



REPUBLIC OF KENYA



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Wairimu & another v Nyakinyua Investment Co. Ltd & another (Environment and Land Appeal E036 of 2022) [2025] KEELC 4902 (KLR) (30 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4902 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E036 OF 2022**

JM ONYANGO, J

JUNE 30, 2025

BETWEEN

JOSEPH NJOROGE WAIRIMU 1ST APPELLANT

ANN WANGARI KIMANI 2ND APPELLANT

AND

NYAKINYUA INVESTMENT CO. LTD 1ST RESPONDENT

JOYCE MWIHAKI KIIRU KAMAU 2ND RESPONDENT

(Being an Appeal against the order/ruling of the Hon. J. A Agonda (Principal Magistrate) delivered on 31st March 2022 in Ruiru CM ELC No. 98 of 2020)

JUDGMENT

1. This Appeal arises from the decision by Hon. J. Agonda (Principal Magistrate) dated 31st March, 2023 in which she upheld the 1st Respondent's Preliminary Objection dated 21st November, 2021 that the suit was res judicata in view of the judgment in CMCC No. 857 of 2010.
2. Being aggrieved by the said decision the Appellants filed a Memorandum of Appeal dated 8th June, 2023 raising the following grounds:
 - i. That the learned trial magistrate erred in law and in fact in upholding the Respondents' Preliminary objection dated 21st November 2021 which heavily relied on CMCC No. 857 of 2010 and in which the Applicants herein were not parties or privy to.
 - ii. That the learned trial magistrate erred in law and in fact in relying on extraneous issues in making a determination in favour of the Respondents while deciding on the issues raised in the Preliminary Objection.



- iii. That the learned trial magistrate erred in law and in fact in holding that the case was falling within the doctrine of res judicata when the earlier case relied upon had different parties from the present one.
 - iv. That the learned trial magistrate erred in law and in fact in dismissing the entire case without considering that the facts and materials presented in Ruiru ELC Case No. 98 of 2020 and those presented in Thika ELC Case No. 857 of 2010 are quite different as the parties before the court were factually different under the circumstances.
3. They prayed that the ruling of the trial magistrate be set aside, varied or quashed and the Respondents' Preliminary Objection be dismissed with costs.

Background of the Case

4. The appeal was canvassed by way of written submissions and by the time of writing this ruling, only the Appellants had filed their submissions.
5. Before delving into the merits of the appeal, it is necessary to give a brief background of the case. The Appellants filed suit against the Respondents vide Ruiru CMELC No. 98 of 2020 claiming that the 1st Plaintiff had purchased the parcel of land known as Ruiru/Mugutha Block 1/5071 from one Ernest Kihara Kiruma on 10th October 2006. The said Ernest Kihara Kiruma was the administrator of the estate of Prisca Wanjiru Kihara who had been allotted the land by Nyakinyua Investments Ltd (1st Defendant). Since the 1st Defendant had a policy that it could only register their land in the names of women, they registered the 2nd Plaintiff as the owner of the suit property and issued her with a share certificate no. 8497 dated 18.10.2007 and a ballot card no. 5071. The plaintiffs further claimed that after they had paid all the requisite fees to the 1st Defendant, they took possession of the suit property and started cultivating the same.
6. The Plaintiffs later learnt that the 1st defendant had colluded with the 2nd Defendant and transferred the suit property to the 2nd Defendant without the plaintiffs' consent. After obtaining the title to suit property the 2nd defendant attempted to evict the plaintiffs thus necessitating the filing of the said suit.
7. The Defendants filed their Defence denying the Plaintiffs claim. In particular, the 2nd Defendant filed a Defence and Counterclaim in which she denied colluding with the 1st defendant and stated that she was lawfully registered as the owner of the suit property after purchasing the same from the 1st defendant. She prayed that the plaintiffs be evicted from the suit property.
8. On 24.11.2021 learned counsel for the 1st Defendant informed the court that he had filed a Notice of Preliminary Objection raising the ground that the suit was res judicata as there was a judgment in Thika CMELC No. 857 of 2010 touching on the same subject matter and some of the parties in Ruiru CMELC 98 of 2020.
9. The court then gave directions on the disposal of the Preliminary Objection and the parties were directed to file their written submissions. In her ruling dated 31.3.2022 the trial Magistrate observed that the proceedings, judgment and decree in Thika CMELC No. 857 of 2010 had been availed to her. She held that the 2nd defendant's contention that the matter had already been determined by a court of competent jurisdiction vide Thika CMELC No. 857 of 2010 was sound as the subject matter was directly and substantially in issue in Thika CMELC No. 857 of 2010 where the court determined that the 2nd Defendant's husband was the legal owner of the suit land. The trial magistrate then upheld the Preliminary Objection and dismissed the Appellants' suit.



