



**Knochella v Kanchuel & 3 others; Olalui Group Ranch (Proposed Interested Party)
(Environment & Land Case 2 of 2023) [2024] KEELC 1193 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1193 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 2 OF 2023
CG MBOGO, J
MARCH 6, 2024**

BETWEEN

GIDEON S KNOCHELLA PLAINTIFF

AND

THOMAS KANCHUEL 1ST DEFENDANT

SYMON SIATOTI KANCHUEL 2ND DEFENDANT

ALEX TUNAI KANCHUEL 3RD DEFENDANT

KIPALI KANCHUEL 4TH DEFENDANT

AND

OLALUI GROUP RANCH PROPOSED INTERESTED PARTY

RULING

1. Before this court for determination is the Notice of Motion dated 4th July, 2023 filed by the proposed interested party/applicant and is expressed to be brought under Sections 1A, 1B and 3A, 63 of the [Civil Procedure Act](#) and Orders 1 Rule 10 (2), Order 12 Rule 7 and Order 51 Rule (1) of the Civil Procedure Rules seeking the following orders: -
 1. Spent.
 2. That this honourable court be pleased to order that the applicant, Olalui Group Ranch, be joined as an interested party and/or in the alternative the 5th defendant in this suit and consequently, grant it leave to file such pleading and documents as it may direct.
 3. That this honourable court be pleased to order that the injunctive orders issued by the Court of Appeal in Civil Appeal (Application) No. 80 of 2020 in its ruling on the 18th December, 2020 be upheld and stay operational pending the hearing and determination of this application.



4. That the costs of this application be in the cause.
2. The application is premised on the grounds inter alia that the proposed interested party/applicant is the rightful owner of Narok/ Trans-Mara/ Olalui/ 1 now illegally, irregularly, unprocedurally and fraudulently subdivided into parcels 2-607.
3. The application was supported by the affidavit of Michael Lekishon Ole Risa, the Chairman of the applicant sworn on even date. In his affidavit, it was deposed that the applicant is a duly incorporated group ranch under the Land (Group Representatives) Act, and that it is the rightful owner of Narok/ Trans-Mara/Olalui/1 now illegally and fraudulently subdivided into parcels 2-607. The proposed interested party/ applicant further deposed that vide the judgment delivered on 30th July, 2020, the trial court dismissed its case which litigated over the suit property in ELC Case No. 335 of 2017.
4. That upon filing of the appeal on 17th August, 2020, the Court of Appeal found in its favour, vide the ruling delivered on 18th December, 2020. The proposed interested party/applicant deposed that the plaintiff/respondent in this case mischievously filed this suit, and has failed to disclose the existence of both the appeal and the injunctive orders, and due to the non-disclosure, the court was misled into granting orders of injunction over the suit property in favour of the plaintiff/respondent. Further, that on 2nd February, 2023, this court issued an order directing the District Land Registrar to visit the suit property and confirm if there are structures and the intended visit shall be in contravention of the Court of Appeal decision.
5. The proposed interested party/ applicant deposed that the plaintiff/respondent is guilty of material non-disclosure of material facts and that they are a necessary party whose participation was required in the proceedings in this matter. Further, that the plaintiff/respondent committed deliberate acts of deceit and fraud in obtaining the orders of 2nd January, 2023 and 2nd February, 2023 which were cleverly designed and calculated to conceal his activities from the applicant and its members.
6. The application was opposed by the replying affidavit of the plaintiff sworn on 9th October, 2023. The plaintiff/respondent deposed that the application is similar to an earlier application made by the same proposed interested party dated 17th February, 2023. Further, that this court rendered a ruling on 13th June, 2023 by dismissing the application with costs and that the present application is thus res judicata.
7. The proposed interested party/applicant in response thereto filed a further affidavit sworn on 26th January, 2024. The proposed interested party/applicant deposed that from the ruling delivered on 13th June, 2023, it is clear that the application was dismissed on a technicality on the grounds that whoever filed it had no locus and as such, the application cannot be said to be res judicata.
8. The application was canvassed by way of written submissions. On the 26th January, 2024 the proposed interested party/applicant filed its written submissions of even date where he raised four issues for determination as listed below: -
 - i. Whether there was material non-disclosure by the plaintiff.
 - ii. Whether the applicants should be granted joinder as Interested Parties or the 5th defendant in the suit.
 - iii. Whether the application is res judicata.
 - iv. Who bears the cost of the application.
9. On the first issue, the proposed interested party/applicant submitted that under Order 40 Rule 7 of the Civil Procedure Rules, the court has the power to set aside or discharge injunctive orders made



