



REPUBLIC OF KENYA



**Maria v Repando (Environment and Land Case E006 of 2024)
[2025] KEELC 5827 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5827 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE E006 OF 2024**

**LL NAIKUNI, J
JUNE 18, 2025**

BETWEEN

BERTHOLD CREMER ARTHUR MARIA PLAINTIFF

AND

MAUREEN AKUMU RAPANDO DEFENDANT

RULING

I. Introduction

1. The Honourable Court was called upon to determination unto the Notice of Motion application dated 5th March, 2025 by Maureen Akumu Rapando, the Defendant/ Applicant. The Application was brought under the provision of Sections 1A,1B,3A and 7 of the *Civil Procedure Act* Cap. 21 Laws of Kenya under Order 2, Rule 15 of the Civil Procedure Rules, 2010; Section 28 of Environment and *Land Act*, No. 19 of 2011; Article 159 of *the Constitution* of Kenya 2010 and any other enabling provision of the law and the inherent Jurisdiction of the Court.

II. The Defendant/Applicant's case

2. The Defendant/Applicant sought for the following orders: -
 - a. That the Court be pleased to strike out this suit in its entirety as it is offends Section 7 of the *Civil Procedure Act*, CAP 21 for being Res-Judicata with a former Suit being Kwale CMELC No. E005 of 2023 Berthold Cremer Arthur Maria – Versus - Maureen Akumu Rapando which was settled through a Consent Judgment issued on 24/05/2023 by a Court of competent jurisdiction.
 - b. That the suit herein be struck out otherwise for being frivolous, vexations and a pure abuse of the court process.
 - c. That the costs of this Application be provided for.



3. The application by the Applicant was premised on the grounds, facts and testimony on the face of the application and further supported by the 12th paragraphed annexed affidavit of Maureen Akumu Rapando, the Defendant herein. The Deponent averred that:
- a. The Plaintiff herein filed a former suit being “Kwale CMELC No. E005 of 2023 Berthold Cremer Arthur Maria – Versus - Maureen Akumu Rapando”. The said suit involved the same parties, same subject matter and raised the same issues as the suit herein. Annexed in the affidavit were copies of relevant pleadings in the said suit in proof of this fact and marked as annexure “MAR-1 appearing on pages 1-9”.
 - b. The parties in opting to settle the said matter on amicable terms and thus the Plaintiff and the Deponent signed a consent dated 22nd May, 2023 in the presence of our then advocates Messers. Lawrence Obonyo Advocates representing the Plaintiff and Messers Mungai Kamau Advocates who was representing her. Annexed in the affidavit a copy of the said consent herein which was marked as annexure “MAR-2 appearing on pages 10-11”.
 - c. On 24th May, 2023 the said consent was recorded and adopted as an order of the court in the presence of both parties and the said advocates in full and final settlement of the matter. Annexed in the affidavit was a copy of the said order which was marked as annexure “MAR - 3 appearing on pages 12-13”.
 - d. The Plaintiff never filed any application for review or settling aside of the said Consent Judgment. Moreover, the Plaintiff never filed an appeal against the said Consent Judgment.
 - e. By filing this suit the Plaintiff was improperly attempting to re – litigate issues which had already been dealt with by a court of competent jurisdiction.
 - f. Accordingly, the averment made in Paragraph 16 of the Plaintiff that there had never been a suit between the parties herein over the same issues and subject was a falsehood and the same amounted to perjury which would therefore render the Plaintiff’s suit herein totally untenable.
 - g. This suit offended the provision of Section 7 of the Civil Procedure Act, Cap. 21 and Section 28 of the Environment and Land Act, No. 19 of 2011 which barred court from trying 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.
 - h. It was trite that this suit was therefore incurably defective and lacked locus standi and the same is therefore frivolous, vexatious and a total abuse of the Court process.
 - i. The Deponent urged this Court to frown upon conducts of persons such as the Plaintiff who openly and unapologetically abuse the court process by filing frivolous suits thus wasting judicial time and resources.
 - j. The Deponent averred that in light of the above, the application herein is well merited and it should be allowed as prayed.

