



**Meme v Munoru (Environment & Land Case E009 of 2023)  
[2023] KEELC 17707 (KLR) (5 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17707 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E009 OF 2023**

**CK NZILI, J**

**JUNE 5, 2023**

**BETWEEN**

**PETER MEME ..... PLAINTIFF**

**AND**

**PETER MPEKETHU MUNORU ..... DEFENDANT**

**RULING**

1. What is before the court is the plaintiff's application dated 14.4.2023 and the defendant's preliminary objection dated 25.4.2023. In the application, the court is asked to grant an interim injunction against the defendant from interfering with 1.52 acres out of L.R No. Ithima/Antuambui/2994 which is currently under the plaintiff's occupation. Additionally, the court is also asked to stay the execution of a decree issued in Maua Chief Magistrate's Civil Suit No. E016 of 2020, involving Peter Munoru and Lucia Thirimbi & another. Lastly, the plaintiff prays that this be heard on a priority basis. The application is supported by an affidavit of Peter Meme sworn on 14.4.2023. Briefly, the applicant deposed that the defendant is the registered owner of Parcel No. Ithima/Antuambui/2994, measuring 0.90 ha out of which he has been using a portion measuring 1.52 acres of the land since 1985, through his brother by growing miraa trees since it is a family land and where he has erected a farmhouse. He averred that a title deed was issued in 1992, following which the defendant obtained an injunction against him in Maua Magistrates court PMCC No. 94 of 2000, which orders were never executed against him.
2. The applicant stated that after he was sued, he found out that the root title of the defendant as per the record of existing rights was surveyed for only 0.70 acres next to his occupied land and they had co-existed peacefully as neighbors since 1980. The applicant further averred that he further established that what was forwarded to the titling center Nairobi in favour of the defendant was only 0.70 acres leaving out his occupied portion of 1.52 acres intact and as distinct. Therefore, he said that the addition of his portion to the defendant's land was illegal and unjustified. The applicant averred that he attempted to file a Tribunal Case No. 99 of 2005 leading to a site visit by the members and the land



- registrar who confirmed the facts and allowed the land to be registered to the name of his deceased relative who had gathered the land initially, one M'Abuambi which decision the defendant successfully appealed against leading to a suit for eviction and a decree was issued on 8.3.2023, in Maua Law Courts.
3. Similarly, the applicant averred that he had not filed a counterclaim in the lower court enjoining the District Land Adjudication and Settlement Officer, the Land Registrar and the Attorney General over fraud or illegality, out of inadvertence on the part of his then-lawyers. Therefore, the applicant averred that there was a need to stop the impending eviction until this suit is heard and determined. He attached copies of the official search, photos, copies of existing rights, pleadings in the former suit, judgment and the chiefs' letter as annexures marked PM 1- 11.
  4. The application is opposed by both a preliminary objection dated 25.4.2023 and a replying affidavit sworn by Peter Mpekethu Munoru on 17.4.2023, on the basis that the suit is incompetent, defective, bad in law an abuse of court process, *res judicata* and filed before a court lacking jurisdiction to hear it.
  5. The defendant deposed that he owns LR No. Ithima/Antuambui/2994 as per his certificate of title attached as MM "1" over which there has been litigation with the plaintiff since 2000, whose orders and directives have been endlessly stayed by the plaintiff for close to 20 years, so as to frustrate his land ownership rights. He attached copies of the proceedings and judgment in Land Dispute Tribunal as MM "2", proceedings and judgment in High Court Civil Appeal No. 4 of 2001 as MM "3" proceedings and judgment in Maua ELC No. 104/2007 as MM "4", proceedings and judgment in Maua CMCC No. E016 of 2000 as MMM "5" & "6".
  6. The defendant avers that the applicant has abused the court process to stay on his land and that justice delayed was justice denied. He stated that the application and the suit before the court was yet another such attempt to frustrate him, this time round through adverse possession, which the suit must fail for being *res-judicata*, malicious and an abuse of court process. Lastly, the defendant averred that the plaintiff/applicant has had adequate legal representation all through and cannot claim one year since the judgment was issued that he was denied his right, more so when he has no known developments on the land. The defendant urged the court to let him enjoy the fruits of his judgment.
  7. With leave parties filed written submissions dated 17.5.2023 and 16.5.2023, respectively. The plaintiff took the view that the doctrine of *res-judicata* does not apply to the instant case since both the courts and the defunct tribunal were not dealing with a dispute founded on adverse possession which jurisdiction falls under this court. Reliance was placed on the holding in Meru ELC No. 61 of 2019.
  8. On the defendant's replying affidavit, the applicant submitted that he has been on the land for over 47 years and not 20 years as alleged by the defendant, which then confirmed his claim that he has been in occupation even before the injunctive or eviction orders were issued.
  9. On the prayer for priority hearing of the matter, the plaintiff urged the court to hear him since he is aged 80 years, his mother is aged 100 years and has an interest in the matter, which facts the defendant has not controverted. He urged the court to dismiss the preliminary objection and allow the prayers sought.
  10. On the other hand, the defendant submitted that several decisions and proceedings have been attached to his replying and a further affidavit showing the previous litigation between the two parties over the subject matter determined by courts of competent jurisdiction to finality and notice of appeal dated 17.9.2018. Therefore, the defendant submitted his preliminary objection dated 25.4.2023 meets the threshold set in *Mukhisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* (1969) E.A 696, *IEBC and others v Maina Kiai & others* (2017) eKLR and *William Koross v Hezekiah Kiptoo Komen and others* (2015) eKLR.



