



**Glucokaniriria Kihato Farmers and Traders Company Limited v Ichoya  
& 3 others; Registrar of Companies (Interested Party) (Civil Case  
E015 of 2024) [2025] KEHC 10752 (KLR) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10752 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL CASE E015 OF 2024  
DKN MAGARE, J  
JULY 22, 2025**

**BETWEEN**

**GLUCOKANIRIRIA KIHATO FARMERS AND TRADERS COMPANY  
LIMITED ..... PLAINTIFF**

**AND**

**JONAH ICHOYA ..... 1<sup>ST</sup> DEFENDANT  
DAVID GITOME ..... 2<sup>ND</sup> DEFENDANT  
PETER KIARIE ..... 3<sup>RD</sup> DEFENDANT  
PAUL THIGE ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**REGISTRAR OF COMPANIES ..... INTERESTED PARTY**

**RULING**

1. This matter is among a series of matters filed in court by various persons seeking leadership of the plaintiff, Gucokaniriria Kihato Farmers and Traders Company Limited. The company does not appear to have ever known peace. Whatever problems they are facing are a result of chicanery, duplicity, subterfuge and skulduggery, forgive the tautology. Parties are involved in various litigation in the courts. I shall set the same out herein verbatim with a view of avoiding parties obfuscating the issues and miring the waters.
2. E015 of 2024 filed on behalf of Gucokaniriria Kihato Farmers and Traders Company Limited.
3. HCCC E151 of 2023, which is now Nyeri HCCC E015 of 2024, was filed by Samuel Mbugua on behalf of Gucokaniriria Kihato Farmers and Traders Company Limited. He was challenging an annual



general meeting which was to be held on 8.12.2022. He had no shame in admitting that he was elected in 2016 as the Chairman. The court (Mulwa Janet J) delivered her ruling on 15.02.2024. The court stayed the suit pending determination of the Nyeri suits, that is E010 of 2022 and E015 of 2022.

4. Nyeri Misc. E45B of 2023, formerly Nairobi Milimani HCCCOM Misc. No. E020 of 2023 and Misc. E625 of 2023 was filed by Samuel Mbugua Njuguna on behalf of Gucokaniriria Kihato Farmers and Traders Company Limited. It sought to stop the annual general meeting of 10.08.2023. The court found this was overtaken by events. The respondents were awarded costs by Muya J.
5. E006 of 2024 formerly NAIROBI HCCC E104 of 2024 was filed by Esther Muthoni Sospeter against Gucokaniriria Kihato Farmers and Traders Company Limited. The suit was dismissed for want of prosecution.
6. Nyeri HCCC E010 of 2024 filed by Samuel Mbugua Njuguna on behalf of Gucokaniriria Kihato Farmers and Traders Company Limited. The suit was stopping the Annual General Meeting of 08.07.2022 as per notice issued on 22.06.2022. There was a counter application in the suit by Jonah Mwangi Ichoya regarding the Annual General Meeting of December 2022. The court directed on 29.05.2023 on holding an Annual General Meeting within 3 months and accounts be dealt with including election of directors. The confusion in the said company, Gucokaniriria Kihato Farmers and Traders Company Limited, can be seen in the letter filed in court by the business registration service on 4.09.2023.
7. The court, Muya J, on 2.05.2025 directed that E010 of 2022 be marked as settled. The Registrar of Companies was directed to effect the resolution of the annual general meeting of 10.08.2023. This order has not been set aside. In effect, the election cycle before 10.08.2023 was completed.
8. There is an application filed to strike out the suit, however, the directors who were elected pursuant to the order by Muya J, have now taken over the running of Gucokaniriria Kihato Farmers and Traders Company Limited. They sought to withdraw the suit on behalf of the company. The party who filed on behalf of the company cannot hear of the same.
9. The main substratum of the suit is to set aside the resolutions of the meeting of 10.08.2023. The said meeting was pursuant to a court order. In effect, any question as to the compliance with the court order as issued in E010 of 2022 on 29.05. 2023 directing of the Annual General Meeting within 3 months, is a question of execution of that order. It can only be challenged in the case it was made. Section 34 of the [Civil Procedure Act](#) provides as follows:
  - (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.
  - (2) The court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit, or a suit as a proceeding, and may, if necessary, order payment of any additional court fees.
  - (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the court.

Explanation.—For the purposes of this section, a plaintiff whose suit has been dismissed, and a defendant against whom a suit has been dismissed, are parties to the suit.
10. Ipso facto, the question of the annual general meeting of 10.08.2023, being a court guided process in E010 of 2022, cannot be challenged vide a separate suit. Therefore, the matter of the annual general meeting held on 10.08.2022 is res judicata having been dealt with finality. Indeed, the court



subsequently gave the said meeting a stamp of approval. The former applicant's goose was cooked, and eaten.

11. Section 7 of the *Civil Procedure Act* Cap 21 Laws of Kenya defines the doctrine of Res Judicata in the following terms:-

“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.”

