



**Sundia v Akello & 3 others (Environment & Land Petition
2 of 2022) [2023] KEELC 17435 (KLR) (11 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17435 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND PETITION 2 OF 2022**

BN OLAO, J

MAY 11, 2023

BETWEEN

GABRIEL ONYACHI SUNDIA PETITIONER

AND

FRANCIS TOBIAS AKELLO 1ST RESPONDENT

LAND REGISTRAR BUSIA 2ND RESPONDENT

HON ATTORNEY GENERAL 3RD RESPONDENT

INSPECTOR GENERAL OF POLICE 4TH RESPONDENT

JUDGMENT

1. Notwithstanding the verve and vigour with which Gabriel Onyachi Sundia (the Petitioner) has marshalled in pursuing what he considers to be his rights over the ownership of the Land Parcel No SAMia/IUanda/Mudoma/1369, he must now be told that his quest has arrived at a cul-de-sac on the ground of being res-judicata.
2. From the Petitioner's own documents, the dispute with regard to the suit land commenced in the then Land Disputes Tribunal. The proceedings are not clear but the 1st respondent in his replying affidavit dated September 21, 2022 confirms that it was in FUnyula Land Disputes Tribunal Case No 33 of 2008. The said Tribunal made an award which was adopted as an order of the Court in Busia PMC Land Case No 106 of 2008. The award of the Tribunal was appealed but the Tribunal's findings were affirmed.
3. Then there was Busia High Court Judicial Review Application No 24 of 2009 in which the Applicant sought judicial review orders challenging the decision of the Tribunal. That application was dismissed by Kibunja J vide a judgment delivered on November 5, 2014. The judgment shows that the suit land was also the subject of that application.



4. The Applicant has now moved to this Court vide this Petition filed on February 15, 2022 in which he seeks various declaratory orders with respect to the suit land as well as the Land Parcels No Samia/Luanda/Mudoma/693 and 3572.
5. In his response to the Petition, the 1st Respondent has deponed, inter alia, that he and the Petitioner have had “numerous cases over the same subject matter and that this Petition is but a back door appeal against the judgments delivered by competent courts.” A chronology of those cases is clearly itemized in the said replying affidavit and judgments thereof are annexed.
6. When the Petition was placed before me, I directed that it be canvassed by way of written submissions. The same have been filed both by Mr Otieno instructed by the firm of Otieno & Company Advocates For The Petitioner And By Mr JV Juma Instructed by the firm of JV JUma & Company Advocates for the 1st Respondent.
7. I have considered the Petition, the rival affidavits, the annexures and the submissions by counsel.
8. As I stated at the commencement of this judgment and as I have now already shown through the previous cases involving the suit land, this Petition is clearly res-judicata which is provided for in Section 7 of the Civil Procedure Act as follows:

7: “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.”

Res judicata is a bar to all suits and including in Constitutional Petitions. In the case of John Florence Maritime Services Ltd & Another v Cabinet Secretary For The Transport And Infrastructure & Others 2015 eKLR, the Court of Appeal rejected the suggestion that res judicata does not apply in Constitutional Petitions and said:

“We accordingly do not accept the proposition that Constitution based litigation cannot be subjected to the doctrine of res judicata. However, we must hasten to add that it should only be invoked in Constitutional litigation in the clearest of the cases. It must be sparingly invoked and the reasons are obvious as rights keep on evolving, mutating and assuming multifaceted dimensions.”

9. I see no reasons not to invoke that doctrine in this Petition.
10. Ultimately therefore, I make the following orders:
 1. The Petition is res judicata. It is hereby struck out with costs to the 1st Respondent.
 2. The injunctive orders issued on June 29, 2022 are vacated.

JUDGMENT DATED, SIGNED AND DELIVERED AT BUSIA ELC BY WAY OF ELECTRONIC MAIL ON THIS 11TH DAY OF MAY 2023.

RIGHT OF APPEAL

BOAZ N. OLAO

JUDGE

11TH MAY 2023

