



REPUBLIC OF KENYA



In re Estate of Joseph Kipkurui Chuma (Deceased) (Succession Cause 114 of 2014) [2025] KEHC 12887 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12887 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 114 OF 2014
S MBUNGI, J
SEPTEMBER 18, 2025**

IN THE MATTER OF ESTATE OF JOSEPH KIPKURUI CHUMA (DECEASED)

BETWEEN

FRANCIS MUZEE KIRUI 1ST APPLICANT

CHRISTINE JELAGAT CHUMA 2ND APPLICANT

AND

TEDDY LABAN KEGODE 1ST RESPONDENT

MARTIN MUKUNZA TERAH 2ND RESPONDENT

RULING

1. Vide summons, the applicant filed a preliminary objection dated 11th October 2024 as the administrator of the estate of Joseph Kipkurui Chuma, seeking the following orders;
 - a. This Honorable court lacks jurisdiction to hear and determine the application dated 9th August 2024 in that the application herein is res judicata and it offends the mandatory provisions of section 7 of the *Civil Procedure Act*, Cap 21.
 - b. The issues raised are land use, occupation, and purchase, among others, which the Probate and Administration Court does not have jurisdiction to hear and determine.
 - c. Costs of this Application shall be borne by the Respondents.
2. The application is based on the reasons listed in it and on the supporting affidavit sworn by the applicant on the same date. She states that she is an administrator of the estate of Joseph Kipkurui Chuma.
3. She confirms that the grant of letters of administration was confirmed on 8th December 2022.



4. She explains that earlier, the protestors had filed an affidavit of protest claiming they were purchasers with an interest in the estate. That protest was heard through written submissions and the court delivered its ruling on 31st October 2022.
5. The applicant argues that the issues raised in the protestors' new application dated 9th August 2024 had already been dealt with by the court, and therefore the application is incompetent and defective.
6. She adds that the court had already directed the protestors to pursue their claims in the Environment and Land Court, since they were neither beneficiaries nor creditors of the estate.
7. She further states that the protestors' documents date back to 1980 and relate to claims against the deceased personally, and therefore cannot be enforced against the estate.
8. Lastly, she contends that the protestors delayed unreasonably in filing their application, as it came almost two years after the grant had been confirmed.
9. The court directed that the application be canvassed by way of a written submission.

Submissions.

10. The applicant filed her written submissions dated 27th January 2025.
11. In support of her preliminary objection, the applicant relied on the well-known authority of *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd (1969) EA 696*.
12. She submitted that the doctrine of *res judicata* serves the important function of bringing litigation to a close, by preventing parties from filing multiple suits over the same subject matter in search of favourable outcomes. To reinforce this argument, she cited Section 7 of the *Civil Procedure Act*, which codifies the principle of *res judicata*.
13. The applicant further noted that the respondents had previously lodged protests claiming purchaser's interest in the estate of Joseph Kipkirui Chuma before the confirmation of the grant.
14. She contends that the issues raised and the reliefs sought in the respondents' application dated 9th August 2024 are identical to those which were heard and determined in the ruling delivered on 31st October 2022. In that ruling, the court directed the purchasers to pursue their claims before the Environment and Land Court, as they were neither beneficiaries nor creditors of the deceased's estate.
15. The applicant emphasized that the earlier ruling was delivered by a court of competent jurisdiction. To support this point, she relied on the case of *Independent Electoral and Boundaries Commission v. Maina Kiai & 5 Others [2017] eKLR*, which elaborates on the circumstances in which the doctrine of *res judicata* may be invoked.
16. She also cited additional authorities, namely *John Florence Maritime Services Ltd & Another v. Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR*, and *Diocese of Eldoret Trustees (Registered) v. Attorney General on behalf of the Principal Secretary Treasury & Another [2020] eKLR*, to reinforce her argument that the present case is barred by *res judicata* under Section 7 of the *Civil Procedure Act*.
17. The applicant therefore urged the court to hold that the application dated 9th August 2024 is *res judicata*, as the issues therein were conclusively determined in the ruling of 31st October 2022.
18. On the issue of jurisdiction, which had been raised by the respondents, the applicant maintained that the respondents' claim was premised on an alleged purchaser's interest in the estate of the deceased, and that they were effectively seeking eviction orders if the applicants were not restrained.



19. She argued that the respondents are not creditors of the estate of Joseph Kipkirui Chuma, and since their grievances relate to land ownership and occupation, the proper forum is the Environment and Land Court under Section 13 of the *Environment and Land Court Act*, as the Probate and Administration Court lacks jurisdiction.
20. To buttress this argument, the applicant cited the case of *Re Estate of Alice Mumbua Mutua* [2017] eKLR, by justice Musyoka which clarified the limits of the jurisdiction of the probate court.
21. The applicant pointed out that the respondents were essentially claiming a portion of parcel number Kakamega/Sergoit/100 on behalf of the estate of Salome Nyangasi Terah, who they allege had purchased the land from the deceased, Kipkurui Arap Chuma.
22. The applicants disputed the validity of that alleged sale and stressed that the court could not determine ownership of the parcel, since questions as to whether there was a valid sale between the deceased parties fall squarely outside the jurisdiction of the probate court.
23. For these reasons, the applicant prayed that the court hold it has no jurisdiction to entertain the application dated 9th August 2024, and that the issues raised therein should be addressed by the Environment and Land Court, where the applicants have already filed suit against the respondents.
24. At the time of writing this judgment the respondent had not filed their submissions.

