



Kamanga & another (Suing on Their Own Behalf and on Behalf of Fourteen Thousand Two Hundred and Sixty-Four (14,264) Members and /or Residents of Shompole Group Ranch, Olkirematian Group Ranch, Pakase Irrigation Scheme And Entasopia Irrigation Scheme as per the Attached Annexure JKI) v Nguruman Ltd & 4 others (Environment and Land Case 31 of 2018) [2025] KEELC 6061 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6061 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND CASE 31 OF 2018
LN GACHERU, J
SEPTEMBER 18, 2025**

BETWEEN

JOHN KAMANGA 1ST PLAINTIFF

ISAAC KIRESIAN 2ND PLAINTIFF

SUING ON THEIR OWN BEHALF AND ON BEHALF OF FOURTEEN THOUSAND TWO HUNDRED AND SIXTY-FOUR (14,264) MEMBERS AND / OR RESIDENTS OF SHOMPOLE GROUP RANCH, OLKIREMATIAN GROUP RANCH, PAKASE IRRIGATION SCHEME AND ENTASOPIA IRRIGATION SCHEME AS PER THE ATTACHED ANNEXTURE JKI

AND

NGURUMAN LTD 1ST DEFENDANT

HERMANUS PHILIPUS STEYN 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

DIRECTOR LAND ADJUDICATION 4TH DEFENDANT

THE HONORABLE ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. This ruling is in regard to the Notice of Preliminary Objection dated 5th December 2014, brought by the 1st Defendant herein, Nguruman Ltd, which Preliminary Objection is in respect of the Notice of Motion Application dated 17th November 2014, and the entire suit as filed by the Plaintiffs herein, wherein the jurisdiction of the court is challenged on the following grounds;



- i. The Plaintiffs lack locus standi to bring this suit and maintain the Notice of Motion Application dated 17th November 2014, because Shompole and Ol kiramatian Group Ranches, wherein the Plaintiffs are office bearers and members, have powers to sue and be sued in their corporate names by virtue of the provisions of section 8(1) of the Land (Group Representatives) Act. Cap 287 Laws of Kenya,
 - ii. That No leave of court was sought or obtained by the Plaintiffs to commence or continue this suit as provided by Order 1 rule 8 of the Civil Procedure Rules.
 - iii. The Plaintiffs lacks locus standi to apply for an Order of stay and/or set aside the execution of the Judgment dated 2nd December 2009, because they are not parties in Kericho HCCC NO.65 OF 2009(as consolidated with Kericho HCCC NO 66 OF 2009).
 - iv. That the Registrar deemed by Order 49 of the Civil Procedure Rules is the Registrar for the High Court, and thus by virtue of Article 165(6) of *the Constitution*, this court lacks jurisdiction to supervise, direct, amend or guide of the perceived mistake of the High Court and or Registrar of the High Court, sitting as such Court when making formal orders of execution;
 - v. That by virtue of section 34(1) of the *Civil Procedure Act*, all questions arising out of execution of the Judgment and Decree of the High Court at Kericho dated 2nd December 2009, can only be determined by the High Court at Kericho as the court, and executing the said decree and such questions cannot be determined by ways of separate suit.
 - vi. That this court lacks jurisdiction to order a stay of execution of the judgment and decree dated 2nd December 2009, because No Notice of Appeal has been against that decision, and indeed no Appeal has been preferred;
 - vii. The Notice of Motion Application dated 17th November 2014, is res judicata because the application for stay of the execution of the Judgment and Decree dated 2nd December 2009, was heard and finally determined by Court of Appeal on 19th April 2013, vide Nairobi Civil Appeal No 18 of 2012, which decision was later rescinded by the same Court of Appeal on 3rd October 2014, vide Nairobi, Civil Application No 90 of 2013.
2. The Plaintiffs filed this suit at Machakos ELC on 17th November 2014, on their own behalf and on behalf of 14,264 members of Shombole and Ol Keramatian Group Ranches, and averred that members of the Olkeramatian and Shombole Group Ranches own OlKeramatian and Shombole Group Ranches Adjudication sections. Further that the two Group Ranches were incorporated by the Registrar of Group Representatives under section 7 of the Land (Group Representatives) Act (Cap 287 now repealed).
 3. It was their further averment that between December 1971 and Jan 1972, a task force was formed to advise on land allocation in Nguruman Escarpment, and on construction of Magadi- Mara Road, and also on possibility of appropriation of the Nguruman Escarpment. The Plaintiffs contended that Nguruman Escarpment was and is still part of OlKeramatian and Shombole Group Ranches.
 4. Further, that vide a letter dated 15th February 1972, the President of the Republic of Kenya requested Kajiado County Council to set apart Nguruman Escarpment as a trust site. However, since Nguruman Escarpment was no longer a trust land, as it formed part of Ol Keramatian and Shombole Group Ranches, the said request was declined.



5. The Plaintiffs also alleged that in breach of notices issued on 12th November 1970 and 15th November 1970, by the Land Adjudication Officer Kajiado District, which declared Olkeramatian and Shombole Group Ranches adjudication sections, six individuals being; Raphael Ololpapit, Noah Ole Silom, Paul Ole Churie, Charles Ole Sonkoi Kone Ole Sendeu and Moses Ole Ololowuanya, purported to hive 6,970 Hectares of Nguruman Escarpment from Olkeramatian and Shombole Group Ranches, and also fraudulently purported to register the hived off land of Nguruman Escarpment as LR NO. Narok Nguruman? Kamorora1, in their names.
6. The Plaintiffs also contended that at no point were the members of Olkeramatian and Shombole Group Ranches ever consulted or resolved to hive off any portion of their land on Nguruman Escarpment to constitute LR No. Narok Nguruman Kamorora1, or at all and thus this land parcel no Narok Nguruman Komorora1, is a fraudulent title.
7. The Plaintiffs further claimed that on 28th August 1984, the Nairobi District Land Registry issued a new Land Certificate over this parcel of land LR NO Narok Nguruman Kamorora1, measuring 26,993 Hectares from 6,970 Hectares, which was published in Legal Notice No 3611 of 1982, in favour of Nguruman Kamorora Group Ranch.
8. Further, the Plaintiffs alleged that the fraud perpetuated by the named individuals, deprived members of the two Group Ranches 26,993 hectares of their prime land, which land is in Nguruman Escarpment, and was fraudulently hived from their parcels of land.
9. The Plaintiffs further averred that after the fraud was completed, Nguruman Kamorora Group Ranch, was dissolved in 1985, and the title over Nguruman Kamorora1, was fraudulently transferred to Nguruman Ltd, the 1st Defendant herein, and a Land Certificate was issued to Nguruman Ltd, on 13th January 1986, and on 24th October 1986, Nguruman Ltd leased the suit land, Narok Nguruman Kamorora1 to Hermanus Philipus Steyn, the 2nd Defendant herein. Thereafter, a Land Certificate was re-issued on 11th November 1986, to the same Nguruman Ltd.
10. It was also alleged that in further perpetuation of fraud, on 15th June 2010, Narok District Land Registry re-issued the title deed over LR NO. Narok Nguruman Kamorora1, measuring 26,993 Hectares to Nguruman Ltd, the 1st Defendant herein. The Plaintiffs further alleged that the said registration is illegal, fraudulent null and void ab initio, and incapable of conferring any proprietorship right over the said land to either Nguruman Ltd or members of Nguruman Kamorora Group Ranch.
11. It was also pleaded that despite the fraudulent registration of this land parcel Narok Nguruman Kamorora1, in favour of the 1st Defendant, it has engaged the members of the Plaintiffs in various Court battles which culminated in an execution Order issued on 9th October 2014, by the Deputy Registrar in Kericho HCCC No 65 of 2009(as consolidated with Kericho HCCC No.66 of 2009): Nguruman Ltd vs Shompole Group Ranch & Another, which Order was obtained ex-parte , without notice against the Plaintiffs: Olkeramatian and Shombole Group Ranches, to attach their land parcels No. LR Kajiado Shompole3 and LR Kajiado Ol Keramatian17, owned by the two Group Ranches respectively.
12. It was argued that the 1st Defendant not only intent on evicting the members of the two Group Ranches from the suit land LR Narok Nguruman Kamorora 1, but also auctioning the said land on 27th November 2014, (though now long past that date) all the remaining portions of Ol Keramatian and Shombole Group Ranches' land, and that action will totally render the members of the two Group Ranches destitute in their own land.