11. The defendant submitted that the preliminary objection must be weighed with due circumspection since the issue of ownership of the suit land has been determined with finality at both the lower court and twice at the appellate stage before this court, one of which decision attracted a notice of appeal to the Court of Appeal. The defendant urged the court to find that the preliminary objection was capable of disposing off the entire suit by upholding the dignity of the court which should not be trivialized by the plaintiff, wasting its time and resources by reopening litigated claims, particularly in this matter which is beyond redemption.
12. The defendant further submitted that the material before the court points out that he owns the suit property which has been confirmed by the courts. He relies on *Mbeyu Wangome and another v Patani Virpal and others* (2015) eKLR, on litigation through a related person over the same property which the plaintiff has been doing with his mother and also in *KCB Ltd v Muiri Coffee Estate Ltd and another* (2016) eKLR.
13. As to whether an adverse possession claim can suffice the defendant relying on *Maweu v Lin Ranching and Farming Cooperative Society* (1985) KLR 430, submitted that the plaint before the court fell short of the ingredients of adverse possession since after the registration of the land on 2.1.1992, he instituted a suit for eviction in 2000 and an order of permanent injunction was issued hence time could not run and was interrupted up to the time he filed a suit for eviction on 4.11.2020.
14. On whether the court has jurisdiction to adjudicate this suit, since there was a notice of appeal by the plaintiff's mother to the Court of Appeal, the defendant submitted that this court has no jurisdiction to entertain a matter before the Court of Appeal and which is also *res-judicata*.
15. Regarding whether the plaintiff has met the threshold for the grounds of injunctive or stay orders, the defendant submitted that due to *res-judicata*, the orders sought cannot issue for he is the one in occupation as per the further affidavit, only that the plaintiff and his mother occasionally trespass into and maliciously cause damage to his property which fact is corroborated by the chief's letter dated 27.4.2023.
16. Further, the defendant submitted that no irreparable loss or damage has been established since the plaintiff was evicted and prevented from accessing the land. Additionally, the defendant submitted that the plaintiff has not been offered any security for the due realization of the decree. Reliance was placed on *Alfred Sagero Omweri v Kennedy Omweri Sagero* (2021) eKLR, *Bedford Mutegi Mboani & 4 others v James Mbaka* (2019) eKLR.
17. The defendant urged the court to stamp its authority, decline to set a bad precedent and find the labeling of the suit as based on adverse possession while it has already been litigated previously to finality as amounting to an abuse of the court process.
18. The court has carefully gone through the suit, the application, the preliminary objection, the replying affidavit, the annexures attached and the written submissions. The central issue before the court is whether the issues raised in the originating summons dated 14.4.2023 are *res-judicata* and if this court should entertain such a suit
19. What the plaintiff has brought before this court is a suit to be declared as entitled to 1.52 acres out of LR No. Ithima/Antuambui/2994 which is registered in the name of the defendant, by virtue of adverse possession under Order 37 *Civil Procedure Rules* as read together with Sections 5, 21 & 38 of the *Limitations of Actions Act*. In the supporting affidavit sworn by Peter Meme on 14.4.2023 and a witness statement thereof, the plaintiff admitted that the defendant is the registered owner of the suit land. He stated that he had been in occupation of 1.52 acres of the said land since 1985 alleged to be family land, gathered by a relative by the name M'Abuambi M'Muthiora, who passed it over to him