III. Submissions

4. On 13th March, 2025 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 5th March, 2025 be disposed of by way of written submissions and all the parties complied. Unfortunately, by the time of penning down this Ruling, the Honourable Court had not as yet accessed the written submissions by the parties from neither the Judiciary CTS portal



nor elsewhere. Nonetheless, the Honourable Court proceeded to render its ruling on its own merit accordingly.

IV. Analysis and Determination

5. I have carefully read and considered the pleadings herein and the relevant provisions made by the parties. In order to arrive at an informed decision, the Honourable Court has framed the following issues for determination:-

- a. Whether the suit before this Court offends the doctrine of res judicata under the provision of Section 7 of the *Civil Procedure Act*, Cap. 21.
- b. Who will bear the Costs of Notice of Motion application 5th March, 2025.

ISSUE No. a). Whether the suit before this Court offends the doctrine of res judicata under the provision of Section 7 of the *Civil Procedure Act*, Cap. 21.

6. Under this sub – title, Honourable Court will deliberate on the Doctrine of “Res Judicata” in depth. The doctrine is one that bars a court from trying a matter that is in one way or other before another Court of competent jurisdiction by way of a previously instituted suit as long as it is between the same parties canvassing it under the same title. In essence, if both Courts were to proceed with the matters on merit and determine them, without deference to the former, they would arrive at similar or different results on the same rights claimed by the same parties and there would be a duplication of the reliefs or a conflict of them, which would be a recipe for confusion and chaos in the legal system. In the alternative of the scenario immediately above, where one of the Courts determined the matter before it the one still pending would be “Res Judicata”. The doctrine of Res judicata is provided for under Section 7 of the *Civil Procedure Act*, Cap. 21 with the object of barring multiplicity of suits and guarantee finality of litigation. It states:-

“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.

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.



7. The Doctrine of Res judicata anticipates five conditions that need to coexist in order to bar a subsequent suit, which are:-
- i. The matter is directly and substantially in the subsequent suit must have been directly and substantially in issue in the former suit;
 - ii. The former suit must have been between the same parties or proxies claiming under them;
 - iii. The parties must have litigated under the same title in the former suit;
 - iv. The former suit was determined by a court competent to try such subsequent suit, and
 - v. The matter in issue must have been heard and finally decided by such court.
8. In the case of “John Florence Maritime Services Limited & another – Versus - Cabinet Secretary for Transport and Infrastructure & 3 others [2015] eKLR”, (John Florence decision), where this Court stated as follows:
- “The doctrine of res judicata has two main dimensions: cause of action res judicata and issue res judicata. Res judicata based on a cause of action, arises where the cause of action in the latter proceedings is identical to that in the earlier proceedings, the latter having been between the same parties or their privies and having involved the same subject matter. Cause of action res judicata extends to a point which might have been made but was not raised and decided in the earlier proceedings. In such a case, the bar is absolute unless fraud or collusion is alleged. Issue res judicata may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant and one of the parties seeks to re-open that issue.”
9. Further in the case of “CK Bett Traders Limited & 2 others – Versus - Kennedy Mwangi & another [2021] eKLR”, the court in considering whether the suit was res judicata quoted with approval the views of the court in the case of “The Independent Electoral and Boundaries Commission – Versus - Maina Kiai & 5 others, [2017] eKLR”, wherein the court interpreted the role of the doctrine as:-
- “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 commonsensical 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 or calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”
10. For the above conditions to be established the party pleading Res judicata ought to provide court with the pleadings in the former suit. In this case, the Defendant contends that the Plaintiff herein filed “Kwale CMELC No. E005 of 2023 Berthold Cremer Arthur Maria – Versus - Maureen Akumu Rapando. The said suit involved the same parties, same subject matter and raised the same issues as the suit herein. The parties in opting to settle the said matter on amicable terms and thus the Plaintiff and the Deponent signed a consent dated 22nd May, 2023 in the presence of our then advocates Messrs. Lawrence Obonyo Advocates representing the Plaintiff and Messrs. Mungai Kamau Advocates who