13. Further, that the two Group Ranches challenge the validity of the title held by Nguruman Ltd, over the land parcel No Nguruman Kamorora 1, on the ground that the said parcel of land was hived off and enlarged from 6,970 Hectares to 26,993 Hectares from Ol Keramatian and Shombole Group Ranches, and the said title is void ab initio.
14. For the above reasons, and others as stated in the Complaint, the Plaintiffs prayed for Judgment against the Defendants for orders that;
 - i. There be a declaration that LR NarokNgurumanKamorora1 is invalid; a declaration that LR NO Narok Nguruman Kamorora1 is part of Shombole and Ol Keramatian Group Ranches;
 - ii. An Order for cancellation of this title for LR NO Narok Nguruman Kamorora1
 - iii. An Order of permanent injunction to restrain the 1st and 2nd Defendants from selling by way of public auction or otherwise andor interfering with the Plaintiffs interests over LR NO. Kajiado Shompole3 and Kajiado Ol Keramatian17, among other prayers.
15. Simultaneously to the Complaint, the Plaintiffs filed a Notice of Motion Application dated 17th November 2014, wherein they sought for an order of injunction to restrain the 1st and 2nd Defendants from disposing off by way of public auction or in any way interfering with the Plaintiffs ownership of Kajiado Shompole3, and LR Kajiado Ol keramatian 17; that the Order of the Deputy Registrar in Kericho HCCC No 65 of 2009(as consolidated with Kericho HCCC No 66 of 2009): Nguruman Ltd vs Shompole Group Ranch& Another, given and issued on 9th October 2014, be set aside.
16. The 1st and 2nd Defendants filed their respective Statements of Defence dated 21st December 2014, and denied all the allegations made in the Complaint. In particular, the 1st Defendant averred that the Plaintiffs lacked locus standi to bring and maintain this suit because Shompole and Ol Keramatian Group Ranches, wherein the Plaintiffs are office bearers and members have powers to sue and be sued in their corporate names, by virtue of section 8(1) of the Land (Group Representatives) Act Cap 287(repealed), and did not have to bring this suit through the Plaintiffs.
17. It was their Defence that the suit land was first registered in the name of Nguruman Kamorora Group Ranch, on 19th June 1975, and the land was mistakenly stated to be 6,970 hectares. That Nguruman Kamorora Group Ranch later applied for correction of the topographical error, and on 2nd August 1984, the Chief Land Registrar advised the Land Registrar that since the Director of Survey had recomputed the approximate acreage of the suit land to read 26,993 Hectares, then the Land Registrar was directed to amend the area accordingly.
18. Further, that Nguruman Kamorora Group Ranch transferred the suit land to the 1st Defendant on 13th January 1986, after obtaining all the necessary consents and approvals, and the said Group Ranch was then dissolved in accordance with the provisions of the Land (Group Representatives) Act. The Defendants claimed that the 1st Defendant later leased the suit land to 2nd Defendant for a period of 20 years with effect from 1st August 1986, which lease lapsed on 1st August 2006, and thereafter its registration was cancelled.
19. It was the 1st and 2nd Defendants further claim that on 12th February 1991, the 1st Defendant being the registered owner of the suit land sued Shompole Group Ranch for trespass by its members before the Resident Magistrate Court at NAROK, which court found in favour of the 1st Defendant. However, Shompole Group Ranch in its Defence did not raise the issue fraudulent increment in acreage of the suit property from the original 6,970 Hectares to 26,993 Hectares.



20. Further, that a consent Order was entered wherein Shompole and its members were restrained from trespassing on the suit property, and later a permanent injunction was issued to restrain Shompole Group from trespassing on the 1st Defendant's Land.
21. Further, that Shompole appealed against that decision of the Magistrate Court to the High Court, wherein their Appeal was allowed. However, the 1st Defendant appealed to the Court of Appeal, which Court allowed the 1st Defendant's Appeal and upheld the Resident Magistrate's findings. It was the 1st and 2nd Defendants further Defence that the issues raised herein by the Plaintiffs have been litigated and decided on various foras, and thus this suit is res-judicata.
22. Further, that the 1st Defendant filed Kericho HCCC No 65 of 2009, (As consolidated with 66 of 2009), which case was decided on 2nd December 2009, and the Plaintiffs claim against execution of the Judgment of the High court in Kericho is barred by the doctrine of Res- judicata, and further, this suit is an attack on the said judgement of Kericho High Court, and the execution proceedings which ensued.
23. It is on the above background that the 1st and 2nd Defendants filed the instant Preliminary Objection dated 5th December 2014, now under consideration. The court has found it necessary to give the background of the pleadings as filed by the parties herein since the suit and the Preliminary Objection were filed in the year 2014, in Machakos ELC. Due to the transfer of this suit from Machakos ELC to Kajiado ELC, and later to this Court (Narok ELC), the pleadings are scattered and are not systematically filed and arranged. However, the court has taken the liberty to gather the crucial pleadings; being the Complaint, the Defence by 1st and 2nd Defendants, the Preliminary Objection, the rival written submissions and authorities relied on.
24. The court has considered the above pleadings and the Notice of Preliminary Objection, and finds that the instant Preliminary Objection can be summarised into two grounds;
 - i. Whether the Plaintiffs lack locus standi to file and sustain this suit and Application dated 17th November 2014;
 - ii. Whether the suit herein offends the doctrine of res judicata.
25. The Preliminary Objection was canvassed by way of written submissions. The 1st Defendant Objector filed its written submissions dated 12th January 2015, through Ahmednasir Abdikadir & Co Advocates, and urged the court to allow the Preliminary Objection herein and dismiss the Plaintiffs' suit for being an abuse of the court process. They relied on various decided cases.
26. On their part, the Plaintiffs filed their written submissions dated 23rd January 2015, through Prof. Tom Ojienda & Associates and urged the court to dismiss the instant Notice of Preliminary Objection, allow the prayers sought in the Notice of Motion dated 17th November 2014, and proceed to set the main suit for hearing, and thereafter determine the suit on merit. Various decided cases were relied on to support their submissions.
27. On the issue of jurisdiction, the 1st Defendant submitted that the Plaintiffs lack locus standi to institute this suit because their allegations as pleaded is that the 1st Defendant violated their legal right, but there are no averments in the Complaint that the Plaintiffs herein have any legally enforceable right or interest in the 1st Defendant's land parcel LR NO Narok Nguruman Kamorora 1. It was also submitted that for one to litigate, he must have standing, and or capacity to sue. For this submission, reliance was sought in the case of Law Society of Kenya vs Commissioner of Lands & 2 Others (2001) KLR 706.



