



**Kimuhu v Kimuhu & 15 others (Environment and Land Case
E020 of 2014) [2025] KEELC 4596 (KLR) (21 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4596 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND CASE E020 OF 2014**

JM KAMAU, J

MAY 21, 2025

BETWEEN

WANGUI JOHN KIMUHU PLAINTIFF

AND

**GEORGE KOIMBURI M.KIMUHU & 15 OTHERS & 15
OTHERS DEFENDANT**

RULING

1. In the suit dated 18/12/2024, the plaintiff has sued the 16 defendants:-

1. An order of injunction restraining the defendants from alienating, selling, developing or transferring the parcels of land numbers NYANDARUA/NJABINI/9XX5/9XX6/9XX8/9XX0/9XX5,9XX7,9XX8.9XX1,9XX9,9XX0,9XX5,9XX6,9XX8,9XX4,9XX5 and 9XX7.
2. An order to the Land Registrar Nyandarua to cancel the aforesaid parcels of land.
3. A declaration that the mutation forms consisting of the sub-division of NYANDARUA/NJABINI/2XX the resulted into the sub-division is illegal , null and void for lack of registration.
4. Restoration of the original title number NYANDARUA/NJABINI/2X7.
5. Cost of the suit
6. Any other relief the Court may deem fir to grant.

2. The prayers were based on claims that the suit land NYANDARUA/NJABINI/2X7 was at material time registered in the name of the late John Kagai Gachema alias Kimuhu Gathenga. The same measures 8.1. hectares. The plaintiff had sued the late Kagai Gachema



in Nakuru High Court in HCCC No 232 of 2012 (O.S) and had in fact obtained temporary orders inhibiting the deceased from having any dealings with the parcel of land. The same was determined through a consent entered by both parties on 23/4/2015 on how to share out the land amongst the Beneficiaries thereof. The consent was dated 18/3/2015. But that the consent was not honored. The parcel numbers 9XX1, 9XX2, 9XX3, 9XX5, 9XX4,9180,9XX6,9XX7,9XX3,9XX6,9XX3,9XX1,9XX9,9XX4,9XX4,9XX1,9XX2,9XX09,9XX9,9XX6 and 9XX4 were illegally and irregularly transferred with the deceased's name.

3. Parcel numbers NYANDARUA/NJABINI/9XX5,9XX6,9XX6 and 9XX4 were all registered in the name of 1st defendant, again illegally or irregularly, at that NYANDARUA/NJABINI/9XX7 is the joint numbers of the 1st Respondent and the 5th Respondent, 9XX1, 9XX5 and 9XX8 in the name of the 2nd Defendant NYANDARUA/NJABINI 9XX8,1XX0 and 1XX7 in the name of the 2nd Defendant, and that David Njihia Kirika and Elizabeth Fraudulently and illegally obtained NYANDARUA/NJABINI/9XX9, 6th Defendant illegally obtained NYANDARUA/NJABINI/9XX3 jointly with the 7th and 8th Defendants, 6th Defendant NYANDARUA/NJABINI/9XX0 jointly with the 7th Defendant and the 10th Defendant, 9th Defendant NYANDARUA/NJABINI/9XX8, 6th Defendant NYANDARUA/NJABINI/9XX9, NYANDARUA/NJABINI/9XX8 to the 13th Defendant, NYANDARUA/NJABINI/9XX9 in the joint names of the 1st and the 14th Defendants. NYANDARUA/NJABINI/9XX0 in the joint numbers of the 15th and the 16th Defendants, NYANDARUA/NJABINI/9XX2 and 9XX3 in the names of the 8th Defendant and finally NYANDARUA/NJABINI/9XX4 in the joint numbers of the 11th and 12th Defendants.
4. The plaintiff avers that the segmentation of all the above titles was a product of an unregistered mutation form received for registration at the Lands Office. Same dated 13/7/2012. it also averred by the Plaintiff that the Court at Engineer in Senior Principal Magistrates Court ELC No. E004 of 2002 found that the registration of all the he sub-dividing hived out of NYANDARUA/NJABINI/2X7 was illegal, null and void and proceeded to order cancellation of NYANDARUA/NJABINI/9XX7,9XX0,9XX9,9XX1,9XX1,9XX1,9XX1, 9XX5,9XX0,9XX1,9XX3,9XX4,9XX7,9XX6,9167,9XX8,9134,9XX2,9166,9133,9172,9XX2,9XX9,9XX1 respectively. He contends that the above said activities were illegal and irregular. He hence prayed for the merger of the sub-divisions and restitution to the original NYANDARUA/NJABINI/2X7.
5. The plaintiff ended the body of his plaint being that there is no and has there been no other suit pending in court in respect to the subject matter as SPMLC Engineer Court case No E004 of 2023 was heard and determined.
6. In their undated statement of Defence and counter-claim the 1st , 2nd , 6th , 7th , 8th , 10th , 11th ,12th and 14th Defendants herewith referred as to the first set of Defendants admit that the Late John Kimuhu Kagai Gachenga had the indefeasible right over NYANDARUA/NJABINI/2X7. They also averred that they have religiously complied with the recorded Court Order dated 15/3/2015 and adopted by the court on 23/4/2015 in Nakuru High Court Civil Suit No 232 of 2012 (O S).
7. They further claimed that the order issued in Nyahururu CMCC No 89 of 2012 prohibiting any dealings with title L.R No NYANDARUA/NJABINI/2X7 was vacated by the same court on 8/6/2012 paving the way for the survey work which work was completed on 30/6/2012 and the mutation form was registered . the first set. If defendants claim that although Engineer Magistrates court ordered for the cancellation of all the sub-dividing mutation in the plaint, the honourable magistrate was wrong since the court misinterpreted the court order. They mentioned that there was a consent recorded in court. They also averred that beside SPMELC Engineer Case No E004 of 2023



