



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njeru v Mutugi & another (Environment & Land Case E007 of 2023)  
[2025] KEELC 3884 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3884 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE E007 OF 2023**

**JM MUTUNGI, J**

**MAY 15, 2025**

**BETWEEN**

**ANGELAS NDAMBIRI NJERU ..... PLAINTIFF**

**AND**

**BENSON GITHINDUI MUTUGI ..... 1<sup>ST</sup> DEFENDANT**

**SENIOR SCHEME MANAGER MWEA IRRIGATION SETTLEMENT .... 2<sup>ND</sup>  
DEFENDANT**

**JUDGMENT**

1. The Plaintiff instituted the present suit by way of a Plaint dated 1<sup>st</sup> February 2023. The Plaintiff as per the Plaint prayed for Judgment against the Defendants for:-
  - a. A permanent injunction restraining the Defendant by himself, his agent, legal representatives or anybody else claiming on his behalf from invading, trespassing, erecting structures, occupying, cultivating, utilizing, remaining on or in any way whatsoever from interfering with rice holding No. 1877 unit M12(A) Mwea Section measuring 4 Acres and the honorable Court do revoke and cancel orders issued by Hon. Nditika in the year 2003 and cancel consent form issued by 2<sup>nd</sup> Defendant in the year 2012 to have the matter to be referred back to the National Irrigation Board.
  - b. That this Honourable Court do order Manager Irrigation Board to cancel all the tenant cards issued to the 1<sup>st</sup> Defendants the order used to give the 1<sup>st</sup> Defendants the cards, Court has no jurisdiction to deal with N.I.B matters.
  - c. Cost of this suit be provided for.
  - d. Any other relief the honorable Court may deem fit and just to grant.



2. The 1<sup>st</sup> Defendant filed a statement of defence dated 1<sup>st</sup> March 2023 where he averred the Plaintiff's suit was fatally defective and was res judicata the same having been heard and determined previously in Wang'uru SRMCC No. 51 of 2003. The 1<sup>st</sup> Defendant therefore contended the Plaintiff's suit did not lie as the issues raised were dealt with and determined in the previous suit.
3. The suit was heard before me on 22<sup>nd</sup> October 2024 when both the Plaintiff and the Defendant testified as the sole witnesses in support of their respective cases.

### **The Plaintiff's Case**

4. The Plaintiff testified that he and the Defendant on 24<sup>th</sup> January 2003 entered into a sale agreement where he (the Plaintiff) agreed to sell to the Defendant a portion of 2 Acres out of Rice holding 1877 measuring 4 Acres which he owned. The Plaintiff in his evidence testified that the Defendant sued him at Wang'uru Magistrate's Court and that the case before the Magistrate's Court was heard in his absence and the Court ordered that he (the Plaintiff) give the Defendant 2 Acres that he had purchased.
5. The Plaintiff further testified that although he had instructed his Advocate to Appeal against the decision of the Wang'uru Magistrate's Court the Advocate did not do so and that prompted him to institute the instant suit in pursuit of Justice. The Plaintiff affirmed that the decision of the Wang'uru Magistrate's Court was given effect by the Irrigation Scheme Manager and that the 1<sup>st</sup> Defendant was registered as the proprietor of 2 Acres of the Rice holding. The Plaintiff relied on the witness statement he had filed as his evidence and the bundle of documents he had filed together with the Plaintiff in support of his case. The Plaintiff in his witness statement admitted that the 1<sup>st</sup> Defendant instituted Wang'uru RMCC No. 51 of 2003 against him (Plaintiff) and obtained a Judgment in his favour and subsequently a decree that was executed. The Plaintiff however contended the 1<sup>st</sup> Defendant obtained the decree unlawfully and that the Defendant blocked him from presenting his documents in the Wang'uru Magistrate's Court and thereby denied him from accessing justice.
6. In Cross examination by the 1<sup>st</sup> Defendant, the Plaintiff affirmed he was the one who approached the 1<sup>st</sup> Defendant to purchase 2 acres of his Riceholding. He further admitted that the order issued in the Wang'uru Resident Magistrate's Court required him to transfer 2 acres of the Riceholding to the 1<sup>st</sup> Defendant. The Plaintiff denied that he executed any transfer in favour of the 1<sup>st</sup> Defendant.