28. The 1st Defendant also submitted that Shompole and Ol Keramatian Group Ranches are body corporates, which have powers to sue and can be sued in their Corporate names by virtue of the provisions of sections 8(1) of Cap 287. It was argued that the Plaintiffs as members of Shompole and Ol Keramatian Group Ranches lacked locus standi to bring this suit on behalf of themselves and other members of the said Group Ranch because a Corporation is a legal person, which is distinct from its members who cannot sue or be sued in respect of an obligation owed to body corporate.
29. Therefore, the Plaintiffs herein lack jurisdiction to bring this suit which is a derivative action, and the proper Plaintiffs ought to have been Shompole and Ol Keramatian Group Ranches. Further, it was argued that the plaintiffs who being Directors of a body corporate, and who did not bring this suit in the body corporate name lacked locus standi, to bring the said suit, and therefore, this suit is incompetent and is not proper before the court. Reliance was placed in the case of *Kamau & Others vs Mains & Others* (2008) 1EA 151.
30. Further, the 1st Defendant submitted that the Plaintiffs cannot bring a suit on behalf of unincorporated bodies. It was its argument that Pakase and Entaposia Irrigation Schemes are unincorporated bodies which lack legal capacity to sue and be sued because they are not legal persons. The plaintiffs therefore could not bring the suit on their behalf. They relied on the case of *Simu Vendors Association vs Town Clerk, City Council of Nairobi* (2005) eklr.
31. It was also submitted that the Plaintiffs herein further lacked locus standi to file this suit for orders of stay and setting aside the execution of the Judgment of Kericho HCCC No65 of 2009, as consolidated with Kericho HCCC No 66 of 2009, because they were not parties to the said suit. Reliance was sought in the case of *Kippra & Others vs Jami Bora Charitable Trust & Others* (2007).
32. The 1st Defendant's further submitted that this suit is a collateral attacks to various concluded proceedings, such the Land Adjudication Officer Narok, decision of 10th January 1974, which dismissed Shompole and Ol Keramatian Ownership claim over the suit land, and who determined that Nguruman Kamorora Group Ranch were the proper proprietors of the suit land. Therefore, the Plaintiffs suit is res- judicata as the present suit is similar to the objection made by Shompole and Ol Keramatian Group Ranches which objection was dismissed in 1974. Reliance was sought in the case of *Communication Commission of Kenya & 5 others vs Royal Media Services Ltd & others* (2014) eklr.
33. It was also submitted that the Plaintiffs suit is an abuse of the court process because the suit is an attack on the Ruling and Order of the Resident Magistrate Court of 25th November 1991, which stopped Shompole from trespassing on the 1st Defendant's land, which Judgment was upheld by the Court of Appeal on 13th July 1994.
34. Further, the suit is an attack on the Judgment of the High Court in Kericho, which Judgment stopped Shompole from trespassing on the suit property. It was also argued that the Court of Appeal further held that it could not stay execution of the judgement of Kericho High Court as there was no Appeal filed, and this court cannot overrule the Court of Appeal.
35. Again, this court lacks jurisdiction to supervise a court of concurrent jurisdiction, and any question arising from the execution of the Decree emanating from Kericho HCCC, can be heard by the said court. Reliance was sought in Section 34(1) of the *Civil Procedure Act*, which states: -

“Questions to be determined by court executing decree

- (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or



satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”

36. In conclusion, the 1st Defendant urged this court to dismiss the Plaintiffs’ entire suit and the Notice of Motion Dated 17th November 2014, for being an abuse of the court process.
37. On their part, the Plaintiffs submitted that the Preliminary Objection herein is not merited and should be dismissed with costs. On whether the Plaintiffs lack locus standi to institute the suit on behalf of Shombole and Ol Keramatian Group Ranches, contrary to section 8(1) of the Land (Group Representatives) Act (repealed), the Plaintiffs submitted that though the 1st Defendant relied on the following decisions of courts; Law Society of Kenya v Commissioner of Lands & 2 others [2001] eKLR; El-Busaidy v Commissioner of Lands & 2 others [2002] KLR259; Halsbury’s Laws of England, 5th Edition, Vol.24, none of these cases dealt with the locus to institute a suit by Group Ranch, registered under Cap 287(repealed).
38. It was the Plaintiffs further submissions that the suit complies with the provisions of Order 1 Rule 8 & 12, of the Civil Procedure Rules, since the 14,264 members and residents of Shombole and Ol Keremiatian Group Ranches have duly signed authority that gave John Kamanga and Isaack Kiresian, power to act on their behalf.
39. The Plaintiffs also submitted that they have demonstrated their interests in Shombole and Ol Keramatian Group Ranches, both as members and occupants of the said Ranches, as can be discerned from the prayers set out in the Plaint, which is to enforce their proprietary rights over the suit land Narok Nguruman Kamorora1, and the parcels of land in Kajiado, which constitute Shombole and Ol Keramatian Group Ranches.
40. While relying on the case of Jeremiah Katapa & 3 Others vs Kilelo Kilitia & 5 Others Machakos Hccc No 160 of 2011, the Plaintiffs reiterate that the Group Ranches exercise their power through Group representatives in consultation with and for the collective benefit of all members of the Group ranch.
41. The Plaintiffs further relied on sections 7(3) and 8, section 8(1) and 2 of Land (Group Representatives) Act,(repealed) and submitted that it is a gross misconception of law, for the 1st Defendant to contend that John Kamanga and Isaak Kiresian who are the Chairmen of Shombole and Ol Keramatian Group Ranches lack locus standi to institute this suit, as the above stated provisions of law, recognises them as the body corporate of the two Group Ranches, with mandate to sue and be sued on behalf of the members of the Group ranches.
42. The Plaintiffs reiterated that John Kamanga and Isaack Kiresian not only have locus standi to institute this suit, but also a duty to do so upon consultation with the members of the Group Ranches, and the suit is for the collective benefit of the members of the two Ranches. Reliance was sought in the case of Harit Amrital Sheth vs Lemerian Ole Moijo 54 Others, Nakuru HCCC No. 387 of 2008; Melton Lenkakurro & 6 others vs Taika Moriati & 3 others, Nairobi Hccc No 317 of 2004; and Elija Mwachironda Chengo vs Athuman Hassan Mwanguvu & 7 Othres, Mombasa Hccc No. 64 of 2012.
43. The Plaintiffs proceeded to submit that the suit herein is not only limited to members of Shombole and or Ol Keramation Group Ranches, but also to squatters on these group ranches, who are also entitled to protection of their rights to dignity, right to housing and children’s right as provided by Article 53 of *the Constitution*. Reliance was sought in the case of Jeremiah Katapa & 3 Others vs Kilelo Kilitia & 5 Others Machakos HCCC No 160 of 2011, where the court held; that members of a Group Ranch have an interest in the Group Land.