- without full disclosure. Further, that it is imperative that before making applications for orders of injunction, parties should fully disclose relevant facts in injunction applications to avoid occasioning prejudice against other parties. It was their submission that if the plaintiff/respondent had disclosed the injunctive orders issued by the Court of Appeal on 18th December, 2020, the court sitting in Kilgoris would have very important information while determining this matter and could have arrived at a completely different finding from the injunctive orders of 17th January, 2023 and 2nd February, 2023.
10. Further, that the orders obtained on 2nd February, 2023 directing the District Land Registrar to visit the suit property and confirm the status quo was in contravention of the Court of Appeal orders granting the proposed interested party/ applicant orders of injunction. The proposed interested party/ applicant relied on the cases of Bahadurali Ebrahim Shamji v Al Noor Jamal & 2 Others Ca 210 of 1997 and Kenya Electricity Transmission Company Limited versus Kibotu Limited [2019] eKLR.
 11. On the second issue, the proposed interested party/ applicant submitted that the suit property illegally subdivided into parcels 2-607 forms part and parcel of land belonging to it from which the plaintiff and others were restrained at its behest. Reliance was placed in the cases of Communications Commission of Kenya & 4 Others v Royal Media Services Limited & 7 Others [2014] eKLR and Francis Karioko Muruatetu & Another versus Republic & 4 Others, Supreme Court Petition No. 15 of 2015.
 12. On the third issue, the proposed interested party/ applicant submitted that paragraph 57 of the ruling delivered on 13th June, 2023 found that the deponent had no locus standi or authority to swear the affidavit on behalf of the Group Ranch. Further, that since the application was brought by a person without authority, it logically follows that it was not an application by the person purported to have filed it and it cannot be said that it was res judicata. It was further submitted that since the impugned application was filed by a person who did not have locus standi, it was incompetent and should have been struck out.
 13. The proposed interested party/ applicant submitted that the court's engagement purporting to dismiss the application had no legal consequence and the use of the term dismissal instead of striking out does render the decision in law. The applicant relied on the cases of Enock Kirao Muhanji v Hamid Abdalla Mbarak [2013] eKLR, Daniel Njuguna Mbugua v Peter Kiarie Njuguna & 2 Others [2021] eKLR, Law Society of Kenya v Commissioner of Lands & Others, Nakuru High Court Civil Case No. 464 of 2000 and Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR.
 14. On the 20th February, 2024 the plaintiff/respondent filed his written submissions of even date where he raised two issues for determination as follows: -
 - a. Should the applicant be joined as an interested party and/or 5th defendant in ELC E001 of 2023 at Kilgoris.
 - b. Is the instant application res judicata.
 15. On the first issue, the plaintiff/respondent submitted that the proposed interested party/applicant will only confuse and meddle in the cause of action as no prayers are made against them. Further, that the proposed interested party/applicant is a corporate body hence incapable of trespassing upon the plaintiff's/respondent's land. He submitted that the proposed interested party/applicant enjoinder in this suit is not merited as they do not have a substantive claim to the suit property, neither as owners as they do not have any title of ownership. He further submitted that the proposed interested party/ applicant has not established that it is a necessary party that will aid the court to settle the matter before it. The plaintiff/respondent relied on the cases of Skov Estate Limited v Agricultural Development Corporation & Another [2015] eKLR and Trusted Society of Human Rights Alliance versus Mumo Matemu & 5 Others, SC Petition (Application) No. 12 of 2013.