in 1976. He averred that the title deed came out in 1992 and that in 2000 he was sued and permanent orders issued against him in Maua PMCC No. 94 of 2000, only for him to establish that the defendant's root title had been fraudulently and illegally acquired from a land belonging to one Manta Kairiama as per the record of existing rights. He has blamed both the defendant, the DLASO and the land registrar for the apparent illegalities and goes further to say that the land he continues to occupy should belong to the family of Manta Kirima since as forwarded to the titling center, it was distinct and separate from the plaintiff's suit land.

20. The plaintiff has admitted the existence of Maua CMCC No. E016 of 2020, its outcomes and orders. Additionally, the plaintiff admits in paragraph 17 of the supporting affidavit that on 8.3.2023, he approached his current lawyers who told him that he had not acquired proper legal advice in his earlier attempts to assert ownership rights for he never counterclaimed against the DLASO the district land registrar and the Hon. AG for complicity in the fraud that resulted into his 1.52 acres being registered in favor of the defendant, yet he had a positive judgment in the LDT case which unfortunately had no jurisdiction to rectify the title deed and register the land under his name. He states that the trial court in Maua could not handle an adverse possession claim.
21. In the list of documents dated 14.4.2023, the plaintiff has omitted the previous cases handled before this court, in the Chief Magistrate's Court Maua, at the defunct Land Disputes Tribunal and the Court of Appeal, save for Maua CMC ELC No. E016 of 2020. On the other hand, the defendant by a list of documents dated 16.5.2023, listed the pleadings and judgment in LDT 41 of 2006, High Court Civil Appeal No. 4 of 2001 Maua ELC No. 104 of 2008 Judgment, Judgment in Maua CMCC No. 94 of 2000 and Judgment in Maua CMCC No. E016 of 2020.
22. The common denominator in the previous litigation is Parcel No. Ithima/Antuambui 2994 pitting the defendant and the plaintiff and one Lucia Thirimbi Abuambi. In Meru High Court Civil Appeal No. 4 of 2001, Sitati J on 26.6.2001 determined the issue of ownership of the suit land in favour of the defendant herein and dismissed the appeal by the plaintiff. In Meru ELC No. 104 of 2008, the subject was over the suit land. The issue of the existence of two parcels of land with one number had been raised. The notice of appeal against the judgment of Sitati J was also raised. The court on page 9 of the judgment looked at all the previous suits regarding the suit land and the use of different names in the previous litigations and the binding nature of any decree, despite litigation under different names on the part of the plaintiff herein or his mother. The court found the issue before it res judicata.
23. In Maua PMCC No. 94 of 2000 the parties herein were litigating over the suit land. Hon. M. Gicheru SRM as he then was now a judge, heard the matter to completion and issued a permanent injunction restraining the plaintiff herein his servants, agents or employees or relatives from trespassing or otherwise interfering with the defendant's land Parcel No. Ithima/Antuambui/2994, measuring 2.22 acres. This is what triggered the appeal before Sitati J. The appeal was eventually dismissed on 25.6.2004 leading to the notice of appeal alluded to in Meru ELC No. 104 of 2008.
24. The last litigation between the parties was the judgment in Maua PMCC No. E016 of 2020. It also considered the previous judgments and rulings. The claim was for vacant possession. The plaintiff participated in the suit and admitted in paragraph 2 of the judgment regarding the previous litigation. The court after considering the evidence allowed the claim for vacant possession on 8.3.2023.
25. Instead of appealing against the said judgment, the plaintiff who had been sued as the 2<sup>nd</sup> defendant opted to bring this suit slightly over a month after the judgment on 14.4.2023. In his list of witnesses dated 14.4.2023 the plaintiff has omitted his mother Lucia Thirimbi M'Abuambi who has been a common litigant in the previous suits yet one of the prayers in this application to hear this suit on priority is because she is elderly. The plaintiff in paragraphs 13, 14, 15, 17, 18, 19, 20, 21, 23 & 24 of