44. Therefore, the Plaintiffs submitted that members of Shombole and Ol Keramatian Group Ranches have interest in land parcels No Kajjado Shompole3 and Kajjado Ol Keramatian17, and even the squatters thereon are entitled to protection of their rights, and cannot be evicted without alternative housing and accommodation.
45. In conclusion on the issue of Locus Standi, it was the Plaintiffs submissions that it would be travesty and contrary to public interest and policy if the court was to find that the 14, 264 Plaintiffs have no right of audience in this court, either individually or collectively. For this submissions, reliance was sought in Order 1 rule 9 of the CPR, which states that a suit shall not be dismissed due to the misjoinder or non-joinder of parties. Instead, the court is empowered to address the matter concerning the parties who are actually before it, thus ensuring the court can focus on the rights and interests of those involved.
46. Ultimately, the Plaintiffs urged the court to find that John Kamanga and Isaac Kiresian have locus standi or capacity to institute this suit on behalf of the 14, 264 plaintiffs, who have given their authority to institute this suit on their behalf, and they have overwhelming interests in land parcels No. LR Kajjado Shompole3 and Kajjado Ol Keramatian17.
47. On the issue of non-compliance with Order 1 rule 8 of Civil Procedure Rules, on leave of the court to commence the representative suit, it was submitted that under the Civil Procedure Rules 2010, such leave is not required, but under Rule 8(2), the party suing has an obligation to notify parties on whose behalf the suit is commenced in order for the parties to elect to either be in the suit or not. It was their submissions that the 14,264 members of the two Group Ranches gave their authorities to John Kamanga and Isaack Kiresian to act on their behalf, and thus they were all notified of this suit. Therefore, the suit complies with the provisions of Order 1 Rule 8 of the CPR.
48. On whether the court lacks jurisdiction to stay execution of the judgement of the court issued by Kericho High Court in HCCC No 65 of 2009, it was submitted that the application for injunction emanates from the decision of the Deputy Registrar in Kericho HCCC No 65 of 2009, which is appealable to this court as provided by Order 49 rule 7(2) of Civil Procedure Rules. Therefore, this ground is non-starter, and the court has jurisdiction to hear and determines the said Application.
49. The Plaintiffs went further to submit that the suit herein comprises of new parties, and this new parties are not re-litigating the issue of trespass, which was a cause of action in Kericho HCCC No.65 of 2009. Further, that the Plaintiffs herein are litigating over their rights on the land parcels No. Kajjado Shompole3 and Kajjado Ol Keramatian 17.
50. On whether the application is res-judicata in view of the Court of Appeal decision in Civil Appeal No Nai 18 of 2012, and Civil Appeal No 90 of 2013, it was submitted that was an erroneous assertion, since the Plaintiffs herein are not appealing against the Order of trespass issued in Kericho HCCC No. 65 of 2009, but asserting their right to own their property. Reliance was sought in the case of Kenya Hotel Properties Ltd vs Willisden Investment Ltd & 6 others Nairobi Civil Appl No. 24 of 2012(2013) klr.
51. The Plaintiffs further submitted that in the instant suit, they are challenging the legitimacy of the title held by the 1st Defendant, which claim can only be determined at the trial, and which issue was not determined in Kericho HCCC No 65 of 2009, but can only be determined in this suit. Further, that in the said Kericho HCCC No 65 of 2009, the Plaintiffs herein were not parties to the said suit, and cannot be accused of re-litigating on the same issues. Therefore, the objection on the suit and the Application being Res-judicata is not merited, as the previous suits referred to are not similar, have no similar issues and the parties are not similar.
52. Ultimately, the Plaintiffs urged the court to dismiss the instant Preliminary Objection with costs.



