



REPUBLIC OF KENYA



KENYA LAW
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Buigut & another (Suing as the Legal Representatives of the Estate of the Late Joel Kiprono Kipkoti) v Komen (Environment & Land Case 384 of 2015) [2025] KEELC 4344 (KLR) (21 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4344 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 384 OF 2015**

CK YANO, J

MAY 21, 2025

BETWEEN

KIPKOSGEI SIRMA BUIGUT 1ST PLAINTIFF

JOAN J LAGAT 2ND PLAINTIFF

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE
JOEL KIPRONO KIPKOTI**

AND

CHARLES KIBET KOMEN PLAINTIFF

RULING

1. Vide a Notice of Motion dated 17th January, 2025 and filed under certificate of urgency, the Plaintiff/Applicant (in the Counter-claim) sought the following orders: -
 - a. Spent.
 - b. That this Honourable court orders the Plaintiffs and the 1st – 7th Defendants to remove themselves and/or any other persons that they have placed on Land Parcel No. MOSOP/KAPCHORWA/7X9 forthwith and in default the Plaintiffs and the 1st – 7th Defendants be forcibly evicted and vacant possession be given to the Applicant.
 - c. That GEORGE KIMETTO T/A DESIRE RECOVERY AUCITIONEERS do effect and execute the above eviction orders.
 - d. That the OCS Metkei Police Station and/or the OCS Kaptagat Police Station to offer security in effecting order (ii) and (iii) above.
 - e. The costs of this Application be provided for.



2. The application is premised on 12 grounds thereon and on the Applicant's Supporting Affidavit sworn on even date. He avers that judgment was issued in the matter in his favor, whose effect was to declare him the legal owner of the entire suit parcel No. Mosop/ Kapchorwa/7X9 and a Decree subsequently issued on 16/12/2022.
3. It is his claim that despite the judgment and decree being issued in his favor, the plaintiffs and the 1st – 7th defendants have refused to cede vacant possession of the land and/or vacate the suit land.
4. It is further his claim that he has duly served the plaintiffs and the 1st – 7th defendants with eviction notices as statutorily required and have even engaged the services of the police on several occasions to assist him in getting into the land but his efforts have been futile hence the instant application.
5. He maintained that it would be in the best interest of justice if the application is allowed and guarantee his constitutionally protected right to own property.
6. The application was opposed. The Respondents filed their various replying affidavits in response to the averments made by the applicant.
7. Judy Kipkoti swore a replying affidavit dated 13.2.2025, on her own behalf and on behalf of 2nd and 3rd respondents. She further explained that the 1st, 5th and 6th defendants in the counter-claim are since deceased and their estates are not represented.
8. She dismissed the application as being an abuse of the court process and offending the doctrine of res judicata. She explained that the applicant had earlier filed an application dated 16/12/2022 seeking similar orders and which was determined vide a ruling delivered on 27/7/2023, dismissing the same for lack of merit.
9. The 7th Defendant/Respondent also filed its replying affidavit; sworn by its Senior Legal Counsel Velma Okoth, on 25.02.2025. She dismissed the application as being bad in law, incompetent, mischievous, frivolous, misleading, an afterthought and an abuse of the court process.
10. It was her claim that the instant application is res judicata, this honourable court having delivered a ruling on 27.07.2023, rendering itself on a similar application dated 16.12.2022, and annexed a copy of the said ruling.
11. She contends that the applicant has never appealed against the ruling dated 27.07.2023 and he is therefore barred from filing a similar application seeking fresh orders of eviction in the same suit.
12. In addition, it is her claim that the 7th Defendant/Respondent is not in occupation or possession of the suit parcel, and therefore, the orders sought against 7th defendant are in vain. She therefore urged the court to find that the application lacks merit and should therefore be dismissed with costs.
13. The application was canvassed by way of submissions. The applicant filed his submissions dated 25/3/2025, the 2nd, 3rd and 4th respondents filed their submissions dated 7/4/2025 while the 7th respondent filed their submissions dated 8/4/2025, which I have read and considered.