- there was 7 other cases involving the suit land viz and that some of these cases were pending in court. This because in the words of the first set of defendants, the plaintiff is a vexatious litigant which enable her to continue enjoying the occupation of the suit land since 15/6/2015.
8. In their counter-claim the foregoing Defendants claim that they inherited the suit land from their Patriarch the late John Kimuhu Kagai Gachenga and became its inherited owners on 15/6/2015 in accordance with the court order of 18/3/2015 recorded in Nakuru High Court Civil Suit No 232 of 2012 (O.S)
 9. They also claim that the father of the first set of Defendants moved L.R No NYANDARUA/NJABINI/2X7 measuring 8.1 Hectares i.e 20 Acres and that the Plaintiff was allowed 6 Acres thereof, approximately 1/3 of the whole land. They then asked the court to grant them the following orders.
 - i. An Order of Permanent injunction restraining the plaintiff from occupying and dealing with the suit parcel L.R No NYANDARUA/NJABINI/9XX54, 9XX6,9XX5,9XX4,9XX7,9XX6,9XX1,9XX5,9XX8,9XX5,9XX0,9XX9,9XX9,9XX2,9XX3 and 9XX4.
 - ii. The Officer Commanding Kenyatta Police Station to provide security during the enforcement of the order of Injunction.
 - iii. Costs of the counter-claim.
 - iv. Interest.
 - v. Income generated from L.R No NYANDARUA/NJABINI/MUKEU/T.49 at the rate of Ksh 50,000 per month.
 - vi. Any other appropriate orders.
 10. Then 13th Defendant entered appearance on 20/1/2025 through the firm of Martin Gathumbi & Co Advocates.
 11. Before the application dated 18/12/2024 was heard, the first set of Defendants filed an application dated 20/4/2025 to that this suit is res judicata in view of the numerous cases filed by the parties against one another in respect to the subject matter of the suit herein i.e LR No NYANDARUA/NJABINI/2X7 and the resultant sub-division thereof. They told the court that in Engineer SPMELC No E023 of 2021 there is contained a judgement that was attached to the replying affidavit of Richard Kariuki Gachenga sworn on 5/2/2025 where Honourable Barasa declined the matter and where the 15th and 16th Defendants herein. In the Engineer suit SPMELC No E023 of 2021, the parties were John Wambu Waweru and Lydia Wairimu (the 15th and 16th Defendants herein) and the Plaintiffs' and Wangui John Kimuhu, Phylis Njeri Kimuhu, Samson Kimuhu Njoroge, Haron Kibunyi Kimuhu and Mutheya Kibunja as the Defendants.
 12. The aforesaid plaintiff's , John Wambu Waweru and Lydia Wairimu Ngugi had asked for prayers for:-
 - a. An Order for a permanent Injunction for a permanent Injunction to restrain the defendants from evicting, taking possession or interfering in any in any manner whatsoever with the plaintiffs quiet possession of their property known as NYANDARUA/NJABINI/9XX0.
 - b. General damages and cost of the suit together with any other or further ruling as the court may deem fit to grant.
 13. In the suit date by way of a plaint dated 9/7/2021, the plaintiffs' were said to have bought NYANDARUA/NJABINI/9XX0 on 5/5/2016 and paid full purchase price for one Damaris



