



**Belgo Holdings Limited v China Wu Yi Company Limited (Environment & Land Case E118 of 2022) [2025] KEELC 4905 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4905 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E118 OF 2022**

**CA OCHIENG, J  
JUNE 30, 2025**

**BETWEEN**

**BELGO HOLDINGS LIMITED ..... PLAINTIFF**

**AND**

**CHINA WU YI COMPANY LIMITED ..... DEFENDANT**

**RULING**

1. In compliance with the pretrial directions in this suit, the Defendant filed its List of Issues for determination and among them was whether this Case is an abuse of process as all the issues raised herein were also matters for determination in ELC Suit No. 454 of 2018 Belgo Holdings Ltd v China Wu Yi Co. Ltd. Further, that this suit is debarred by the principle of res judicata and issue of estoppel.
2. On 10<sup>th</sup> March 2025, the Court directed that the issue of res judicata would be canvassed by way of written submissions.
3. In its submissions, the Defendant submits that this suit replicates the Plaintiff filed in ELC No. 454 of 2018 Belgo Holdings Limited v China Wu Yi Company Ltd that was between the same parties, founded on the same issues and determined by a Court of competent jurisdiction by adoption of the parties Consent dated 28<sup>th</sup> March 2019. Further, that by an order of 29<sup>th</sup> June 2022, the suit was settled and the file was closed thus the Plaintiff's attempt to re-litigate the same issues offends the doctrine of res judicata and issue estoppel. It further submits that the present suit indeed meets the criteria for res judicata.
4. It points out that in the present suit, the Plaintiff seeks redress for the alleged excavation and extraction of red soil of volume 483,757.24 liters valued at ksh. 241,878,620/= and ksh.250,0000/= respectively, the approximate costs for building a bridge to join two sections of the Plaintiff's land purportedly bisected by Defendant but the two issues were obvious and evident prior to the filing of the former suit, but they were just negligently omitted by the Plaintiff.



5. It argues that the Plaintiff specifically failed to indicate the date it realized its land had been bisected into two portions requiring the construction of a bridge and the precise period it realized that the Defendant was carting away or had carted away vast amounts of red soil. Further, that the omissions are deliberate to deceive the court that the discovery of facts and the resultant cause of action are "new".
6. It insists that the issues raised in the present suit ought to have been addressed in the former suit as the doctrine of res judicata does not condone litigation in installments. The Defendant also points out that in the former suit, the consent recorded in court at Paragraph 2 provides that:
  - “2. That prior to vacating the suit property the Defendant to restore the same to the condition in which it was on 8<sup>th</sup> March 2016.”
7. It contends that it was a precondition of the Consent recorded on 1<sup>st</sup> April, 2019 in the former suit that the suit would only be marked as settled, upon the full restoration of the suit land by the Defendant, and since the court marked the suit as settled three (3) years later, on 29<sup>th</sup> June 2022, in the presence of Counsels for the Plaintiff and Defendant, if there was any breach of paragraph (2) of the Consent, Counsel for the Plaintiff would have informed Court of the breach and for the Defendant to provide the adequate remedy.
8. It also argues that the doctrine of res judicata bars the Plaintiff from seeking the reliefs sought in the present Plaint whereas they had the opportunity to address court on these reliefs in the previous suit. It reiterates that this suit is an abuse of court process. Further, that the suit land has been the subject of several suits being; ELC No. 362 of 2017, ELC No. 253 of 2017, ELC No. 362 of 2017, ELC No. 454 of 2018 and the present suit and the continued litigation over the same subject matter has to end.
9. To buttress its averments, it relied on the following decisions: Kenya Commercial Bank Ltd v Muiiri Coffee Estate Ltd & Ano (2016) eKLR; John Florence Maritime Services Limited & Ano v Cabinet Secretary Transport & Infrastructure & 3 Others (Petition No. 17 of 2015); George W M Omondi & Another v National Bank of Kenya Ltd & 2 Others (2001) eKLR; Yunis Malik v Joseph D Halake [2022] KEELC 862 (KLR); Okingo v Nyakako (Environment and Land Appeal E079 of 2021) (2023) KEELC 21066(KLR); Franceso v Mbugua & Another (Environment & Land Case E019 of 2023) [2024] KEELC 738 (KLR) and K.K. Modi v K.N. Modi & Ors (1998) 3 SCC 573.
10. On its part, the Plaintiff submits that in the former suit, the main relief sought was for eviction and mesne profits whilst this suit contains the claims which were withdrawn, and fresh claims which arose thereafter. The Plaintiff contends that the claims in the instant suit were not subject of contest in the former suit. It insists that the new claims arose between 2018 and the date of filing of the instant suit, thus the most important criteria for application of res judicata are absent. It points out that the former claims included: claims for removal of soil from the entire property (paragraphs 14,15 (ii) & (iv) and 22); gross violation of environment laws and regulations (paragraphs 10 to 13,15,16,18 and 22); claim for special damages as well as exemplary damages (paragraph 21 and prayer G to the Plaint) as well as compensation for violation of environment laws and regulations but they were withdrawn on 1st April 2019 by Consent, with Plaintiff at liberty to file a fresh suit.
11. It argues that the authorities relied upon by the Defendant emphasize that the previous suit or the issue must have been heard and determined judicially but in this instance, the legal rights of the parties have not been judicially determined.



