



REPUBLIC OF KENYA



**Inspector General of Police & another v Njagi & 4 others; County Government of Embu & another
(Interested Parties) (Petition E003 of 2022) [2025] KEELC 3913 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3913 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
PETITION E003 OF 2022**

**AK BOR, J
MAY 8, 2025**

BETWEEN

INSPECTOR GENERAL OF POLICE 1ST PETITIONER

THE ATTORNEY GENERAL 2ND PETITIONER

AND

FREDRICK NJUGUNA NJAGI 1ST RESPONDENT

SALESIO NJERU MUTISYA 2ND RESPONDENT

PATRICK NJUKI NYAGA 3RD RESPONDENT

ELIAS GITONGA NGIGE 4TH RESPONDENT

LUCY NJOKI LAWRENCE 5TH RESPONDENT

AND

COUNTY GOVERNMENT OF EMBU INTERESTED PARTY

NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

1. The 1st respondent, Fredrick Njuguna Njagi and the 4th respondent, Elias Gitonga Ngige, raised a preliminary objection to the petition dated 28/6/2022 on the grounds that it was an abuse of the court's process and that it was res judicata and offended the provisions of Section 7 of the [Civil Procedure Act](#) cap 21. It was also contended that the petition is misconceived, incompetent and should be struck out with costs to the 1st and 4th respondents.
2. The court directed parties to file an exchange written submissions which it has considered. The 1st and 4th respondents gave a brief background to the case. They submitted that the dispute involved the land



- known as Evurore/Evurore/1067, which the 1st Respondent claims has always been private land passed down through his family lineage. He averred his grandfather purchased the land and that although the land was wrongly registered under Embu County Council, he took legal action from as early as 1975, leading to a consent judgment in HCCC No. 54 of 1997 (formerly Meru HCCC No. 11 of 1992) where Embu County Council agreed to transfer the land to him.
3. He submitted that the transfer was approved by the Land Control Board, but later Mbeere County Council interrupted registration by lodging a caution and instituting Siakago Civil Case no. 38 of 2005 which was later transferred to Embu as Misc Civil Application No. 47 of 2007 claiming that the land had been preserved for public use. They submitted that the suit was dismissed for want of prosecution on 13/10/2014 following an application he made. He added that the dismissal was never appealed, reviewed or set aside. That he later applied for removal of the caution and completed the registration of the land in his name through a court order dated 22/10/2015.
 4. He contended that the current petition dated 28/6/2022 was brought by parties who were not part of the earlier suits but who sought to be joined as interested parties HC Misc Application No. 47 of 2007. He maintained that the issues raised in the petition were directly and substantially in issue in the Embu HC Misc Application No. 47 of 2007 which was finalized through the dismissal of the suit. Further, that the petitioners wanted to revive that matter which is pending as ELC Misc Application 7B of 2023. He urged that the petitioners are parties in ELC Misc Application 7B of 2023 meaning they are privy to the earlier litigation and bound by its outcome. He further contended that the dismissal of that matter for want of prosecution amounted to a final determination and the petitioners could not reopen the same dispute through a constitutional petition. He argued that the petition was an abuse of the court process and that permitting it to proceed would be contrary to the doctrine of finality and settled principles of law and urged the court to uphold the preliminary objection.
 5. The 1st and 2nd petitioners submitted that the only issue for determination was whether the suit is res judicata. They submitted that the subject matter of the suit is land parcel Evurore/Evurore/1067 which was also the subject matter in Embu Misc Application No. 47 of 2007. It was their contention that the petitioner was not a party in that suit so the matter is not res judicata. It is not clear which petitioner they were referring to. They submitted that the current petition had different parties, that is, the Inspector General of Police and the Hon Attorney General and that the parties had not litigated over the same suit property in a court of competent jurisdiction. They urged that the preliminary objection did not meet the required legal threshold.
 6. The main issue for determination is whether the petition dated 28/6/2022 is res judicata. A preliminary objection may be raised where there is a pure point of law argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
 7. In the present case, the 1st and 4th respondents contend that the petition is res judicata in accordance with Section 7 of the *Civil Procedure Act*. Section 7 of the *Civil Procedure Act* Cap 21 provides 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 was heard and decided by such court.
 8. The 1st and 4th respondents emphasised that the subject matter in this petition that is, Evurore/Evurore/1067 was the same as that in Misc. Application No. 47 of 2007, which was dismissed for want of prosecution.



9. The 1st and 4th respondents did not furnish the pleadings or judgment from Misc. Application No. 47 of 2007 to the court to enable the court determine whether the issues raised in this petition were directly and substantially in issue in the former suit. It is therefore not possible for this court to assess whether the doctrine of res judicata applies to this petition. The court cannot infer or presume that the issues in the former suit were substantially the same to this suit, or that the parties were the same. Additionally, while the respondents argue that the dismissal of Misc. Application No. 47 of 2007 for want of prosecution amounted to a final determination, the dismissal may not amount to a determination on the merits as contemplated by Section 7 of the [Civil Procedure Act](#).
10. The preliminary objection fails and is dismissed. Costs shall be in the cause.

DELIVERED VIRTUALLY AT EMBU THIS 8TH DAY OF MAY 2025.

K. BOR

JUDGE

