



REPUBLIC OF KENYA



**Sheria Na Watu v Wambugu & 3 others (Environment & Land Petition  
E081 of 2024) [2025] KEELC 3905 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3905 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION E081 OF 2024**

**CG MBOGO, J**

**MAY 22, 2025**

**BETWEEN**

**SHERIA NA WATU ..... PETITIONER**

**AND**

**JOHN KIUMI WAMBUGU ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT**

**NAIROBI CITY COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Before me is the notice of motion dated 4<sup>th</sup> October 2024, filed by the petitioner, and it is expressed to be brought under Articles 22, 23 (3)(b) of *the Constitution* of Kenya and Rule 23 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013) seeking the following orders: -
  1. Spent.
  2. Spent.
  3. That pending the hearing and determination of this petition, an interim order of injunction be issued restraining the 1<sup>st</sup> respondent whether by itself, its agents, employees from erecting or constructing any more buildings or improvements, leasing, selling, charging or in any way interfering with all that parcel of land known as LR. No. 57/ 1343, Kasarani and the Officer Commanding Kasarani Police Station to ensure compliance with this order.
  4. That costs of this application be provided for.



2. The application is premised on the grounds inter alia that the 1<sup>st</sup> respondent is in the process of subdividing LR No. 57/1343, the suit property into various plots and there is a real likelihood of disposing the same to unsuspecting members of the public.
3. The application is supported by the affidavit of Augustine Omondi, the chairperson of the petitioner. The petitioner deposed that the suit property was part of LR. No. 57/29 and 57/30 previously owned by Agricultural and Industrial Holdings Limited. Further, that the suit property amongst other plots were to be surrendered to the government free of charge. He deposed that the suit property was reserved for the establishment of a public primary school, but the 1<sup>st</sup> respondent unlawfully acquired the same in concert with the personnel in the office of the respondents to deprive the residents of clay works, the opportunity to utilize the suit property.
4. The petitioner further deposed that as a result of the unlawful acquisition and conversion of the suit property, the children who were the primary beneficiaries of the school have been exposed to undue hardship as they have to travel to distant schools at the expense of private interests. He deposed that unless this court intervenes, the 1<sup>st</sup> respondent is likely to dispose the suit property thereby altering substantively the nature of this petition.
5. The application was opposed vide the replying affidavit of the 1<sup>st</sup> respondent sworn on 16<sup>th</sup> December, 2024. The 1<sup>st</sup> respondent deposed that he is the registered owner of the suit property having purchased the same from Peter Wambugu Mureithi, Francis Kingori Wanyeki and Irene Jacinta Wambui. He deposed that the issues raised in the present petition have been raised and ventilated in ELC Case No. E095 of 2021, and judgment delivered on 8th February, 2024.
6. The 1<sup>st</sup> respondent further deposed that the judgment is the subject of appeal in Civil Appeal No. COACA E479 of 2024 which is pending directions. The 1<sup>st</sup> respondent deposed that he is an innocent purchaser of the suit property, which he has demonstrated before the court previously, and that he is aggrieved to be prosecuted twice over the same issue.
7. The petitioner filed a further affidavit in response thereto sworn on 13<sup>th</sup> February, 2025. The petitioner deposed that he has brought this petition on his own behalf, and on behalf of the residents of Clayworks whose right to clean and healthy environment as well as the right to property has been infringed. He deposed that the suit in ELC E095 of 2021 was a private dispute whereas the instant petition is brought in public interest, and seeks a declaration that the suit property is public property. Further, that the petitioner was not a party in that suit, and that the question as to whether the suit property is public land was not determined.
8. The application was canvassed by way of written submissions. The petitioner filed their written submissions dated 14<sup>th</sup> February, 2025 where it raised four issues for determination as follows: -
  - a. Whether the petition dated 4<sup>th</sup> October, 2024 is res judicata.
  - b. Whether the petition dated 4<sup>th</sup> October 2024 is sub judice.
  - c. Whether the petition meets the threshold of constitutional petitions.
  - d. Whether the application dated 4<sup>th</sup> October, 2024 is merited.
9. On the first issue, the petitioner submitted that the petition is not res judicata for the reason that parties are not the same, and the question of whether the suit property is public land was not determined by the court. The petitioner relied on the case of Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR.



10. On the second issue, the petitioner submitted that whereas there is a pending appeal before the court of appeal, the same issues are between parties that were before the trial court in ELC No. E095 of 2021. To buttress on this issue, the petitioner relied on the case of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR.
11. On the third issue, the petitioner submitted the petition has complied with Rule 10 of the Mutunga Rules and in line with the requirements in Anarita Karimi Njeru v Republic [1979] eKLR. On the fourth issue, the petitioner submitted that the nature of the orders sought in the application are meant to ensure that the suit property does not change hands pending the final determination of the petition. To buttress on this issue, the petitioner relied on the cases of Mrao v First American Bank of Kenya Ltd [2003] eKLR, and Nguruman Ltd v Jan Bonde Nielsen & Others [2014] eKLR. The petitioner submitted that public interest over the suit property by far outweighs the private interests of the 1<sup>st</sup> respondent.
12. The 1<sup>st</sup> respondent filed his written submissions dated 12<sup>th</sup> March, 2025 where he raised two issues for determination as follows:-
  - a. Whether the issues raised in this petition have been determined in another matter.
  - b. Whether the court should entertain this application.
13. On the first issue, the 1<sup>st</sup> respondent submitted that the prayers sought in the petition have been previously determined by a competent court. He relied on the cases of Florence Nyaboke Machani v Mogere Amosi Ombui & 2 Others [2014] eKLR, Republic v Paul Kihara Kariuki, Attorney General & 2 others, Ex parte Law Society of Kenya [2020] eKLR, and Francis Karioko Muruatetu & Another v Republic [2020] eKLR.
14. On the second issue, the 1<sup>st</sup> respondent submitted that the petitioner has not proven a prima facie case as required in the cases of Mrao Ltd v First American Bank of Kenya Ltd [2003] eKLR, and does not deserve the orders of temporary injunction. Further reliance was placed in the case of Paul Gitonga Wanjau v Gathuthis Tea Factory Company Ltd & 2 others [2016] eKLR, and Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR.
15. I have considered the application, the replies thereof and the written submissions filed by the petitioner and the 1<sup>st</sup> respondent. In my view, there are two issues for determination summarized below: -
  - i. Whether the petition is res judicata.
  - ii. Whether the petitioner is entitled to the orders of injunction pending the hearing and determination of the petition.
16. The doctrine of res judicata is set out in Section 7 of the *Civil Procedure Act*. 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.
17. Section 7 of the *Civil Procedure Act*, provides as follows: -
 