### **The 1<sup>st</sup> Defendant's Case.**

7. The 1<sup>st</sup> Defendant in his evidence adopted his witness statement and relied on the bundle of documents he had filed in support of his case. He denied the allegations made against him by the Plaintiff. He testified that he paid the full consideration to the Plaintiff as per the agreement dated 24<sup>th</sup> January 2003. He stated that he sued the Plaintiff at Wang'uru Magistrate's Court because the Riceholding Plot No. 1877B that the Plaintiff purported to transfer to him did not belong to him but to his mother. He testified that the Plaintiff's plot was No. 1877A and he sued him so that he could transfer the appropriate plot to him. The 1<sup>st</sup> Defendant denied that he prevented the Plaintiff from presenting his evidence before the Wang'uru Magistrate's Court. He stated that the case was heard and Judgment was made in his favour. He affirmed that following the Judgment, the plot was transferred to him and that he was utilizing the plot.
8. In cross examination by the Plaintiff, the 1<sup>st</sup> Defendant reiterated that he sued the Plaintiff at Wang'uru because he failed to transfer the plot to him as per the agreement. The 1<sup>st</sup> Defendant stated that the Plaintiff subsequently has challenged the Wang'uru Magistrate's Court decree without success. He



affirmed that 1 acre out of the 2 acres was paid in kind by the 1<sup>st</sup> Defendant surrendering his motor vehicle to the Plaintiff as per the agreement.

9. The parties filed their submissions as per the Court's directions. In their submissions each of the parties reiterated the contents of their respective pleadings and evidence as contained in their respective documents.

### **Analysis and Determination**

10. As between the Plaintiff and the 1<sup>st</sup> Defendant, there is agreement that they both entered into a sale agreement dated 24<sup>th</sup> January 2003 where the Plaintiff herein as the vendor agreed to surrender 2 acres of Riceholding 1877 Mwea Section Unit 12A to the 1<sup>st</sup> Defendant as the purchaser. The 1<sup>st</sup> Defendant was to pay for one (1) acre by way of exchange of his Motor Vehicle Registration No. KST 651 CHEV LUV valued at Kshs 160,000/-. The 1<sup>st</sup> Defendant was to pay Kshs 160,000/- for the other one (1) acre in the manner set out in the sale agreement. It is the 1<sup>st</sup> Defendant's evidence that he fulfilled his part of the bargain as relates to the said agreement and when the Plaintiff failed to transfer the portion of 2 acres as agreed, the 1<sup>st</sup> Defendant sued the Plaintiff in Wang'uru Resident Magistrate's Court Civil Case No. 51 of 2003.
11. The 1<sup>st</sup> Defendant contended that the suit was heard and determined which rendered the instant suit res judicata. The Wang'uru Magistrate's Court rendered a Judgment in the suit on 18<sup>th</sup> November, 2003 where it ordered the Plaintiff to transfer 2 acres of Riceholding No. 1877 being Riceholding No. 1877A to the 1<sup>st</sup> Defendant. This Court order was not appealed against and has not been set aside and was consequently implemented by the 2<sup>nd</sup> Defendant.
12. Res judicata is a jurisdictional issue and where it is successfully raised the Court has no jurisdiction to entertain the suit. Section 7 of our *Civil Procedure Act*, Cap 21 Laws of Kenya, clearly bars a Court from trying any matter in which the matter directly and substantially in issue had been determined previously by a Court of competent jurisdiction.
13. The Section 7 of the *Civil Procedure Act* provides as follows:-

7 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.
14. Though the Court did not consider the issue of whether the instant suit was res judicata on account of Wang'uru RMCC No. 51 of 2003 as a Preliminary issue, the Court nonetheless is obligated to consider the issue as it goes to the jurisdiction of the Court. If the matter is res judicata, then this Court would have no jurisdiction to entertain the same as Section 7 of the Civil Procedure, Act bars the Court from doing so. The Court would be acting in futility if it entertained a suit that was res judicata and would be against public policy.
15. The rationale for the res judicata doctrine is that litigation has to come to an end and that parties that have had litigation that has been concluded should not be allowed to open a new front of litigation before another Court on the same issues that have previously been litigated before another Court. If parties were to be allowed to file fresh suits on issues that have been determined and adjudicated before another Court, litigation would never come to an end, and a successful litigant would never take comfort and reap the fruits of his success as he would not be assured the litigation would not



be revived before another Court. The res judicata principle also prevents parties to forum shop and ensures finality and certainty in the litigation process.