53. The above are the Pleadings of the parties, the Preliminary Objection, the grounds and rival submissions for and against the said Preliminary Objection and the cited authorities. The singular issue herein is whether the said instant Preliminary Objection is merited based on all the grounds advance.
54. Before delving on the merit or demerit of this Preliminary Objection, the court points out that Shombole and Ol Keramatian Group Ranches have had a chequered history over the suit land with 1st Defendant (Nguruman Ltd). From the Pleadings of the parties herein, it is not in doubt that, before the 1st Defendant became the registered as the owner of Land Narok Nguruman Kamorora 1, Nguruman Kamorora Group Ranch, was the registered owner of this parcel of land, and thereafter, the said Group Ranch transferred the suit land to 1st Defendant in 1986. The 1st Defendant was issued with a Land Certificate on 13th January 1986, which was later re-issued in 2010, and has been holding it since then.
55. The court has also noted that the adjudication process for the three Group Ranches, Shompole, Ol Keramatian and Nguruman Kamorora were completed in the 1970s, and Land Certificates were issued being Kajiado Shombole 3, Kajiado Ol Keramatian 17 and Nguruman Kamorora 1, pursuant to the *Land Adjudication Act*.
56. Further, it is clear that in 1974, the Shompole and Ol Keramatian Group Ranches raised an objection after the Nguruman Kamorora Adjudication was completed. The said Objection was heard by the Adjudication Officer, and the Objection was dismissed. There was no appeal lodged against that dismissal, and therefore, a Certificate of finality was published which confirmed Nguruman Kamorora Adjudication Register was final.
57. It is also evident that on 12th February 1991, the 1st Defendant sued Shompole Group for trespass at Narok Resident Magistrates Court; which suit was decided in favour of the 1st Defendant. However, after Shompole appealed at the High Court, the decision of the Magistrates Court was overturned. The 1st Defendant appealed to the Court of Appeal, which Court allowed the Appeal, and upheld the decision of the Resident Magistrate. Therefore, the 1st Defendant was confirmed to be the owner of the suit land. There is no evidence whether that holding has been upset by any competent court.
58. Further, from the available pleadings, it is evident that the 1st Defendant filed two cases against the Shompole and Ol Keramatian Group Ranches, at the High Court being Kericho HCCC No 65 of 2009, and Kericho 66 of 2009, which suits were consolidated. A Judgment of the court was issued on 2nd December 2009, which Judgement was in favour of the 1st Defendant. Restraining orders were issued against Shompole and Ol Keramatian Group Ranches, from continuing with the trespass over the 1st Defendant's parcel of land; Narok Nguruman Kamorora 1.
59. It is also evident that after this Judgment of Kericho HCCC No. 65 of 2009, as consolidated with HCCC No. 66 of 2009, several proceedings followed, culminating in proceeding before the Court of Appeal, which Court initially set aside a Ruling of the High Court that had disallowed an application for review, but later set aside the said order of allowing review. There is no evidence of whether this Judgment of Kericho High Court of 2nd December 2009, was ever appealed against.
60. After the setting aside by the Court of Appeal, execution proceedings ensued against Shompole and Ol Keramatian, who were Judgment Debtors. The Deputy Registrar at Kericho High Court issued Execution Orders on 9th October 2014, in the two consolidated suits, wherein the Decree Holder, being the 1st Defendant was allowed to sale the properties comprised of Kajiado Shompole 3 and Kajiado Ol Keramatian 17, in execution of a Decree issued by the court.
61. The Plaintiffs herein were aggrieved by the said execution Orders, but instead of filing an Appeal or stay of execution of the Deputy Registrar's order, the Plaintiffs filed the instant suit together with an



Application seeking Stay of the Ruling of the Deputy Registrar over the execution of the Judgment in Kericho HCCC No 65 of 2009(as consolidated with Kericho Hccc No 66 of 2009). The said Judgment of Kericho High Court has not been overturned and or set aside, and thus, it is still a valid Judgment of the court, capable of execution.

62. After the said Execution Orders were issued by the Deputy Registrar in the above Kericho Matter on 9th October 2014, the Plaintiffs herein filed the instant suit at Machakos ELC on 18th November 2014, and sought for cancellation of the Land Certificate for Narok NgurumanKamorora 1, held by the 1st Defendant, who was the successful litigant in Kericho HCCC No.65 of 2009(consolidated with 66 of 2009).
63. The Plaintiffs also prayed for a declaration that the said land, Narok Nguruman? Kamorora1 is part of Shombole and Ol Keramatian Group Ranches' land; The Plaintiffs also sought for permanent injunction to restrain the 1st and 2nd Defendants from selling land parcels No. Kajiado Shompole 3 and Kajiado Ol keramatian17, by way of public auction or otherwise, which orders emanated from an execution proceeding issued at Kericho HCCC No. 65 of 2009(as Consolidated with Kericho HCCC No. 66 of 2009). The said execution proceedings have not been set aside and or vacated.
64. From the annexures to the Replying Affidavit of the 1st Defendant, which annexures have not been denied by the Plaintiffs, it is evident that a Constitution Petition No 625 of 2006, had been filed on behalf of members of Shompole and Ol Keramatian Group Ranches under the retired Constitution, wherein among the prayers sought were; a declaration that the purported adjudication of NgurumanKamorora parcel of land, in 1973, was a sham, null and void. Further, that the Group Representatives of Shompole and Ol Kiramatian Group Ranches be registered as the owners of the land parcel Nguruman Kamorora1.
65. The said Petition was vehemently opposed by the Respondents thereon; and the 1st and 2nd Defendants were among the Respondents sued in the above Petition. It is not clear to this court what was the fate or outcome of the above Petition, which Petition had raised similar issues to the ones raised in the instant suit. Was this Constitution Petition No 625 of 2006 finalised? What were the findingsdetermination?
66. The above being the background of this case and the 1st Defendant's Preliminary Objection, which is challenging the jurisdiction of this court on various grounds, the main issue is whether the said Preliminary Objection is merited. The two basic issues for determination are;
 - i. Whether the Plaintiffs have locus standi to institute and maintain this suit and Notice of Motion dated 17th November 2014;
 - ii. Whether the suit herein and the Notice of Motion dated 17th November 2014 are Res-judicata.
67. Does the Notice of Preliminary Objection herein meet the criteria of what amounts to a Preliminary Objection as stated in the case of Mukisa Biscuits Manufacturers Ltd v West End Distributors Ltd (1969) EA696, where the Court held;

“ „, so far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”



68. The Black's Law Dictionary defines a Preliminary Objection as: "...an objection that, if upheld, would render further proceedings before the tribunal unnecessary".
69. The case of Attorney General & Another Vs Andrew Mwaura Githinji & Another [2016] eKLR:- explained what is tantamount to the scope, nature and meaning of a Preliminary Objection as :-
- i. Preliminary Objection raises a pure point of law, which is argued on the assumptions that all facts pleaded by other side are correct.
 - ii. A Preliminary Objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and
 - iii. The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute."
70. Therefore, a Preliminary Objection can only be raised purely on a point of law, and does not question the truthfulness of a fact in a case because then it would be a breach of rules of procedure and ought not be entertained by courts of law.
71. In the case of Aviation & Allied Workers Union Kenya v Kenya Airways Limited & 3 others [2015] eKLR, the Supreme Court held that;
- "the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record".
72. From the various decided cases, it is clear that a Preliminary Objection must be raised on the assumption that all facts pleaded by the adverse party are correct. It must not raise substantive issues from the pleadings which must be determined by court upon perusal of evidence. No Preliminary Objection can be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
73. As the court pointed earlier, the 1st Defendant is challenging the jurisdiction of this court on the basis of lack of locus standi by the Plaintiffs, and the suit being Res-judicata, and thus abuse of the court process. The above issues as raised go to the Jurisdiction of this Court to hear and determine the matter herein. Jurisdiction is everything, and without jurisdiction, the Court must then down its tools.
74. In the case of Owners of the Motor Vessel 'Lillian' (S) v Caltex Oil (Kenya) Ltd [1989] KLR 1, the Court held that; -
- "Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court had no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction..."
75. The court finds the Objection as raised by the 1st Defendant; on lack of Jurisdiction, lack of locus standi OR capacity to bring the suit herein and abuse of the court process, are pure points of law, which if upheld can dispose of the suit at the preliminary stage.
76. See the case of Quick Enterprises Ltd v Kenya Railways



Corporation, Kisumu High Court Civil Case No 22 of 1999, where the Court held that:-

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the court having to resort to ascertaining the facts from elsewhere apart from looking at the pleadings alone”.