## Analysis and Determination

12. Upon consideration of the proceedings herein including rivalling submissions, the only issue for determination is whether this suit is res judicata.
13. It is not in dispute that a Consent judgement was entered in ELC Suit No. 454 of 2018 Belgo Holdings Ltd v China Wu Yi Co. Ltd, dated 28<sup>th</sup> March 2019 which was adopted by the Court, with the said suit subsequently marked as settled on 29<sup>th</sup> June 2022. The Defendant insists that this suit is hence res judicata.
14. The Plaintiff contends that its claims in the instant suit are fresh as some issues raised in the previous suit were withdrawn by Consent and it had liberty to file a fresh suit on the said withdrawn issues, as they were not determined in the former suit.
15. On res judicata, Section 7 of the [Civil Procedure Act](#) provides 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.”
16. The [Civil Procedure Act](#) provides explanations with respect to the application of the res judicata rule. Explanations 1-6 states thus:

“Explanation. — (1) The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation. — (2) For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. — (3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation. — (4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation. — (5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. — (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”
17. For a suit to be declared res judicata, the Court of Appeal in Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] KECA 477 (KLR) stated that the following elements must all be satisfied:
  - 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.”
18. While the Supreme Court of Kenya in the case of John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment), held that:
- “Hence, whenever the question of res judicata is raised, a court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a court of competent jurisdiction. This test is summarized in Bernard Mugo Ndegwa v James Nderitu Githae & 2 others, (2010) eKLR, under five distinct heads: (i) the matter in issue is identical in both suits; (ii) the parties in the suit are the same; (iii) sameness of the title/claim; (iv) concurrence of jurisdiction; and (v) finality of the previous decision.”
19. In this instance, the Plaintiff vide a Plaint dated the 25<sup>th</sup> March, 2022, sought for judgement against the Defendant for the following Orders:
- i. Exemplary and other damages for trespass, deliberate breaches of statutes and Court Orders, and by wanton, deliberate and illegal acts of destruction of the said properties by the Defendant to be assessed by this Honourable Court;
  - ii. Special damages in the sum of Kshs. 491, 878, 620.00;
  - iii. Compensation to be assessed under Article 70 (2) (c) of *the Constitution*; and
  - iv. Costs of this suit.
20. While in ELC No. 454 of 2018, the Plaintiff therein, who was is the Plaintiff herein, sought for the following Orders against the Defendant:
- 1. The Town Planning Department of Nairobi County Government (“NCG”), the Director of National Environment Management Authority (“NEMA”) and officers of Water Resources Management Authority (“WARMA”), and each one of them, be directed pursuant to Article 70 (2) (b) of *the Constitution* to ensure that the Defendant ceases to utilize or operate the illegal borehole and the industrial plant for making concrete constructed on the said properties, and ceases all acts and deeds which have not been authorized by the applicable laws.
  - 2. The Defendant as well as its servants, agents and others acting on its behalf, and each one of them, be restrained from entering upon or trespassing on two portions of Land Reference Numbers 28487 and 28686 (original numbers 3859 and 3860), Peponi Road, Nairobi (“the said properties”) comprising 6 acres of thereabouts previously let to the Defendant (“the leased premises”) or any part or parts thereof or using access roads leading to them;
  - 3. The Defendant as well as its servants, agents and others acting on its behalf, and each one of them be restrained from operating or using the illegally constructed borehole and the industrial plant for making concrete on the said properties;