16. The Court of Appeal in the Case of IEBC v Maina Kiai & 5 others [2017] KECR 477 KLR outlined conditions that need to be satisfied in order for the doctrine of res judicata to be held to be applicable. The Court held as follows:-

“Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not distinctively but conjunctive terms:-

1. The suit or issue was directly and substantially in issue in the former suit.
2. The former suit was between the same parties or parties under whom they or any of them claim.
3. Those parties were litigating under the same title.
4. The issue was heard and finally determined in the former suit.
5. 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.”

17. In the Case of ET v Attorney General & Another [2012] eKLR the Court stated as follows:-

“The Courts must always be vigilant to guard against 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 an issue which has been resolved by a Court of competent jurisdiction. In the Case of Omondi v National Bank of Kenya Ltd & 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 v Wambugu & Another HCCC 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 on every occasion he comes to Court, then I do not see the use of the doctrine of res judicata.”

18. In the instant case it is evident that the foundation of the Plaintiff’s case is the agreement dated 24<sup>th</sup> January 2003 entered into between him and the 1<sup>st</sup> Defendant where the Plaintiff agreed to sell to the 1<sup>st</sup> Defendant a portion of 2 acres out of his (the Plaintiff’s) Riceholding No. 1877 Mwea.

19. This was the agreement that was the subject of the suit in Wang’uru SRMCC No. 51 of 2003. In this suit the 1<sup>st</sup> Defendant had sued the Plaintiff and sought to have the Plaintiff ordered to transfer to him the portion of 2 acres as per the agreement. The Record of Proceedings before the Magistrate’s Court exhibited in the Plaintiff’s bundle of documents indicates that the suit proceeded for hearing by way of formal proof as the Plaintiff herein who was the Defendant in the suit was served but did not appear and/or file a defence within the prescribed period. The Plaintiff attended Court on 26.8.2003, 9.9.2003 and 26.9.2003 when the suit was not heard for various reasons. The suit was heard on 16<sup>th</sup> October 2003 and a Judgment delivered on 18<sup>th</sup> November, 2003 whereby the Defendant (Plaintiff herein) was ordered to transfer to the Plaintiff (Defendant herein) 2 Acres being Riceholding 1877A. The Court order was extracted and served on the 2<sup>nd</sup> Defendant who duly implemented the same.



20. The Plaintiff no doubt was a party in the previous suit and was aware of the decision made by the Court. The Plaintiff did not apply to set aside and/or appeal the decision made by the Magistrate's Court. The decision was implemented by the 2<sup>nd</sup> Defendant and remains a valid decision made by a Court of competent jurisdiction. To the extent that the decision was not appealed against reviewed and/or varied it remains a final determination by a Court competent to hear and determine the issues that were raised in the suit.
21. In the present suit the Plaintiff, inter alia under prayer (a) of the Plaint seeks the Court to order revocation of the orders issued by Hon. Nditika RM and to order cancellation of the consent form issued by the 2<sup>nd</sup> Defendant. With respect, the Plaintiff did not approach this Court in its appellate jurisdiction and or review jurisdiction and the Court cannot invoke such jurisdiction which would invite different considerations altogether.
22. The Plaintiff instituted the suit by way of Plaint when he was aware, a previous Court had dealt with the same subject of the suit and made a determination which was fully implemented. The instant suit raises the same issues that were raised in Wang'uru RMCC No. 51 of 2003 and which were determined by that Court. The Plaintiff, if he was dissatisfied with the decision of that Court ought to have applied to set aside the decision; appealed and/or applied for review of the decision. He never did so and consequently remains bound by the decision.
23. It is accordingly my determination that the Plaintiff's suit offends Section 7 of the [Civil Procedure Act](#) and it is Res judicata. The suit lacks any merit and is dismissed with costs to the 1<sup>st</sup> Defendant.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 15<sup>TH</sup> DAY OF MAY 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