77. If the court is to find that it has no jurisdiction due to lack of locus standi or capacity, and abuse of the court process, the court would have no option but to down its tools, and the matter will be determined preliminarily without having to call evidence. Therefore, the instant Notice of Notice of Preliminary Objection meets the criteria of a Preliminary Objection as per Mukisa Biscuits case(supra).

78. The next issue is whether the Preliminary Objection is merited? In answering this question, the court will consider the two issues set out earlier for determination.

I. Whether the Plaintiffs have locus standi to institute and maintain this suit and Notice of Motion dated 17th November 2014;

79. The is Defendant objected to the Plaintiffs’ case on the basis that they lack Locus standi to institute and maintain the suit. Locus standi or capacity to institute a suit, gives a litigant standing, and lack of the said capacity means that the suit is incompetent and should be struck out. In the case of Law Society of Kenya v Commissioner of Lands & others, Nakuru High Court Civil Case No 464 of 2000, the Court held that; -

“locus standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law”.

80. Further, in the case of Alfred Njau and others v City Council of Nairobi (1982) KAR 229, the Court also held that; -

“the term locus standi means a right to appear in Court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings”.

81. Therefore, it is evident that locus standi is the right to appear and be heard in Court or other proceedings and literally, it means ‘a place of standing’. If a party is found to have no locus standi, then it means heshe cannot be heard even on whether or not he has a case worth listening to. It is further evident that if this Court was to find and hold that the Plaintiffs herein have no locus standi, then they cannot be heard and that point alone may dispose of the suit.

82. See the case of Hussein v Gedi; Adan (Interested Party) (Environment & Land Case E009 of 2024) [2025] KEELC 931 (KLR) (26 February 2025) (Ruling); where the court held;

“Locus standi goes to the jurisdiction of the Court to entertain the suit as it relates to the capacity of a party to sustain a suit. If a party lacks capacity, any suit commenced by such a party andor against such a party is incompetent and null and void and cannot be sustained by the Court.”

83. It was the 1st Defendant’s argument and submissions that the Plaintiffs herein John Kamanga and Isaack Kiresian have no locus standi to institute and maintain this suit as office bearers and members of the two Group Ranches, which Group Ranches have power to sue and be sued in their corporate name as provided by Section 8(1) of the Land (Group Representative) Act, Cap 287(repealed).



84. This section 8(1) of the repealed Cap 287 provides;
- “The issue of a certificate of incorporation of group representatives shall, subject to this Act and any regulations made under it and to the conditions, limitations and exemptions in the certificate of incorporation, confer on the group representatives power to sue and be sued in their corporate name, and to acquire, hold, charge and dispose of property of any kind, and to borrow money with or without giving security.”
85. The above section provides a legal framework for a formally recognized group to manage and transact with property through its appointed representatives. Therefore, Group Representatives can sue or be sued through their Representatives who are identified in the Certificate of Incorporation in their corporate name. The above provision of law dictates that Land Group Representatives, upon receiving a certificate of incorporation, are granted the power to sue and be sued in their corporate name. That certificate of incorporation confers this power on the group representatives, making it a mandatory procedure for such groups or entities to bring legal actions in their official corporate capacity.
86. In Nakuru Constitutional Petition No. 45 OF 2014, the court made the following observations; “under section 7(3) of the Land (Group Representatives) Act, Chapter 287 Laws of Kenya that provide that upon registration and issuance of a certificate of incorporation, the persons named in it as the group representatives shall thereupon become representatives of the group. Section 7(3)(3) also provides that the certificate of incorporation confers on the group representatives power to sue and be sued in their corporate name. It is stated that in view of the above provisions, the group representatives ought to have been named, and sued in their capacity as group representatives. The petitioner failed to follow the above procedure that makes the petition incompetent and bad in law.”
87. The Certificates of Incorporation of the two Group Ranches were attached to the 1st Defendant’s Replying Affidavit, which annexures were not opposed by the Plaintiffs. In the said Certificates of Incorporation, the representatives indicated thereon are; For Shompole Group Ranch, the representatives are; Isaac Keses Kiresian(one of the Plaintiffs), Lerondo Ole Sapiyaya, Joseph Lemomo Munge, Sorkote ole Torinke, odupol ole kawuet, Somare Ole Tanchu, Nehue Ole Masiama Nkaate Ole Komeyani ,Parmitor ole Tetu and Siara Ole Tumpes.
88. For the Ol Keramatian Group Ranch, the representatives according to the Certificate of Incorporation are John Kamanga (one of the Plaintiffs), Lempaa ole Kitu, Mepukori Parseyia, and 7 others whose names are not legible. Attached to the Certificates of Incorporation are names of the alleged members of these Group Ranches. However, apart from the names appearing thereon, the said members have not signed the said registers or given their identification numbers. Can the court then confirm that indeed these group members had notice of the suit and they gave their authority?
89. The suit herein is filed by John Kamanga, one of the representatives of Ol Keramatian Group Ranch and Isaack Kiresian, one of the representatives of Shompole Group Ranch. The suit is not filed by all the Representatives of the Group Ranches in the corporate names. There are no reasons advanced as to why the other officials of the Group Ranches were not included in the suit, and there was no evidence that they gave authority to the two representatives to sue on behalf of the Group Ranches. Do these two representatives among the many give a corporate name to the two Group Ranches? The answer is negative.
90. Courts have variously held that it is only the Group Ranch through its representatives, that could sue on behalf of its members concerning land belonging to the Group Ranch. Individual members of a Group Ranch lack capacity to sue until and unless they have acquired private interest in the



land belonging to the group ranch. See the case of Daniel Mamagul Kandeï & 2 Others vs. Kamanga Holdings Ltd & 44 others (2017) eKLR, where the Court held: -

“Having read the provisions of Sections 5, 7 and 8 of the Act, and the cases of Simon Tapai Santento Kimnyak Ole Sale (Suing on behalf of 78 Olepols Village Members) v Ita Ole Bulati & 8 others [2011] eKLR and Nkol Risha Ole Ntompō Kerery and 4 others v. Chairman Larngosua Group Ranch & 9 Others Nairobi HCCC No. 269 of 2001, I agree with the defendants that the plaintiff as not being the group representatives contemplated under the aforementioned sections of the law, have no capacity to sue on behalf of the group ranch, the members of the group ranch or on their own behalf.