Nyambura Kimuhu and followed all the legal process to obtain a title deed in their names on 11/5/2016. They then took possession to the time of filing the suit but that from April, 2021. The defendants in the earlier case started interfering with the said land by moving the beacons and fence and issuing threats of eviction. In response thereto, the 5 defendants filed a statement of Defence and said that they had resided on the subject land along without interference and that if the plaintiff had purchased the suit land NYANDARUA/NJABINI/9XX0, then it was not from the bona vide owner and that the Late John Kimuhu who was the registered owner did not sell any land to the plaintiffs as alleged. The court also decreed that the case could not be determined unless and until the orders in Nakuru HCCC No 232 of 2012 (O.S) directed how the dividing of the subject land should be done. The 2 plaintiffs were successful as the court found out that they had proved their claim in terms of the 1st prayer in the plaint. That if an injunction against the Defendants taking possession or evicting and/or interfering in any manner with the Plaintiffs' quiet possession of their property otherwise known as NYANDARUA/NJABINI/9XX0. This indeed settled line of ownership of NYANDARUA/NJABINI/9XX0 once and for all since no Appeal has been said to have been prepared and filed. High Court Suit No 232 of 2012 (O.S) has no t mentioned any of the parcel of land in the current suit and it is not shown by any relationship between the parcels therein i.e Plot Nos' 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,29,30,31,33,34,35,36,37,38,40,41,44,45,46,47,48,49,50,51,52,53,54,55,60,61,64,65 and 67 and we side where consent was entered in respect to the parcels of land and the suit of land properties herein and the other. Consequently, no matter can be litigated involving John Wambu Waweru and Lydia Wairimu Nganga in relation to the ownership of Plot No NYANDARUA/NJABINI/9XX0 as against the plaintiff herein.

14. Section 7 of the Civil Procedure is furtherance of the Directive of Res Judicata provides that even a suit where the cause of action is related to an earlier on or where it ought to have been a subject/claim in an earlier suit or where the parties are related to the parties in the earlier suit should not be entertained in a latter suit. Thus this suit then fall in that category. The 15th and 16th Defendants are hereby struck out of this suit. They will also get costs.
15. The substantive law on Res Judicata is found in Section 7 of the [Civil Procedure Act](#) Cap 21 which 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.

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.”

16. 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...”
17. 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.
18. In order therefore to decide as to whether an issue in a subsequent Suit is res judicata, a court of law should always look at the Decision claimed to have settled the issues in question and the entire Suit and the instant Suit to ascertain;
- i. what issues were really determined in the previous Suit;
 - ii. whether they are the same in the subsequent Suit and were covered by the Decision.
 - iii. whether the parties are the same or are litigating under the same Title and that the previous Suit was determined by a court of competent jurisdiction.
19. In the case of Christopher Kenyariri vs Salama Beach (2017) eKLR, the court clearly stated the ingredients to be satisfied when determining res judicata thus;
- ...the following elements must be satisfied ...in conjunctive terms;
- a) The suit or issue was directly and substantially in issue in the former suit
 - b) Former suit between same parties or parties under whom they or any of them claim
 - c) Those parties are litigating under the same title
 - d) The issue was heard and finally determined.
 - e) The court was competent to try the subsequent suit in which the suit is raised.”
20. In E.T vs Attorney General & Another (2012) eKLR where it was held that:
- The Courts must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the Plaintiff in the second suit is trying to bring before the court in another way and in a form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi Vs National Bank of Kenya Limited and Others (2001) EA 177 the court held that , ‘parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.’ In that case the court quoted Kuloba J., in the case of Njangu vs Wambugu and another Nairobi HCCC No. 2340 of 1991 (unreported) where he stated, ‘if parties were allowed to go in litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because



he gives his case some cosmetic fact lift on every occasion he comes to court, then i do not see the use of the doctrine of res judicata....”

21. As for all the other Defendants there is nothing to show that they had a suit with the plaintiffs had a similar case with the Plaintiffs with them and therefore the case against them will proceed to full hearing.

RULING DATED AND DELIVERED AT NYANDARUA THIS 21ST DAY OF MAY, 2025.

HON MUGO KAMAU

JUDGE

In the presence of:

Court Assistsnt - Samson

Mr Maina.....for the Plaintiff

Mr Gathumbi..... for the 13th Defendant

Mr Kuriafor the 15th and 16th Defendants.

