



**M’Raibuta v Land Adjudication & Settlement Officer, Kiguchwa Adjudication Section
& another (Petition E006 of 2025) [2025] KEELC 5182 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5182 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
PETITION E006 OF 2025**

**JO MBOYA, J
JUNE 18, 2025**

BETWEEN

NAHASHON THARUIYA M’RAIBUTA APPLICANT

AND

**LAND ADJUDICATION & SETTLEMENT OFFICER, KIGUCHWA
ADJUDICATION SECTION 1ST RESPONDENT**

LAND REGISTRAR TIGANIA 2ND RESPONDENT

RULING

1. The Petitioner/ applicant approached the court vide petition dated 30th December 2024; and which was filed in the High Court at Meru. Vide the Petition, the petitioner sought diverse reliefs, albeit touching on and concerning ownership of LR No. 1186 Kiguchwa Adjudication Section [hereinafter referred to as the suit property].
2. The subject petition was subsequently transferred to the Environment and Land court and same was renumbered ELC Petition E006 of 2025.
3. The Petitioner/ Applicant also took out and filed an application dated 28th May 2025; and wherein the applicant has sought the following reliefs:
 - i. That this Application be certified as extremely urgent and one deserving to be heard ex-parte in the first instance.
 - ii. That pending the hearing and determination of the main Petition the court be pleased to issue an order of injunction restraining the eviction of the Petitioner from their ancestral land.
 - iii. That pending the hearing and determination of this suit, this Honourable court be pleased to issue an order of injunction restraining any party either by themselves, their servants, workers agents, employees from alienating, advertising for sale or offering for sale, selling or taking



possession of, leasing, transferring charging or otherwise in any manner whatsoever from dealing or interfering with the suit property.

- iv. That pending the hearing and determination of this application, the court be pleased to stay the warrants of eviction dated the 13th March 2025.
 - v. That the costs of this application be provided for.
4. The instant application is premised on various grounds which have been highlighted in the body thereof. In particular, it has been contended that the suit property has been captured and reflected in the body of warrants of eviction issued vide Maua SRM CC 85 of 1997. To this end, it has been contended that the petitioner is now exposed to eviction from the suit property which is however contended to belong to the petitioner/applicant.
 5. The subject petition is supported by the affidavit of the petitioner namely; Nahashon Tharuiya M'raibuta [the deponent] sworn on even date. Furthermore, the deponent has annexed assorted documents inter alia, a copy of the warrants of eviction issued by Maua SRM CC No. 85 of 1997.
 6. The respondents herein duly entered appearance and thereafter filed grounds of opposition dated 17th June 2025 and wherein the respondents have raised four [4] key issues, namely; that the petition and application before hand are prohibited by the doctrine of res judicata; the petition and application constitute an abuse of the due process of the court; the orders sought are bound to affect and impact upon third parties who have not been joined into the proceedings; and the applicant has neither met nor satisfied the threshold for the grant of an order of temporary injunctions.
 7. The instant application came up for hearing on the 18th June 2025, whereupon directions were taken pertaining to and concerning the hearing and disposal of the application. For good measure, the parties agreed to canvass and dispose of the application by way of oral submission. Suffice it to say that the oral submission[s] form part of the record of the court.
 8. Learned counsel for the applicant, adopted the grounds contained at the foot of the application and reiterated the averments contained in the body of the supporting affidavit. Moreover, learned counsel for the applicant thereafter highlighted four [4] key issues for consideration by the court. The issues highlighted by the applicant are namely; that there arose and occurred an error of records during the time of adjudication; the error complained of has affected and prejudiced the petitioner's rights of property; that the applicant is now exposed to eviction and thus same shall suffer irreparable loss and lastly, that the applicant has met the threshold for the grant of an order of temporary injunction.
 9. Regarding the first issue, learned counsel for the applicant has submitted that during the adjudication and demarcation process, the land adjudication officers committed an error in the records and the error in question has affected the ownership rights of the applicant. In particular, it was contended that the error affecting the suit property occurred when the land adjudication department entered the details of the suit property, albeit in a different folio.
 10. To this end, it has been submitted that as a result of the error, the petitioner applicant has been exposed to being denied the enjoyment of the suit property.
 11. In respect of the second issue, learned counsel for the applicant has submitted that the applicant herein is entitled to benefit from the provisions of Article 40 of the *Constitution* 2010. Nevertheless, it has been posited that despite being entitled to the suit property, the same is now on the verge of being alienated.