91. In the above case of Simon Tapai Santento Kimnyak Ole Sale (Suing on behalf of 78 Olepols Village Members) v Ita Ole Bulati & 8 others [2011] eKLR; the court held as follows;

It does not seem to be in dispute that the land in issue generally belongs to Naroosura Group Ranch. It has not yet been subdivided. The land is therefore governed by the Land Group (Representative) Act Cap. 287, Laws of Kenya. The question is therefore whether the applicants are properly before the court. Under Section 5 of the Act, a meeting of the Group, convened by the Registrar after due notice, elects its representatives. Under Section 7, the said representatives who then apply for incorporation and under Section 8, the certificate of incorporation confers on the representative's power to sue and be sued in the corporate name, acquire, hold or charge and dispose of property of any kind and borrow money with or without security.It seems that there are disputes in the Group Ranch over leadership and ownership or use of land as admitted by the applicants in the further affidavit at paragraphs 9 to 14. That being the case, the applicants should first exhaust the dispute resolution mechanism under the Act (Section 10) before they can venture to come to this court. Besides, it is clear from Section 5 and 7 that the applicants have no locus to bring this application as they are not Group representatives recognized under Section 8 of the Act. The Group Ranch is still in existence and the applicants must comply with Cap 287, Laws of Kenya, and Rules of the Group to which the Group is subject....”

92. It is not in doubt that John Kamanga and Isaack Kiresian are some of the directors or representatives of the two Group Ranches, but they are not the only Directors. They have not brought the suit together with the other Directors, and the other Directors have not given them authority to bring the suit alone. It is evident that a single representative of a Group Ranch cannot sue alone on behalf of Group Ranch, as the Land (Group Representatives) Act (Cap. 287) states that group representatives must act on behalf of and for the collective benefit of all members. A suit filed and or brought by Group representatives must be in their corporate name, and the actions taken are for the group as a whole.
93. The Plaintiffs herein as Directors of the two Group Ranches could not sue on behalf of the members of the said Group Ranches alone without involving the other DirectorsRepresentatives because as provided by section 8(1) of CAP 287(repealed), they should have sued in the corporate name, and that meant including the other DirectorsRepresentatives.
94. Further, the court concurs with the 1st Defendant's submissions that the two Plaintiffs have no Locus standi to sue for unincorporated bodies. The Plaintiffs have allegedly sued on behalf of Pakase and Entasopia Irrigation Scheme. Who are these groups? Are they incorporated? Without evidence of their incorporation then this court finds and holds that they are not incorporated and the Plaintiffs can certainly not file a case on their behalf.



95. In any event, the Plaintiffs who have sued on behalf of the said Pakase and Entasopia Irrigation Schemes did not comply with the mandatory provisions of Order 1, rule 8(1) & (2) of CPR, which states;
1. Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as of all in same representing all or as representing all except one or more of them.
 2. The parties shall in such case give notice to all such person either by personal service or where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.
96. It is very clear from the above provisions of Order 1 Rule 8(2) that when a representative suit is filed, the parties must give notice of the suit to all the interested persons. This notice can be served personally or through public advertisement if personal service is not feasible due to the large number of people or other reasons, as directed by the court.
97. There is no evidence that the Plaintiffs herein did give such notice to members of Pakase and Entasopia Irrigation Schemes. This requirement is mandatory, and it is evident that no order as required in Order 1 rule 8(1) above was obtained and no such notice was issued. Further no evidence that the two Plaintiffs are elected officials of the two Irrigation Schemes
98. In the case of *Kituo Cha Sheria v John Ndirangu Kariuki & another* [2013] KEHC 21 (KLR) the court held that: -
- “As a general rule, unincorporated legal persons including societies, clubs and business-names can only bring proceedings through their registered or elected officials or in their proprietor’s names.”
99. Additionally, under Order 1 Rule 13 of the Civil Procedure Rules, where there are more than one Plaintiff or more than one Defendant, any one or more of them may be authorized by the others to appear plead and/or act on their behalf in writing. Order 1 Rule 13 of the Civil Procedure Rules provides:-
- “13.
- (1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.
 3. The authority shall be in writing signed by the party giving it and shall be led in the case.”
100. In the present matter the Plaintiffs, who are allegedly suing on behalf of the 14,264 members of the two Group Ranches and also members of the two irrigation schemes. The two Plaintiffs did not have any written authority of the other would have been Plaintiffs to plead and/or act on their behalf. There was clearly no compliance with the provisions of Order 1 Rule 13 of the Civil Procedure Rules and hence the Plaintiffs could not properly represent the Members of Pakase and Entasopia Irrigation Schemes. Therefore, the Plaintiffs herein lacked the *Locus Standi* and/or the capacity to institute the instant suit on behalf of the other Plaintiffs.



101. In the case of Julian Adoyo Ongunga & Another –vs- Francis Kiberenge Bendera (suing as Administraror of the Estate of Fanuel EvansAmudavi, Deceased) (2016) Eklr, the court elaborated on the issue of lack of locus or capacity as follows;

“Further the issue of locus standi is so cardinal in a Civil matter since it runs through the heart of the case. Simply put, a party without locus standi lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a Court acting without jurisdiction, it all amounts to null and void proceedings”.

Therefore, it is the court’s considered view that the Plaintiffs herein lacked the locus standi and/or capacity to institute the suit against the Defendants.

102. Further, this suit was filed after the execution orders were issued at Kericho High court in Kericho HCCC No. 65 of 2009. The Plaintiffs Group Ranches were the parties thereon, but not the Plaintiffs herein as named in this suit. If they were not parties in Kericho HCCC No. 65 of 2009, do they have capacity or locus to seek for stay orders of the Ruling of 9th October 2014? This court finds in the negative.

II) whether the Suit herein and the Application dated 17th November 2014 are Res judicata?

103. The Black’s law Dictionary defines Res- judicata as:

“An issue that has been definitely settled by judicial decision; An Affirmative defense barring the same parties from litigating a second law suit on the same claim, or any other claim arising from the same transaction or series of transaction and that could have been but was not raised in the first suit. The three essentials are

- (1) an earlier decision on the issue,
- (2) a final Judgment on the merits and
- (3) the involvement of same parties, or parties in privity with the original parties.”

104. The doctrine of res judicata is set out in Section 7 of the *Civil Procedure Act*, which states: -

7. Res judicata

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

105. The doctrine ousts the jurisdiction of a court to try any suit or issue which had been finally determined by a court of competent jurisdiction in a former suit involving the same parties or parties litigating under the same title.

106. Section 7 of the Act reveals that for the bar of res judicata to be effectively raised and upheld, the party raising it must satisfy the doctrine’s five essential elements which are stipulated in conjunctive



as opposed to disjunctive terms. In the case of Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] Eklr, the Supreme Court stated: -

“The doctrine of res-judicata will apply only if it is proved that:

- i. The suit or issue raised was directly and substantially in issue in the former suit.
- ii. That the former suit was between the same party or parties under whom they or any of them claim.
- iii. That those parties were litigating under the same title.
- iv. That the issue in question was heard and finally determined in the former suit.
- v. That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.”