Analysis and Determination

25. Having carefully considered the pleadings and submissions by the applicant, the Court has outlined the following issues for determination:
 - a. Whether the respondents' application dated 9th August 2024 is barred by the doctrine of res judicata under Section 7 of the *Civil Procedure Act*.
 - b. Whether this Probate and Administration Court has jurisdiction to determine issues relating to purchaser's interest and ownership of land allegedly sold by the deceased.
26. The doctrine of res judicata is codified under 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 ... and has been heard and finally decided by such court.”
27. The Court of Appeal in *Uhuru Highway Development Ltd vs. Central Bank of Kenya & 2 Others* [1996] eKLR underscored that the principle of res judicata is founded on public policy that litigation must come to an end.
28. Similarly, in *ET v. Attorney General & Another* [2012] eKLR, Majanja J. explained that the doctrine prevents parties from reopening matters that were or ought to have been litigated, thereby safeguarding judicial economy and consistency.
29. The Supreme Court in *Kenya Commercial Bank Limited v. Muiiri Coffee Estate Limited & Another* [2016] eKLR emphasized that the doctrine of res judicata applies with equal force to interlocutory applications, rulings, and orders, not merely full suits.



30. In the present case, the respondents' filed an affidavit of protest which was heard on its merits, submissions considered, and a ruling rendered on 31st October 2022. The respondents were directed to the proper forum which is the Environment and Land Court.
31. The respondents' attempt to reintroduce the same questions on the 9th August 2024 application with similar issues which amounts to re-litigation of issues that have already been finally determined. The test in *Independent Electoral and Boundaries Commission v. Maina Kiai & 5 Others* [2017] eKLR is fully satisfied: the issues are identical, the parties are the same, the earlier decision was final, and it was rendered by a competent court.
32. I therefore find that the application is barred by res judicata and offends the principles of finality of litigation.

On jurisdiction

33. The jurisdiction of this Court in succession matters is derived from the *Law of Succession Act* (Cap 160) and Article 165(3) of *the Constitution* of Kenya 2010. Section 47 of the Act vests jurisdiction in the High Court to determine matters relating to succession and administration of estates.
34. However, Section 13 of the *Environment and Land Court Act*, 2011 grants exclusive jurisdiction to the Environment and Land Court to determine disputes relating to title, use, occupation, and interest in land.
35. The Court of Appeal in *Isaya Masira Momanyi v. Daniel Omwoyo & Another* [2017] eKLR clarified that disputes over land ownership between an estate and third parties must be addressed before the ELC and not within succession proceedings.
36. Likewise, in *Re Estate of Alice Mumbua Mutua* (2017) eKLR, Musyoka J. held that the probate court's mandate is to identify beneficiaries and distribute the estate, but it cannot convert itself into an ELC to resolve ownership disputes.
37. The High Court (Nyakundi J.) in *In re Estate of Charles Ngotho Gichungu (Deceased)* [2015] eKLR echoed the same position, reiterating that succession proceedings are not the forum for determining the validity of sale agreements between a deceased and third parties.
38. The jurisprudence is fortified by *In the Matter of the Estate of Veronica Njoki Wakagoto (Deceased)* [2013] eKLR, where the court stressed that purchasers cannot be introduced through succession proceedings as if they were heirs; their remedy lies in a separate civil or land suit.
39. Guided by the binding authority in *Owners of the Motor Vessel "Lillian S" v. Caltex Oil (Kenya) Ltd* [1989] KLR 1, this Court must down its tools where jurisdiction is lacking. The respondents' grievance being one of purchaser's interest falls squarely within the jurisdiction of the ELC and not this Court.
40. Article 159(2)(b) of *the Constitution* of Kenya 2010 provides that justice shall not be delayed. Re-litigation of issues conclusively determined undermines these constitutional values.
41. The doctrine of res judicata is thus not merely a technical rule; it is a constitutional imperative meant to foster certainty, efficiency, and finality in litigation.
42. Having considered the pleadings, submissions, and applicable law, the Court makes the following findings:
 - a) The respondents' application dated 9th August 2024 is res judicata, contrary to Section 7 of the *Civil Procedure Act*, and therefore incompetent.



- b) The Probate and Administration Court lacks jurisdiction to adjudicate on claims of purchaser's interest and ownership of estate property, which lies exclusively within the mandate of the Environment and Land Court.
- c. Accordingly, the Preliminary Objection dated 11th October 2024 is upheld. The respondents' application dated 9th August 2024 is hereby struck out with costs to the applicant.

43. Right of Appeal 30 days.

DATED SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 18TH OF SEPTEMBER, 2025.

S.N. MBUNGI

JUDGE

In the presence of;