16. On the second issue, the plaintiff/respondent submitted that the instant application in its entirety is similar to an earlier application dated 17th February, 2023 made by the same proposed interested party through their advocates on record involving the same parties and same subject matter and seeking similar prayers of enjoinder.
17. I have considered the application, replies thereof and the written submissions and authorities by the rival parties and, in my view, the issues for determination are as follows: -
- i. Whether the instant application is res judicata.
 - ii. Whether the applicant/proposed interested party ought to be enjoined in these proceedings.
18. Section 7 of the [Civil Procedure Act](#) provides that: -
- “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”
19. The Black’s law Dictionary 10th Edition defines “res judicata” as: -
- “An issue that has been definitely settled by judicial decision...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...”
20. A person may not commence more than one action in respect of the same or a substantially similar cause of action and the court must attempt to resolve multiple actions involving a party and determine all matters in dispute in an action so as to avoid multiplicity of actions.
21. In order therefore to decide as to whether an issue in a subsequent application is res judicata, a court of law should always look at the decision claimed to have settled the issues in question and the entire application and the instant application so as to ascertain; what issues were really determined in the previous application; whether they are the same in the subsequent application and were covered by the decision; and whether the parties are the same or are litigating under the same title and that the previous application was determined by a court of competent jurisdiction.
22. The Court of Appeal held in *The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, [2017] eKLR, that:
- “For the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;
- a) The suit or issue was directly and substantially in issue in the former suit.
 - b) That former suit was between the same parties or parties under whom they or any of them claim.
 - c) Those parties were litigating under the same title.
 - d) The issue was heard and finally determined in the former suit.



- e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

23. The court went on to state on the role of the doctrine:

“The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and commonsensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”

24. The proposed interested party/applicant filed the Notice of Motion Application dated 17th February, 2023 seeking the following orders: -

1. Spent.
2. Spent.
3. That this honourable court be pleased to order that the applicant, Olalui Group Ranch, be joined as an interested party and/or in the alternative, the 5th defendant in this suit and consequently grant it leave to file such pleading and documents as it may direct.
4. That upon grant of prayer 3 above, this honourable court be pleased to vary and/or set aside its orders of the 17th January, 2023 and 2nd February, 2023.
5. That the cost of this application be in the cause.

25. The application was supported by the affidavit of Michael Lekishon Ole Risa and it was sworn on even date. The application was opposed by the replying affidavit of the plaintiff/respondent sworn on 30th March, 2023. This court, sitting in Kilgoris, delivered a ruling with respect to the said application on 13th June, 2023.

26. In dismissing the application, the court in paragraph 43 made the following finding: -

“The applicant’s presence in this suit is therefore not necessary as there will be no relief against it in the present suit or their presence necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit.”

27. Paragraph 57 further reads: -

“In essence therefore, this honourable court is inclined to agree with the respondent’s submission that the deponent of the present application does not have the necessary locus standi to file the present application for lack of a resolution from the other group representatives and/or authority to swear the pleadings thereof as required by law.”

28. From the above, the instant application is similar to the application dated 17th February, 2023 for all intent and purposes. The issues raised in the previous application and which was determined by a court



of competent jurisdiction are the same in the instant application. The parties are the same in both applications and litigating under the same title.

29. The proposed interested party/ applicant argued that since there was no locus standi, then there was no application at all in the first place. In other words, the proposed interested party/applicant wants this court to assume that there was no application in the first place or at all. Simply because the ruling pointed out an error on the proposed interested party's application with regard to their locus, does not mean that the proposed interested party can now come back with a similar application and purport to have filed the same properly. Further, the ruling delivered on 13th June, 2023 had already made a finding that the proposed interested party was not a necessary party in the suit as contained in paragraph 43 of the said ruling.
30. A decision of the court must be respected as fundamental and judicial determinations must be final, binding and conclusive. It is not fair for a party to litigate afresh matters which have already been determined by the court.
31. The decision by Washe J, delivered on 13th June, 2023, unless set aside or quashed in a manner provided for by the law, must be accepted as incontrovertibly correct.
32. From the above, I find the instant application is an abuse of the court process and totally lacking in merit. The result thereof is that the Notice of Motion Application dated 4th July, 2023 is dismissed with costs to the plaintiff/respondent. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 6TH DAY OF MARCH, 2024.

HON. MBOGO C.G.

JUDGE

6/03/2024.

In the presence of:

Mr. Meyoki – C. A