Analysis and Determination

10. The main issue for determination is whether doctrine of res judicata was applicable and whether the Preliminary Objection should have been upheld.
11. Section 7 of the [Civil Procedure Act](#) defines the doctrine of Res Judicata 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.”
12. The Supreme Court in the case of Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR, while considering the provisions of section 7 of the [Civil Procedure Act](#), held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked, that is: -

“

 - “(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.”
13. Guided by the above decision, I will proceed to determine whether all the above elements were met. Although the Record of Appeal and lower court file do not seem to have the judgment and proceedings in Thika CMELC Case No 857 of 2010, a copy of the decree therein shows that the suit in Thika CMELC No. 857 of 2010 was in respect of a plot identified by ballot no. 5071 within Nyakinyua Investment Company Ltd while the suit property in Ruiru CMELC No. 98 is described as land parcel No. Ruiru/Mugutha Block 1/5071. It would appear that plot No. 5071 is what was later registered as land parcel No. Ruiru/Mugutha Block 1/5071.
14. The parties in Thika CMELC Case No. 857 of 2010 are Stephen Kiiru Kamau v Ernest Kihara Kiruma, Joseph Kamwobe Kiruma and Teresia Gathoni Njoroge while those in Ruiru CMELC Case No. 98 of 2020 are Joseph Njoroge Wairimu & Anne Wangari Kimani v Nyakinyua Investment Limited & Joyce Mwhaki Kiiru Kamau. It is apparent that the Appellants herein were not parties to Thika CMELC Case No 857 of 2010 and whereas Stephen Kiiru Kamau, the Plaintiff in Thika CMELC Case No. 857 of 2010 sought to be registered as the owner of plot no. 5071, in Ruiru CMELC No. 98 of 2020 Joseph Njoroge Wairimu and Anne Wangari Kimani, the Appellants herein sought to cancel the title of Joyce Mwhaki Kiiru, (2nd Respondent) and to have the same registered in the name of Anne Wangari Kimani the 2nd Appellant.
15. As for whether the parties in the current suit are litigating under any of the parties in the former suit, the only link appears to be between Joyce Mwhaki Kiiru and Stephen Kamau Kiiru.



16. From the decree in Thika CMELC Case No. 857 of 2010 a consent was recorded to the effect that the suit property be registered in the name of the Plaintiff (Stephen Kiiru Kimani).
17. The final point is that the court that recorded the consent was competent to hear and determine the matter.
18. Although I am of the view that not all the conditions were met, I did not have the advantage of reading the pleadings and proceedings in Thika CMELC Case No. 857 of 2010 in order to appreciate the connection between all the parties in the two suits. For that reason, I am reluctant to fault the trial magistrate who appears to have had a better understanding of the issues and parties in the two suits.
19. Consequently, the appeal is dismissed. Each party shall bear their own costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 30TH DAY OF JUNE 2025.

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J. M ONYANGO

JUDGE

No appearance for the parties

Court Assistant: Hinga