- the supporting affidavit sworn on 14.4.2023 has admitted that he has been litigating over the suit land in different capacities and in various forums where decisions have been made against him individually and or jointly with his mother.
26. While admitting the binding nature of the previous decisions, the plaintiff stated that he has found novel legal advice that he ought to have raised a counterclaim based on fraud, illegality and adverse possession.
  27. The suit before this court is on adverse possession and not on either customary trust, fraud, illegality, or acquisition of property through a corrupt scheme. In the decision by Gicheru SRM, the land registrar was called and cross-examined on whether there was illegality in the manner the land was registered in favor of the defendant. Therefore, this cannot be a new issue at all. Further to this, the issue of occupation for over 12 years cannot be termed as a new discovery of which the plaintiff was not aware. If the permanent injunction was issued on 7.12.2000 and confirmed by Sitati J on 25.6.2004, the question is when and on what basis did the plaintiff regain occupation of the suit land without a stay of execution of the decree of the High Court, so as to found a basis of filing an adverse possession based on continuous possession to date.
  28. To compound it all as recently as 19.11.2020, the plaintiff and his mother filed a statement of defence in Maua PMCC No. E016 of 2000, against a claim for vacant possession, to the plaintiff dated 2.11.2020. In paragraph 6 of that plaintiff, the outcomes in Meru HC Civil Appeal No. 4 of 2001 and Meru ELC No. 104 of 2008 were raised. The plaintiff did not put in a counterclaim based on adverse possession or raise a plea that there was a pending appeal at the Court of Appeal.
  29. In *Mtana Lewa v Kabindi Ngala Mwangandi* (2016) eKLR the court held that a party may file a counterclaim based on adverse possession in a claim for vacant possession. There is no evidence that the plaintiff attempted to do so and applied for the transfer of the suit if at all the lower court had no jurisdiction to entertain such a claim.
  30. The above being the undisputed facts before this court the question is whether the preliminary objection raised by the defendant is a pure point of law. In *Mukhisa Biscuit (supra)* a preliminary objection was termed as one raised on the assumption that all facts pleaded by the other side are admitted and none is to be ascertained through evidence or is based on the exercise of the court's discretion. In this suit, what is raised by the defendant is that the subject matter has already been determined to finality by a court of competent jurisdiction and are therefore not ripe for re-litigation before this court.
  31. In the cases of *IEBC v Maina Kiai and 5 others* (2017) eKLR (2017) as read together with *Koross v Hezekiah Kiptoo Komen & others (supra)* *KCB Ltd v Muri Coffee (supra)*, it was held that for a party to succeed in a plea of *res-judicata*, he has to show that the suit or issue was directly and substantially the same in the former suit, over the same parties, litigating on the same title and was heard and determined to finality by a court of competent jurisdiction to try the subsequent suit.
  32. In *Omweri v Omweri (supra)* the court cited with approval *E.T v AG & another* (2012) eKLR it was observed that courts must be vigilant to guard against litigants evading the doctrine of *res-judicata* by introducing litigation seeking the same remedy in court, and the test was whether a party was trying to bring before the court the same matter in the name of a different cause of action, already determined or by adding new parties against the same defendant in the name of a new cause of action. In that suit, the plaintiff was the son of the plaintiff in a previous suit over the same subject matter. The court upheld the preliminary objection based on *res judicata*.



