



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mweu v Daystar Multipurpose Co-operative Society Limited (Environment & Land Case E008 of 2023) [2025] KEELC 4736 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4736 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E008 OF 2023**

**NA MATHEKA, J**

**JUNE 24, 2025**

**BETWEEN**

**WANZA KIOKO MWEU ..... PLAINTIFF**

**AND**

**DAYSTAR MULTIPURPOSE CO-OPERATIVE SOCIETY  
LIMITED ..... DEFENDANT**

**RULING**

1. The Defendant raised a Preliminary Objection on a point of law to the effect that the claim herein does not disclose any cause of action against them.
2. Preliminary Objection is based on the grounds that;
  1. That the ownership of the two(2) acres by the Plaintiff herein in the parcel of land known as Mavoko Town Block 3/2357 was the primary issue in Machakos ELC Suit No. 174/2018 (Wanza Kioko Mweu -v- Daystar Multipurpose Co-operative Society Limited) whose Judgment was delivered on 4<sup>th</sup> October, 2023 (and forms part of the Plaintiff's list for documents) and the twelve (12) years period which is the primary ingredient for a suit based on adverse possession stopped running when the Plaintiff herein filed the above said suit on 17<sup>th</sup> September, 2018 and the same could only start running as from 4<sup>th</sup> October, 2023 and the same are yet to lapse.
  2. That the suit herein is res judicata to Machakos ELC Suit No. 174 of 2018 (Wanza Kioko Mweu -v- Daystar Multipurpose Co-operative Society Limited).
3. Thus, this suit should be struck out with costs to the Defendant.
4. I have considered the preliminary objections. The issue for determination is whether the defendants' preliminary objection has satisfied the threshold or not. The leading decision on Preliminary



Objections is the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd. (1969) EA 696, where the Court held as follows:

"a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is 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".

5. Similarly, the Supreme Court in Independent Electoral & Boundaries Commission vs Jane Cheperenger & 2 Others (2015) eKLR made the following observation as relates to Preliminary Objections:

"... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits."

6. I find that the issue of limitation and res judicata meets the threshold.
7. The Defendant's submission is that the suit herein is res judicata to Machakos ELC Suit No. 174 of 2018 (Wanza Kioko Maweu vs Daystar Multipurpose Co-operative Society Limited). Section 7 of the Civil Procedure Act 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 has been heard and finally decided by such court."

8. Expounding further on the essence of the doctrine this Court in John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others (2015) eKLR pronounced itself as follows;

"The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably."

9. I have perused the pleadings of Machakos ELC Suit No. 174 of 2018 (Wanza Kioko Maweu vs Daystar Multipurpose Co-operative Society Limited) and find that the parties are the same and the subject



matter is the same. In a judgement delivered by Justice A. Nyukuri dated 4<sup>th</sup> October 2023 the court found that the plaintiff had failed to prove her case on the required standard and dismissed the same with costs to the 1<sup>st</sup> defendant who is the defendant in the instant suit. That suit was brought in by way of a plaint while the current one is an originating summons. Litigation must come to an end and if the plaintiff was dissatisfied with the earlier decision she should have filed an appeal and not a fresh suit. Having found so there would be no need to consider the issue of limitation. I find this matter is res judicata and not merited and is struck off with costs to the defendant.

10. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24<sup>TH</sup> DAY OF JUNE 2025.**

**N.A. MATHEKA**

**JUDGE**