was representing the Defendant. On 24th May, 2023 the said consent was recorded and adopted as an order of the court in the presence of both parties and the said advocates in full and final settlement of the matter. The Plaintiff never filed any application for review or settling aside of the said consent judgment. Moreover, the Plaintiff never filed an appeal against the said consent judgment. By filing this suit the Plaintiff was improperly attempting to re – litigate issues which had already been dealt with by a court of competent jurisdiction.

11. Accordingly, the averment made in paragraph 16 of the Plaint by the Plaintiff that there had never been a suit between the parties herein over the same issues and subject was a falsehood and the same amounted to perjury which would therefore render the Plaintiff's suit herein totally untenable.
12. I have thoroughly gone through the annexures attached by the Applicant, in particular the Consent marked as "MAR - 2". Undoubtedly, the said Consent was adopted and hence making it a Consent Judgement of this Court. From the Consent Judgement, it is clear that the issue in the former suit was the same as the one in this suit and the parties were the same and they consented to mark the matter as settled. It is therefore this court's considered view that the present suit bears the elements of res judicata. Therefore by virtue of this the Court puts its pens down.

ISSUE No. b). Who will bear the Costs of Notice of Motion application 5th March, 2025.

13. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. This principle encourages responsible litigation and motivates parties to pursue valid claims. See the cases of "Harun Mutwiri – Versus - Nairobi City County Government [2018] eKLR and "Kenya Union of Commercial, Food and Allied Workers – Versus - Bidco Africa Limited & Another [2015] eKLR, the court reaffirmed that the successful party is typically entitled to costs, unless there are compelling reasons for the court to decide otherwise.
14. I have well stated in previous precedence and most especially in "Sagalla Lodge Limited – Versus - Samwuel Mazera Mwamunga & another (Suing as the Executors of Eliud Timothy Mwamunga – Deceased) [2022] eKLR", that:

"58. The Black Law Dictionary defines "Cost" to means, "the expenses of litigation, prosecution or other legal transaction especially those allowed in favour of one party against the other".

The provisions of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that Costs follow events. The issue of Costs is the discretion of Courts. From this provision of the law, it means the whole circumstances and the results of the case where a party has won the case. The events in this case is that the Notice of Motion application dated 7th December, 2021 by the Plaintiff has succeeded and hence they are entitled to costs of the application and that of the Defendants dated 21st December, 2021."

15. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. In the case of "Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances. In the present case, the Honourable Court elects to award the Defendant/ Applicant costs of the Notice of Motion application dated 5th March, 2025.



V. Conclusion and Disposition

16. In long analysis, the Honorable Court has carefully considered and weighed the conflicting parties' interest as regards to balance of convenience. Clearly, the Defendant/Applicant has a case against the Plaintiff/Respondent.
17. Having said that much, there will be need to preserve the suit land in the meantime. In a nutshell, I proceed to order the following:-
 - a. That the Notice of Motion application dated 5th March, 2025 be and is hereby found to have merit and is allowed in its entirety.
 - b. That this Court finds that the instant suit has the elements of res judicata.
 - c. That the suit be and is hereby found to be incompetent thus be and is hereby struck out.
 - d. That the costs of the Application and the suit to be borne by the Plaintiff/Respondent.

It Is So Ordered Accordingly.

RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT KWALE THIS 18TH DAY OF JUNE 2025.

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HON. MR. JUSTICE L. L. NAIKUNI ENVIRONMENT AND LAND COURT

AT

KWALE

Ruling delivered in the presence of:

- a). Mr. Daniel Disii, Court Assistant.
- b). M/s. Oguna Advocate for the Plaintiff/Respondent.
- c). No appearance for the Defendant/ Applicant

