



REPUBLIC OF KENYA



**Kanusu v Kulecho & 2 others (Environment & Land Case E012 of 2023)  
[2023] KEELC 21333 (KLR) (7 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21333 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE E012 OF 2023  
DO OHUNGO, J  
NOVEMBER 7, 2023**

**BETWEEN**

**CHIRANNGOSI KANUSU ..... PLAINTIFF**

**AND**

**NORAH NYAKOA KULECHO ..... 1<sup>ST</sup> DEFENDANT**

**KASSIM SUNGURA KULECHO ..... 2<sup>ND</sup> DEFENDANT**

**BUTALI SUGAR CO LTD ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The plaintiff moved the court through plaint dated 19<sup>th</sup> April 2023 wherein he prayed for the following orders:
  - a. A declaration that the proceedings undertaken before the defunct Land Dispute Tribunal at Kabras Division and all the consequential orders are null and void on account of being stale.
  - b. A declaration that the purported sale of Land Parcel No. N/Kabras/Malava/1206 between the 1<sup>st</sup> and 3<sup>rd</sup> defendants is null and void.
  - c. A permanent injunction be issued restraining the defendants acting jointly and/or severally through their agents/servants howsoever called from evicting the plaintiff from land parcel No. N. Kabras/Malava/1649 pending the hearing and determination of this suit.
  - d. A declaration that the plaintiff herein has overriding interest in land parcel number N/Kabras/Malava/1649 and consequently his title deed is valid.
  - e. Costs and interests.
2. Together with the plaint, the plaintiff filed Notice of Motion dated 26<sup>th</sup> April 2023, through which he sought an injunction to restrain the defendants through their agents or servants from evicting him



- from the parcel of land known as N. Kabras/Malava/1649 pending hearing and determination of the suit.
3. The application is supported by an affidavit sworn by the plaintiff. He deposed that he was the registered proprietor of the parcel of land known as N. Kabras/Malava/1649 (the suit property) which he acquired from the second defendant in 1981 and that the first and second defendant colluded to undertake proceedings before the Kabras Land Disputes Tribunal which led to cancellation of his title to the suit property and reversion to the original N. Kabras/Malava/1206 but which orders were never effected in the register. He added that the third defendant who purports to hold title to N. Kabras/Malava/1206 which measures 16 acres attempted to evict him from the suit property which measures 28 acres.
  4. The first and third defendants opposed the application through a replying affidavit sworn by the first defendant. Additionally, they filed Notice of Motion dated 9<sup>th</sup> June 2023 through which they sought striking out of the suit with costs for being res judicata.
  5. Notice of Motion dated 9<sup>th</sup> June 2023 is supported by an affidavit sworn by the first defendant. The gist of the replying affidavit and the supporting affidavit is that the dispute between the parties was initially litigated before the Kabras Land Dispute Tribunal whose award was eventually adopted as a judgement of the court in Kakamega CMC. Misc. Appl. No.96 of 2002 whereby subdivisions known as N. Kabras/Malava/2357, 1648 and 1649 were cancelled and the land reverted to the original number N. Kabras/Malava/1206 to be registered in the first defendant's name.
  6. The first defendant further deposed that he lawfully sold N. Kabras/Malava/1206 to the second defendant herein who became the registered owner. That sometime in 2007, the plaintiff herein filed Kakamega HCC No. 82 of 2018 over the same parcel of land which suit was later transferred to Chief Magistrates' Court Kakamega as MCLE No. 94 of 2018 and later transferred to Butali Court as ELC No. 24 of 2018. That Butali ELC No. 24 of 2018 was struck out for being res judicata and that the plaintiff also filed Butali ELC No. 17 of 2022 which the court also held was res judicata.
  7. The first defendant went on to state that the plaintiff again used another buyer to whom he had sold part of the suit land to file Kakamega ELC No. 336 of 2014 which suit was also dismissed. That the issues herein had also been the subject of Kakamega ELC No. 15 of 2021 which suit was also struck out for being res judicata and that the plaintiff herein and others were eventually evicted sometime in the year 2020 pursuant to eviction orders issued in Kakamega CM MISC. APPL. No. 96 of 2002.
  8. The first defendant thus contended that the issues in this matter have been substantially heard and determined and that the plaintiff herein is abusing the court process in filing this suit. He urged the court to strike out the suit for being res judicata.
  9. This ruling is in respect of both Notice of Motion dated 26<sup>th</sup> April 2023 and Notice of Motion dated 9<sup>th</sup> June 2023. The applications were canvassed through written submissions which both sides duly filed.
  10. I have considered the applications, the affidavits, and the submissions. The issues that arise for determination are whether this case is res judicata and whether the reliefs sought in the applications are available. I will deal first with Notice of Motion dated 9<sup>th</sup> June 2023 since it raises res judicata which is an issue of jurisdiction.
  11. Jurisdiction is at the core of all judicial proceedings. Without jurisdiction proceedings come to a certain end and the court cannot make any further step. See *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR and [Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others](#) [2012] eKLR.



12. Beyond being a doctrine of general application, res judicata has found statutory expression in Section 7 of the [Civil Procedure Act](#) which 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.

13. As reiterated by the Supreme Court in [Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another](#) [2016] eKLR, the doctrine of res judicata allows a litigant only one bite at the cherry by prevent the litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action or submitting to court issues that have been heard and determined by a competent court. The doctrine prevents a multiplicity of suits and ensures that litigation ends.
14. For an objection based on res judicata to succeed, there must been a previous suit in which the matter was in issue; the parties in both matters were the same or litigating under the same title; the previous matter was heard and determined by a competent court and the issue is raised once again in the new suit. See [John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others](#) [2015] eKLR. Res judicata operates as a complete estoppel against any suit that runs afoul of it. See also [Maitihene Malindi Enterprises Limited v Kaniki Karisa Kaniki & 2 others](#) [2018] eKLR.
15. This suit concerns the parcels of land known as N. Kabras/Malava/1649 and N. Kabras/Malava/1206. The former parcel is a subdivision of the latter. The plaintiff is among others seeking a declaration that the proceedings undertaken before the defunct Land Dispute Tribunal at Kabras Division through which his title to N. Kabras/Malava/1649 was cancelled and the register reverted to N. Kabras/Malava/1206 and all the consequential orders are null and void. The plaintiff further seeks a declaration that the sale of land parcel number N/Kabras/Malava/1206 to the third defendant is null and void.
16. There is no dispute that the award of the Kabras Land Dispute Tribunal was adopted as a judgment of the court through Kakamega CM Misc. Appl. Award No. 96 of 2002. The plaintiff herein, the first defendant and the second defendant were parties to the proceedings before the Kabras Land Dispute Tribunal and by extension the adoption proceedings in Kakamega CM Misc. Appl. Award No. 96 of 2002. The judgment that ensued in the adoption proceedings has not been set aside.
17. The declarations and permanent injunction that the plaintiff now seeks cannot be issued in view of the award of the Kabras Land Dispute Tribunal and its adoption which remain in force. I see the plaintiff's current suit and prayers as cosmetic facelifts to the old dispute. See [E.T. v Attorney General & another](#) [2012] eKLR. I agree with the first and third defendants that this suit is res judicata. That being the case, I need not consider Notice of Motion dated 26<sup>th</sup> April 2023.
18. In the result, I strike out the plaintiff's case with costs to the first and third defendants.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 7<sup>TH</sup> DAY OF NOVEMBER 2023.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

Mr Mondia holding brief for Mr Kiveu for the Plaintiff



Mr Getanda for the first and third Defendants

No appearance for the second Defendant

Court Assistant: E. Juma