“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.



Explanation. —(1) The expression 'former suit' means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation. —(2) For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. —(3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation. —(4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation. —(5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. —(6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”

18. From the above, it will be observed that for res judicata to apply, the issue in the latter suit must have been directly and substantially in issue in the former suit, between the same parties, or between parties under whom they are litigating. The court of appeal in the case of Uhuru Highway Development Ltd v Central Bank & Others, [CA No. 36 of 1996](#) held that: -

“In order to rely on the defence of res judicata, there must be a previous suit in which the matter was in issue; the parties must have been the same or litigating under the same title; a competent court must have heard the matter in issue and the issue is raised once again in the fresh suit.”

19. In the present petition, the petitioner seeks the following orders:-
- a. A declaration that all that property known as LR. No. 57 /1343 constitutes public property and the acquisition of the same by the 1<sup>st</sup> respondent is unconstitutional, null and void.
  - b. An order does issue directing the 2<sup>nd</sup> respondent to cancel the certificate of lease over that property known as LR. No. 57/ 1343 held by the 1<sup>st</sup> respondent and all entries thereof and reinstate the suit property in the name of the 4<sup>th</sup> respondent, Nairobi City County.
  - c. A permanent injunction be issued restraining the 1<sup>st</sup> respondent whether by itself, its agents, employees from erecting or constructing any buildings or improvements, leasing, selling, charging or in any way interfering with all that parcel of land known as LR. No. 57/1343, Kasarani and the Officer Commanding Kasarani Police Station to ensure compliance with this order.
  - d. Costs of the petition be provided for.
20. In ELC Case No. E095 of 2021, the plaintiff is Kimuri Housing Company Limited and the 1<sup>st</sup> respondent is the 1<sup>st</sup> defendant and the Chief Land Registrar is the 2<sup>nd</sup> defendant. In a judgment delivered on 8<sup>th</sup> February, 2024, this court made the following orders:-
- a. The plaintiff's suit be and is hereby dismissed with costs to the defendants.



- b. The 1<sup>st</sup> defendant's counterclaim dated 21<sup>st</sup> August, 2021 be and is hereby allowed as hereunder:-
- i. The plaintiff's title to and in respect of LR.No. 57/1343 be and is hereby revoked, nullified and/or canceled.
  - ii. The indenture of conveyance bearing the name of the plaintiff and pertaining to L.R. No. 57/1343 shall be and is hereby struck off the register.
  - iii. The 1<sup>st</sup> defendant be and is hereby declared to be the lawful and legitimate proprietor/owner of L.R. No. 57/1343.
  - iv. There be and is hereby granted an order of permanent injunction to restrain the plaintiff either by herself, servants, agents, employees and/or servants acting on behalf of the plaintiff from entering upon, remaining onto, interfering with and/or otherwise dealing with the suit property in manner adverse to the rights and interests of the 1<sup>st</sup> defendant.
  - v. Costs of the counterclaim, be and are hereby awarded to the 1<sup>st</sup> defendant and same shall be borne by the plaintiff.
21. The petitioner argues that it was not a party in the former suit, and the question of whether the suit property is public land was not determined. On the other hand, the 1<sup>st</sup> respondent contended that the suit has been previously determined by a competent court and there is a pending appeal before the court of appeal. In my view, and just by having a look at the prayers sought in the instant application and petition and the former suit, the petitioner is inviting this court to assume the existence of previous proceedings touching on the validity and ownership of the suit property by the 1<sup>st</sup> respondent. It has been stated over and over again that litigation has to come to an end, and any attempt to mask the approach by introducing different parties ought to be discouraged to say the least. Particularly, and in this case, there exist valid orders which are in force, and until the court of appeal pronounces itself otherwise, the 1<sup>st</sup> respondent remains the owner of the suit property. I find the instant application and petition res judicata, and an abuse of the court process.
22. Having pronounced myself on the above, I find it not necessary to proceed to determine the second issue. The notice of motion and the petition dated 4<sup>th</sup> October, 2024 is hereby struck out with costs to the 1<sup>st</sup> respondent.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2025.**

**HON. MBOGO C.G.**

**JUDGE**

22/05/2025.

In the presence of:

Ms. Betty Cheron - Court assistant

Mr. Eredi for the 1<sup>st</sup> Respondent – present

No appearance for the Petitioner