12. The *Civil Procedure Act* also provides explanations with respect to the application of the res judicata rule. In the case of *In re Estate of Riungu Nkuuri (Deceased)* [2021] eKLR the court stated as follows:

The test for determining the Application of the doctrine of res-judicata in any given case is spelt out under Section 7 of the *Civil Procedure Act*. In *Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others* [2017] eKLR, the Supreme Court while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked. That is:

- “(a) The suit or issue was directly and substantially in issue in the former suit.
- (b) That former suit was between the same parties or parties under whom they or any of them claim.
- (c) Those parties were litigating under the same title.
- (d) The issue was heard and finally determined in the former suit.
- (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

13. In the case of *Attorney General & another ET vs* (2012) eKLR 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 form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of *Omondi s NBK & 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, (as he then was) in the case of *Njanju vs Wambugu and another Nairobi HCC No. 2340 of 1991* (unreported) where he stated: If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift in every occasion he comes to court, then I do not see the use of doctrine of res judicata.....”.

14. In essence therefore, the doctrine implies that for a matter to be res judicata, the matters in issue must be similar to those which were previously in dispute between the same parties and the same having been



determined on merits by a court of competent jurisdiction. The court in the English case of *Henderson v Henderson* (1843-60) All E.R 378, observed thus:

“...where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”

15. *Res judicata* applies to applications just like suits. In the case of *Julia Muthoni Githinji v African Banking Corporation Limited* [2020] eKLR the court stated thus:

14. After a careful reappraisal of the application for injunction before the lower court, I have come to the conclusion that the application was *resjudicata* and the entire suit was subjudice as there was an active pending suit before a court of competent jurisdiction being Nakuru ELC No. 272 of 2017. All issues raised in the suit before the subordinate court could be properly litigated in the suit pending before the ELC. The filing of the suit by the appellant in the subordinate court when she had a similar suit in the ELC Court was an abuse of the Court process which the Court cannot countenance.

16. In the case of *Maumbwa & 3 others v Kisemei* (Civil Appeal E009 of 2021) [2022] KEHC 10416 (KLR) (26 May 2022) (Judgment *Maumbwa & 3 others v Kisemei* (Civil Appeal E009 of 2021) [2022] KEHC 10416 (KLR) (26 May 2022) (Judgment) the court stated as doth:

By comparing the two applications and the authorities on *res judicata*, it is clear to me that the issues being canvassed in the application dated 11<sup>th</sup> January 2021 is *res judicata*. The issues in issue in that application were directly and substantially in issue in the application dated 13<sup>th</sup> September 2017. These issues relate to the same parties and these issues have been tried by a competent court. To my mind to bring the same issues between the same parties that have been determined by a court of competent jurisdiction is an abuse of the court process.

17. The directions relate to this matter and the impact of the decision of the court, Muya J, in HCCC No. E010 of 2022. In the said decision, the court issued an Order marking HCCC No. E010 of 2022 as overtaken by events. The court also directed the Interested Party, Registrar of Companies to effect resolutions of the Annual General Meeting of the Plaintiff held on 10.8.2023.

18. The said decision of court was not appealed and remains a binding order of this court. The parties have again sought to challenge a result of an order of the court. Put in another way, can this court find that there was no authority to hold elections and the annual general meeting of 10.08.2023?

19. After having looked at all the matters referred, I come to the inevitable conclusion that the rest of the matters have lost the substratum and are overtaken by events. They serve no useful purpose. In the circumstances, this suit is struck out.

20. The next issue is the question of costs which are governed by Section 27 of the *Civil Procedure Act*, which provides as follows:



- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers: Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
  - (2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.
21. Costs are discretionary but the discretion must be exercised judiciously. The Court of Appeal in the case of *Farah Awad Gullet v CMC Motors Group Limited* [2018] KECA 158 (KLR) had this to say:
- It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.
22. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of *Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai & 4 others*, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -
- “(18) It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this Court in other cases.
23. The suit was baseless. Samuel Mbugua Njuguna kept filing suits without the authorisation of the company, Gucokaniriria Kihato Farmers and Traders Company Limited. Ordering blanket costs will mean that the winners will pay costs, as interests have merged. It is fair that Samuel Mbugua Njuguna bears costs.
24. The matter is now concluded and closed. Noting that the parties have a tendency to file suits in the name of the company, it is fair to order that where there is a dispute, between any director or shareholder relating to the company, the suit shall be filed in the name of the individual director or shareholder and not the company.



**Determination.**

25. The upshot of the foregoing is that I make the following orders: -

- a. The suit is res judicata and is accordingly struck out.
- b. Directors and shareholders are barred from filing suits relating to the company in the name of Gucokaniriria Kihato Farmers and Traders Company Limited, in respect of any annual general meeting. Any suit filed shall be in the name of the individual complainant and with the company, Gucokaniriria Kihato Farmers and Traders Company Limited as one of the defendants.
- c. Samuel Mbugua Njuguna shall bear the costs of the suit to be taxed or agreed.
- d. The file is closed.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 22<sup>ND</sup> DAY OF JULY, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of:-

Ms. Irungu for Mungata for the plaintiff

Ms. Mutinda for Thuo for the Plaintiff

1<sup>st</sup>- 4<sup>th</sup> defendants in person

Court Assistant – Michael