4. A declaration that the Defendant has no right to enter upon or utilize or be in possession of any part or parts of Land Reference numbers 28587 and 28586 (original numbers 3859 & 3860), Peponi Road, Nairobi except with the agreement of the Plaintiff;
  5. An order for vacant possession of the leased premises being two portions comprising of six acres or thereabouts situated on Land Reference numbers 28587 & 28586 (original numbers 3859 & 3860), and eviction therefrom of the Defendant, its servants, agents and others acting through or under it;
  6. Mesne profits at a rate to be ascertained by this Honourable Court from 23<sup>rd</sup> August, 2018 until vacant possession of the leased premises is handed back to the Plaintiff;
  7. Exemplary and other damages for trespass, and wanton, deliberate and illegal acts of destruction of the said properties by the Defendant to be assessed;
  8. Compensation to be assessed under Article 70 (2) (c) of *the Constitution*; and
  9. Costs of this suit.
21. It has emerged that ELC No. 454 of 2018 was settled vide consent dated the 28<sup>th</sup> March, 2019, which was adopted as an order of court on 1<sup>st</sup> April, 2019. The terms of the impugned Consent were as follows:
- “By consent
1. That the Defendant to deliver up vacant possession of the suit property on 9<sup>th</sup> November, 2019.
  2. That prior to vacating the suit property, the Defendant to restore the same to the condition in which it was on 8<sup>th</sup> March, 2016.
  3. That the Defendant to pay mesne profits from 23<sup>rd</sup> August, 2018 till 8<sup>th</sup> March, 2019 at the same rate as the monthly rental previously paid by the Defendant.
  4. That as from 8<sup>th</sup> March, 2019, the Defendant will pay mesne profits at the rate of Shs. 3.3 million per month payable in advance for the entire period of eight months.
  5. That against the said mesne profits, the Defendant will receive credit for the amounts paid on account of rent from 23<sup>rd</sup> August, 2018 till 8<sup>th</sup> March, 2019.
  6. That the borehole erected on the property of the Plaintiff will be left in situ, in the same condition as at present, together with the pump and other equipment attached thereto.
  7. That the Plaintiff to withdraw all claims herein, except those for eviction and mesne profits with liberty to file a fresh suit, if necessary.
  8. That the Defendant to pay forthwith to the Plaintiff the costs of this suit to be agreed and in absence of an agreement, to be taxed.
  9. That mention on 13<sup>th</sup> day of November, 2019 to record a final settlement.”
22. Upon perusal of the respective pleadings, I note the fulcrum of the dispute herein which revolves around Reference numbers 28587 and 28586 (original numbers 3859 & 3860), Peponi Road was the



same in ELC 454 of 2018. Further, vide the impugned Consent in ELC 454 of 2018, which I have highlighted above, the matter was settled. I note certain prayers were withdrawn but in my view, I find that the prayers being sought in the instant suit seem similar, to some of the prayers which were in the previous suit, that were settled through the impugned consent.

23. In *Kahoro & 2 Others (Suing on their Behalf and on Behalf of Members of Twendane Company Limited) v Kanyamwi Trading Company Limited (Civil Appeal 62 of 2018) [2025] KECA 941 (KLR) (23 May 2025)* (Judgment), the Court of Appeal while dealing with *res judicata* observed that:

“In the contemporary world, one animal known for changing its colour to camouflage with its surrounding environment is the chameleon. It will be green in the morning, brown in the afternoon and yellow in the evening, depending on where its majestic walk has taken it. In the legal world, it is known that parties may attempt to approach the court in different shades, while remaining the same parties. To prevent this mischievous way of litigation, the doctrine of *res judicata* was developed to bar parties from bringing a litigious action once a final determination has been made on the merits of a similar previous suit..... Having considered the facts of the two suits, it does not require any scientific analysis to note that the issues that were in Nakuru HCCC No. 156 of 1983 involved the company known as Twendane Company Ltd and its members. The appellants in the suit that was struck out, that is Nakuru ELC No. 113 of 2012, were claiming adverse possession over the same parcel of land that was the subject of the dispute in Nakuru HCCC No. 156 of 1983. The only innovation invoked in the subsequent suit was to remove the name of Twendane Company Ltd and filed what they dubbed a representative suit on their behalf and on behalf of all members of Twendane Company Ltd. It is beyond argument that they are laying claim to the same parcel land. 26. Clearly, it is not difficult to see that the appellants are trying to use judicial craft and machination arguments to run away from the ruling in Nakuru HCCC No. 156 of 1983. Unfortunately for the appellants, the legal eye does not blink and remains open to avoid an abuse of the legal process. 27. Our analysis of the record of appeal, grounds of appeal, the submissions and the authorities leaves us with no doubt that the learned judge’s findings that the suit by way of the originating summons was an abuse of the legal process were sound and she rightly struck it out.”

24. Based on the facts before me, and relying on the legal provisions, I have cited above as well as associating myself with the decisions quoted, while applying them to the circumstances at hand, I find that the instant suit is indeed *res judicata* as issued raised herein were heard and determined in ELC 454 of 2018 by a Court of competent jurisdiction. Further, the previous suit was between the same parties who were litigating under the same title. Insofar as the Consent intimated that the Plaintiff was at liberty to file a fresh suit, which now the Plaintiff has done by seeking special damages, it seems to me that the Plaintiff is raising the same issues as in the previous suit, but has only added an extra prayer for special damages, which I opine it was aware of, while settling the said previous suit. I opine that the issue of special damages raised herein, was indeed part of the dispute in ELC 454 of 2018 and should have been dealt with therein.
25. In the circumstances, I find that this suit is indeed *res judicata*.
26. In the foregoing, I will proceed to strike out this suit with costs to the Defendant.

**DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2025**

**CHRISTINE OCHIENG**

**JUDGE**



In the presence of:

Esmail holding brief for Ochieng for Plaintiff

Njoroge holding brief for Ngatia SC for Defendant

Court Assistant: Joan