107. In the case of John Florence Maritime Services Limited & Another Vs Cabinet Secretary for Transport & Infrastructure & 3 Others [2021] eKLR; the supreme court held, for the doctrine of Res-judicata to apply, the following elements had to be demonstrated:

- a. There was a former judgment or order which was final;
- b. The judgment or order was on merit;
- c. The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
- d. There had to be between the first and the second action identical parties, subject matter and cause of action.

108. Further, the Supreme Court in Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another [2016] eKLR, stated the following regarding res judicata: -

“Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights.”

109. In its submissions, the 1st Defendant argued that the suit herein is barred by the doctrine of Res - judicata, since the issues raised herein have variously been determined in other cases, by courts of competent jurisdiction. The Plaintiffs herein have alleged that the 1st Defendant’s title was fraudulently acquired after Nguruman Kamorora Group Ranch fraudulently acquired the suit land that belonged to the two Group Ranches- Shompole and Ol Keramatian.

110. On their part, the Plaintiffs submitted that the suit herein is not Res -judicata since some of the Plaintiffs herein were not parties to the earlier suits, and the claim herein is on fraudulent acquisition of the Plaintiffs’ land, and a claim for cancellation of the fraudulently acquired title deed held by the 1st Defendant.

111. However, as the court pointed out earlier, the two Group Ranches have had various disputes over the suit land with the initial holder of the title Deed being Nguruman Kamorora Group Ranch, who later sold the suit land to the 1st Defendant. The dispute before the land Adjudication officer was determined in favour of Nguruman Kamorora Group Ranch. No Appeal was filed.



112. The suit before the Resident Magistrate court was eventually determined in favour of the 1st Defendant after the matter ended up at the Court of Appeal. Further, the suit filed at Kericho High Court was also determined in favour of 1st Defendant and it was at the execution stage when the instant suit was filed.
113. There is no evidence that the said Judgement at Kericho High Court has been set aside and or overturned. It is still a final judgement of the court, and by asking the court to cancel the title held by the 1st Defendant, it is tantamount to asking the court to sit on an appeal of a court of equal status. As has the courts have variously held, litigation must come to an end.
114. It does not matter that the Plaintiffs herein have taken different names, OR some of the Plaintiffs were not parties in Kericho HCCC NO 65 &66 OF 2009, what matters is that the suit property that was the subject matter in all the named and determined court cases is still the suit property in this case, being Narok Nguruman Kamorora 1, and the 1st Defendant has been a constant party in all those proceedings.
115. In the case of Omondi v National Bank of Kenya, Ringera J held as follows;
- “...the doctrine of res judicata would apply not only to situations where a specific matter between the same persons litigating in the same capacity has previously been determined by court of competent jurisdiction but also to situations where either matters which could have been brought in were not brought in or parties who could have been enjoined were not enjoined. Parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit. They are bound to bring all their cases at once.”
116. Further in the case of ET v Attorney General & Another [2012] eKLR, the court held that a claim may be debarred by res judicata or issue estoppel, on the broad principle that prevents a party from re-litigating an issue of fact or law that has been determined by a prior order or judgment. The court held thus;
- “The courts must always be vigilant to guard against the litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court.”
117. After a thorough consideration of the instant Preliminary Objection, the court is convinced that the suit and the application dated 17th November 2014, are res judicata, since the orders issued by the Deputy Registrar on 9th October 2014, were towards execution of a valid court Judgement.
118. In a nutshell, though the Plaintiffs aver that this suit is not res-judicata, it is evident from the pleadings and annexures thereto that the issue of the land parcel Narok Nguruma Kamorora 1 has been a subject of litigation and resolution since 1974, and several decisions have been made related to it. These decisions are; A Decision of 10th January 1974 by the Land Adjudication Officer in the claim made by Shompole and Olkeramatian Group Ranches against Nguruman Kamorora Group Ranch over the suit land. The matter was resolved and Certificate of Adjudication for Nguruman Kamorora Adjudication was made final.
119. There is also the decision of Resident Magistrate Court Narok in Civil Case No 15 of 1991, which was later upheld by the Court of Appeal, and the Judgment in Kericho HCCC No, 65 &66 of 2009(consolidated), which Judgment was in favour of the 1st Defendant and which culminated in issuance of execution order of 9th October 2014, wherein the Shompole and Ol Keramatian parcels of land in Kajiado are to be sold in execution of the Decree of that Court.
120. If the two Group Ranches were aggrieved by the said execution order, they ought to have filed objections or further proceedings before the said court, but not to file a fresh suit over the same issues



that had already been determined. Consequently, this court concurs with the 1st Defendant that the suit herein is Res-judicata.

121. The Plaintiffs are seeking to stay of execution proceedings that were issued in said Kericho HCCC NO.65 & 66 OF 2009. The court finds and holds that this is an abuse of the court process since the said Application for stay could have been sought in the said court, which issued the said execution orders. Could the filing of the suit in Machakos ELC for stay of orders issued in Kericho High Court not amount to forum shopping?
122. The other reason why the court finds the suit herein is an abuse of the court process is that the Court of Appeal did pronounce itself on 3rd October 2014, and did not stay execution of the Judgement of the in Kericho HCCC No. 65& 66 of 2014. Consequently, execution proceedings ensued, and then the Plaintiffs filed the instant suit in a different court. Why have Plaintiffs herein sought for stay of the orders issued in the execution proceedings in a separate suit, in the instant suit. why not file proceedings to oppose the said execution orders in the court that issued them? The suit is an abuse of the court process.
123. For the above reasons, this court finds that it lacks jurisdiction to stay execution of a decree that was issued in another court, which court issued the said execution orders pursuant or in enforcement of a Judgement of a competent court, which Judgment has not been set aside, upset and or overturned. Further, this court has no Jurisdiction to deal with a matter wherein the Plaintiffs have no locus standi or capacity to institute the suit, and the suit is res-judicata.
124. Consequently, this court upholds the 1st Defendant's Preliminary Objection dated 5th December 2014 and proceeds to strike out the Plaintiffs' entire suit and the Notice of Motion Application dated 17th November 2014, with costs to the 1st Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF SEPTEMBER 2025

L. GACHERU

JUDGE.

Delivered online in the presence of: -

Elija Meyoki, Court Assistant.

Ms. Misiati holding brief for Prof. Tom Ojienda (SC) for Plaintiffs

Ms Muthoni holding brief for Mr. Ahmednasir M. Abdullahi (SC) for 1st Defendant Objector and 2nd Defendant

NA for the 3rd Defendant

NA for the 4th Defendant

NA for the 5th Defendant

