



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**ELCC No. 472 OF 2016**

**DIANA LEE LASOI (AS ADMINISTRATOR & HEIR OF THE ESTATE OF  
SOLOMON KIPKORIR ARAP LASOI).....1<sup>ST</sup> PLAINTIFF  
LEA CHERONO SHABANGI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JOHN KIPTOO CHERUIYOT.....1<sup>ST</sup> DEFENDANT  
PETER K. CHERUIYOT.....2<sup>ND</sup> DEFENDANT  
COLLINS K. CHEPKWONY.....3<sup>RD</sup> DEFENDANT  
JANE CHEPKORIR BARBARET.....4<sup>TH</sup> DEFENDANT  
CAREN CHEPKURUI MUTAI.....5<sup>TH</sup> DEFENDANT  
CAROLINE CHEBET.....6<sup>TH</sup> DEFENDANT  
SAMWEL KIPNGETICH KITUR BETT.....7<sup>TH</sup> DEFENDANT  
THE COUNTY LANDS REGISTRAR  
NAKURU COUNTY.....8<sup>TH</sup> DEFENDANT**

**CONSOLIDATED WITH**

**ELCC No. 54 OF 2020**

**CAROLINE CHEBET.....PLAINTIFF**

**VERSUS**

**DIANA LEE LASOI.....1<sup>ST</sup> DEFENDANT  
LEA CHERONO SHABANGI.....2<sup>ND</sup> DEFENDANT  
LEONARD KIPNGETICH CHELULE.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of Notice of Motion dated the 31<sup>st</sup> May 2021, filed by Caroline Chebet who is the plaintiff in ELCC No. 54 of 2020 and the 6<sup>th</sup> defendant in ELCC No. 472 of 2016. The following orders are sought in the application:

1. [Spent]

2. [Spent]

3. That pending the hearing and determination of this suit, a temporary order of injunction restraining Leonard Kipnetich advocate by himself, his agents and servants from entering into, trespassing onto, remaining in, interfering with or in any way dealing with the 6<sup>th</sup> defendant's/applicant's quiet and peaceful occupation and use of all that parcel of land known as NAKURU/OLENGURUONE/CHEPTUECH/269. This court order be implemented through the O.C.S Olunguruone police station.

4. That costs of this application be borne by Leonard Kipnetich advocate personally.

2. The application is supported by an affidavit sworn by Caroline Chebet, the applicant. She deposed that Leonard Kipnetich Chelule who is the 3<sup>rd</sup> defendant in ELCC No. 54 of 2020 and who is also on record as advocate for the plaintiffs in ELCC No. 472 of 2016 stormed into the subject parcel of land on 25<sup>th</sup> May 2021 in the company of hired men and sprayed the grazing field with some noxious and poisonous herbicides. She added that by 26<sup>th</sup> May 2021 Mr. Chelule had completed erection of a hut on the suit property and had closed down the only entry and exit gate where her livestock use to access the grazing field on the suit land.

3. Mr. Chelule opposed the application through a replying affidavit in which he deposed that on 24<sup>th</sup> May 2018 the applicant herein filed an application seeking similar orders as those sought in her present application and that the earlier was heard and determined through a ruling delivered on 17<sup>th</sup> December 2020 wherein the application was struck out for being *res judicata*.

4. The parties elected not to file any submissions but relied on the material on record. I have considered the application and the affidavits filed by the parties.

5. **Section 7 of the Civil Procedure Act** states 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.*

6. The Court of Appeal in **Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others** [2017] eKLR held as follows:

*... for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms;*

*(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.*

...

*The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. ...*

*The practical effect of the res judicata doctrine is that it is a complete estoppel against any suit that runs afoul of it, and there is no way of going around it – not even by consent of the parties – because it is the court itself that is debarred by a jurisdictional injunction, from entertaining such suit.*

7. It is important to recall that “suit” is defined at **Section 2 of the Civil Procedure Act**, to mean “all civil proceedings commenced in any manner prescribed”. To my mind, that includes applications.

8. The present application essentially seeks an injunction to restrain the 3<sup>rd</sup> defendant in ELCC No. 54 of 2020 pending hearing and determination of the consolidated suits. A perusal of the record herein shows that indeed, this court delivered a ruling in this matter on 17<sup>th</sup> December 2020. The ruling was on two injunction applications: Notice of Motion dated 3<sup>rd</sup> September 2018, filed by the plaintiffs in ELCC

No. 472 of 2016 and Notice of Motion dated 24<sup>th</sup> May 2018, filed by the plaintiff in ELCC No. 54 of 2020.

9. In the ruling, I stated thus:

*The record herein shows that through Notice of Motion dated 3<sup>rd</sup> November 2016, the plaintiffs in ELCC No. 472 of 2016 sought an injunction against the 1<sup>st</sup> to 3<sup>rd</sup> defendants who were then the only defendants in the matter. The plaint was later amended on 7<sup>th</sup> June 2018 to join the 4<sup>th</sup> to 8<sup>th</sup> defendants. The court delivered a ruling on 19<sup>th</sup> June 2018 in which an injunction was granted restraining the 1<sup>st</sup> to 3<sup>rd</sup> defendants from advertising or selling the property known as Nakuru/Olenguruone/Cheptuech/269 pending hearing and determination of the suit. Since the plaintiffs contend that the defendants obtained title on 7<sup>th</sup> November 2016, the allegations against the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants ought to have been raised in Notice of Motion dated 3<sup>rd</sup> November 2016 or as soon as the plaint was amended on 7<sup>th</sup> June 2018 and before delivery of the ruling on 19<sup>th</sup> June 2018. I therefore agree with the plaintiff in ELCC No. 54 of 2020 that prayer 3 of Notice of Motion dated 3<sup>rd</sup> September 2018 is res judicata. I strike out the said prayer. ... Similarly, the whole of Notice of Motion dated 24<sup>th</sup> May 2018 is res judicata in view of the ruling of 19<sup>th</sup> June 2018. I equally strike out the said application.*

10. This court having previously considered and determined whether or not an injunction could issue to the parties, it is not open to Caroline Chebet to bring a new application for injunction, even if it is clothed in new allegations. *Res judicata* bars this court from considering such an application.

11. In view of the foregoing, I find that Notice of Motion dated the 31<sup>st</sup> May 2021 is *res judicata*. I strike it out with costs to the plaintiffs in ELCC No. 472 of 2016.

12. The suit is scheduled for hearing on 28<sup>th</sup> October 2021. Parties should be ready to proceed on that date, before the Environment and Land Court at Nakuru.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 7TH DAY OF OCTOBER 2021.**

**D. O. OHUNGO**

**JUDGE**

Delivered through Microsoft Teams video link in the presence of:

No appearance for the plaintiffs in ELCC No. 472 of 2016 and for the defendants in ELCC No. 54 of 2020

No appearance for the 1<sup>st</sup> defendant in ELCC No. 472 of 2016

No appearance for the 2<sup>nd</sup> to 7<sup>th</sup> defendants in ELCC No. 472 of 2016 and for the plaintiff in ELCC No. 54 of 2020

No appearance for the 8<sup>th</sup> defendant in ELCC No. 472 of 2016

Court Assistant: E. Juma