ANALYSIS AND DETERMINATION.

14. Having carefully considered the application, the various responses and the rival submissions in totality, it is my considered opinion that the issues arising for determination are as follows;
 - i. Whether the instant application offends the doctrine of res judicata
 - ii. Whether the applicant is entitled to the reliefs/orders sought.



i. Whether the instant application offends the doctrine of res judicata;

15. The plaintiffs and the 1st – 7th defendants contend that the application as filed offends the doctrine of Res Judicata. It is their claim that the applicant herein, vide an application dated 16.12.2022 sought similar orders of eviction as the orders sought in the present application. That the said application was heard and determined vide a Ruling issued on 27th July, 2023 and whose effect was to dismiss the said application.
16. The applicant did not file any Supplementary Affidavit to respond to the averments made in the respective replying affidavits nor adduce any evidence to the contrary.
17. Section 7 of the *Civil Procedure Act* defines the doctrine of Res Judicata as follows: -

“No court shall try any suit 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.”
18. The Supreme Court in the case of John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment), where the court held in part as hereunder;

“54. The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.⁵⁸ Hence, whenever the question of res judicata is raised, a court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a court of competent jurisdiction. This test is summarized in Bernard Mugo Ndegwa v James Nderitu Githae & 2 others, (2010) eKLR, under five distinct heads: (i) the matter in issue is identical in both suits; (ii) the parties in the suit are the same; (iii) sameness of the title/claim; (iv) concurrence of jurisdiction; and (v) finality of the previous decision.

59. For res judicata to be invoked in a civil matter the following elements must be demonstrated: a) There is 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 must be between the first and the second action identical parties, subject matter and cause of action.”



19. Further, in *Suleiman Said Shabhal vs Independent Electoral & Boundaries Commission & 3 Others* [2014] eKLR while addressing what amounts to res judicata the court held as follows:-

“To constitute res judicata, there must be adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy.”

20. The doctrine of res judicata applies to both suits and applications and is aimed at ensuring finality in litigation. I have carefully perused the court record in considering the averments made by parties herein. It is not in dispute that the applicant filed a previous application dated 16.12.2022 seeking orders of eviction against the plaintiffs and the 1st – 7th defendants from the suit parcel. It is also not contested the said application was heard and determined vide a ruling issued by J. Onyango J. on 27th July, 2023 and whose effect was to dismiss the said application for lack of merit.

21. The question that follows is whether all the elements of res judicata have been determined sufficiently. Are the issues directly and substantially in issue in the instant application similar to the issues that were directly and substantially in the previous application dated 16/12/2022 and whether the previous application was heard and finally determined.

22. From a cursory look at the previous application, it is clear that the issues directly and substantially in issue are similar to the issues that are directly and substantially in issue in the present application. In both applications, the applicant is seeking orders of eviction against the respondents from the suit land.

23. Further, from a reading of the Ruling by my predecessor, Onyango J., I do note that the issue of eviction and the judgment issued by Kibunja J. was discussed extensively. It is therefore clear that the previous application was heard and finally determined on merit.

24. In view of the foregoing, it is my finding that the instant application offends the doctrine of res judicata.

CONCLUSION.

25. The totality of the foregoing is that the application dated 17th January, 2025 lacks merit and is hereby dismissed with costs to the plaintiffs and the 1st – 7th defendants.

26. It is so ordered.

DATED, SIGNED and DELIVERED in ELDORET this 21ST day of MAY, 2025.

HON. C. K. YANO

ELC, JUDGE

Ruling delivered in the presence of: -

Ms. Terer for 7th Defendant/Respondent.

Ms. Nyaribo holding brief for Mr. Kipnyekwei for 2nd, 3rd & 4th Defendants.

Charles Kibet Komen/Applicant present in person.

Court Assistant – Laban