33. In *Koross v Komen* (*supra*), the court observed that the philosophy behind *res-judicata* was that there has to be finality to litigation to avoid an unsuccessful party who kept on trying until something gave out. The court said the doctrine was meant to provide rest and closure for endless litigation and did little more than vex and add cost yet a successful litigant must reap the fruits of his success. The unsuccessful party must learn to let go in the public interest for a party who succeeds should not be harassed by a multiplicity of proceedings over the same issue.
34. In this suit, the court has gone through a somewhat painful path that the defendant has been taken through by the plaintiff since 2000. There is every reason to find that there has been litigation, re-agitation and reconvening of matters already settled. If after Sitati J confirmed the lower court judgment on 7.12.2000 and a notice of appeal was filed by his mother, the plaintiff cannot come before this court 13 years down the line and say “Alas” I forgot to raise a claim or a defence of adverse possession! I did not get wise counsel!
35. The history of the previous litigation shows that the plaintiff has had the benefit of legal representation throughout. Even in the recent suit for vacant possession which was determined in March 2023, the plaintiff had competent lawyers acting for him. He would have raised a defence on adverse possession. Parties are not permitted in law to litigate in installments and or wait to raise defences which ideally, they should have raised in the primary suit. The plaintiff has not appealed against the decree on vacant possession yet he has now mounted a fresh litigation as if the previous decrees of courts of competent jurisdictions including this court, mean nothing to him and the defendant. He thinks this court should reopen, revisit and give him an audience to ventilate a new defence or cause of action over the same subject matter and between the same parties, yet the previous litigation settled the matter on ownership of the suit land in favour of the defendant.
36. What then should this court tell the defendant? Should he not be shielded from such new maneuvers oblivious of his favourable decrees to his land ownership? I think the only answer is to tell the plaintiff in the words *IEBC v Maina Kiai* (*supra*), that pragmatism and common sense dictate that wastage of courts time and resources in an endless round of litigation of intrepid pleaders such as him in seeking favourable outcomes is a nuisance which brings disrepute and calumny to courts. This court and other courts below it have already pronounced themselves swiftly, surely and certainly on the subject dispute. It is in the public interest that this matter rests.
37. A permanent injunction is already in place since December 2000. It was confirmed by the High Court and later on by this court. The plaintiff or his mother opted to try his luck in the Court of Appeal. He has not told us what became of the appeal. He now seeks a temporary injunction to stop a permanent injunction issued in 2000. He further seeks a stay of execution of a decree by the trial court which he has not appealed against.
38. Order 42 Rule 6 of the *Civil Procedure Rules* and Article 40 of *the Constitution* as read together with Order 40 of the *Civil Procedure Rules* have not been satisfied. There are no disclosed rights belonging to the plaintiff which have been infringed by the defendant capable of being safeguarded by this court. No irreparable loss and damage or balance of convenience as held in both in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* (2003) eKLR and *Nguruman Ltd v Jan Bonde Nielsen* (2014) eKLR, has been particularized to show any danger to the suit property to call for the court’s aid. He who comes to equity must do equity and come with clean hands. The plaintiff was permanently enjoined from the suit land in 2000, yet he claims he is there legally with accrued overriding rights. If that be so, then the plaintiff can only be in the suit land in flagrant disregard of the court’s decree. He can only be there as a self-proclaimed trespasser who should not deserve any equitable remedies from this court. The plaintiff has abused every foreseeable order of this court to the detriment of the defendant going by



the annexures in the pleadings. Echoing the words in *KCB Ltd v Muiri Coffee Ltd* (*supra*), the plaintiff has had one too many bites at the cherry. He should not burden this court and the defendant with any more court visits to clog our court system, by re-sharpening the same issues in new ways or by adding or dropping some of his co-plaintiffs.

39. Therefore, I find this suit as a proper candidate fitting a description of an abuse of the court process. I proceed to uphold the preliminary objection dated 25.4.2023 and proceed to dismiss the suit in its entirety as both incompetent before the court and lacking merits with costs to the defendant.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU  
ON THIS 5TH DAY OF JUNE 2023**

**In presence of**

C.A John Paul

Defendant in person

**HON. CK NZILI**

**ELC JUDGE**