12. Regarding the third issue, learned counsel for the applicant has submitted that the applicant is now on the verge of eviction pursuant to warrants of eviction issued by Maua Law courts. Nevertheless, it has been posited that despite all this, the applicant herein contends that same is the lawful owner of the suit property.
13. Finally, the counsel submitted that even though there was a previous suit, namely; Maua SRM CC No. 85 of 1997 and which was thereafter appealed to the ECL; and to the Court of Appeal; the appeals were however, dismissed. It was the further submission of the learned counsel of the applicant that the previous suit did not touch on and or concern the manner in which the suit property was birthed. To this end, it has been submitted that the petition and the current application are not res judicata. In this regard, it has been contended that the submission[s] by the respondent touching on and concerning res judicata are misconceived.
14. In the premises, it has been contended that the applicant has met and demonstrated that same [applicant] is likely to be subjected to gross prejudice and or inconvenience.
15. In a nutshell learned counsel for the applicant has implored the court to find and hold that the petition and the consequential application thereto espouse prima facie cases and thus same ought to be allowed in an endeavour to protect the rights and interests of the applicant. To this end, the court has been invited to grant the order[s] of temporary injunction.
16. The respondents herein adopted and relied on the ground[s] of opposition dated 17th June 2025 and wherein same canvassed four [4] issues namely, whether the petition and the application are barred by the doctrine of res judicata; whether the petition and the application constitute and abuse and due process of the court; whether the order[s] sought are bound to affect and or impart on the rights of third parties who have not been joined; and whether the applicant has met the requisite threshold for issuance of temporary injunction or otherwise.
17. Regarding the first issue, namely; whether the petition and the application are barred by the doctrine of res judicata, Learned counsel for the respondents has submitted that the dispute pertaining to and concerning the ownership of the suit property and the process attendant to its acquisition have been the subject of four separate suits which have been heard and determined by courts of competent jurisdiction. To this end, learned counsel highlighted the following cases
 - a. Maua SRM CC 85 of 1997;
 - b. Meru HCCA 104 of 1999;
 - c. Court of appeal at Nyeri Civil Appeal No. 221 of 2010
 - d. Meru ELC Petition 7 of 2022
18. Arising from the foregoing, learned counsel for the respondent has submitted that the issue before hand, having been duly considered and determined by courts of competent jurisdiction, same is now barred by the doctrine of res judicata. Moreover, learned counsel referenced the provisions of Section 7 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya.
19. Regarding the second issue, learned counsel for the respondent has submitted that having previously filed the various suits [whose details have been captured in the body of the grounds of opposition] the filing of the instant petition and the application therefore constitute[s] an abuse of the due process of the court. Further and in any event, it was posited that the instant petition is merely intended to vex, harass and waste the respondents' time.



20. In respect of the third issue, it has been submitted that the application beforehand is seeking for orders of temporary injunction to bar and restrain the usage of the Suit Land by third parties. Nevertheless, learned counsel argued that the third parties whose rights are bound to be affected by the court orders [if any] have neither been joined nor impleaded. In this regard, counsel referenced the provisions of Article 50 of the Constitution as pertains to the right to fair hearing and fair trial.
21. Moreover, learned counsel submitted that if the court were to grant the orders sought, then the third parties who own the suit property will have been condemned unheard. To this end, counsel posited that the court should be weary of the import; tenor and the Legal implication[s] of the subject application.
22. Lastly, learned counsel for the respondent has submitted that the applicant herein was obliged to place before the court plausible cogent and credible evidence to demonstrate the existence of a prima facie case and the likelihood to suffer irreparable loss unless the order sought are granted.
23. To the extent that the applicant has neither espoused nor made out a case for the grant of the temporary injunction, it has been submitted that the application for temporary injunction is therefore premature and legally untenable.
24. Having reviewed the application dated 28th May 2025; and upon taking into account the grounds of opposition thereto and upon consideration of the oral submissions, I come to the conclusion that the determination of the dispute beforehand stands on four [4] key issues; whether the petition and the application are barred by the doctrine of res judicata or otherwise; whether the petition constitutes an abuse of the due process of court; whether the orders sought are bound to impact upon and or affect the rights of other third parties and whether the applicant has satisfied the conditions for the grant of an order of temporary injunctions or otherwise.
25. Regarding the first issue, it is worthy to recall and reiterate that the dispute beforehand essentially touches on and concerns the ownership of the suit property and the process leading to its acquisition. Suffice it to say that the suit property was birthed by the land adjudication process which led to its demarcation and ultimately registration in the name of Severina Nchulubi. [See annexure NTM1 attached to the supporting affidavit].
26. It appears that the Petitioner/ Applicant herein was not happy with the adjudication process touching on and concerning the suit property. In this regard, various suits were filed and subsequently, disposed of.
27. Instructively, the dispute herein has been heard and determined by four [4] courts of competent jurisdiction, namely; Maua SRM CC No. 85 of 1997; the High Court of Kenya at Meru vide Meru HCCA No. 104 of 1999; Nyeri Court of appeal civil appeal No. 221 of 2010 and Meru ELC No, 7 of 2022. Notably, the various courts have upheld the rights of Severina Nchulubi to the suit property.
28. Moreover, it is not lost on this court that learned counsel for the petitioner/applicant duly conceded that there was an appeal lodged before the court of appeal and which appeal was dismissed. However, counsel endeavoured to state that the issue[s] of the error affecting the adjudication record in respect of the suit property were neither raised nor canvassed before the court of appeal or other courts before.
29. Be that as it may, there is no gainsaying that the dispute which was heard and adjudicated upon before the Court of Appeal and the other courts therebefore touched on and concerned ownership of the suit property and the process leading to its acquisition. Suffice it to posit that the courts found and held that the suit property belongs to Severina.
30. I beg to state that the issue now being raised and canvassed at the foot of the instant petition, namely [sic] the error in the adjudication record is an issue that touches on ownership and acquisition of the



suit property. Such an issue ought to have been raised and or canvassed in the previous suits [See Section 7 explanation 4 of the *Civil Procedure Act*, chapter 21, Laws of Kenya]

31. The scope, tenor and legal implications of the doctrine of res judicata has been expounded in a number of judicial decisions. In the case of *Kenya Commercial Bank Limited v Benjoh Amalgamated Limited* [2017] KECA 98 (KLR) the court of Appeal stated as hereunder:

Cognizant of the above principles, the courts called upon to decide suits or issues previously canvassed or which ought to have been raised and canvassed in the previous suits have not shied away from invoking the doctrine as a bar to further suits. As was stated in *Henderson v Henderson* (1843) 67 ER 313, res judicata applies not only to points upon which the court was actually required by parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time. In the case of *Mburu Kinyua v Gachini Tutu* (1978) KLR 69 Madan, J. Quoting with approval *Wilgram V.C. in Henderson v Henderson* (supra) stated:

Where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case and will not (except in special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have from negligence, inadvertence, or even accident omitted part of their case. The plea of res judicata applies except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce judgment but to every point which properly belonged to the subject of litigation, and which parties exercising reasonable diligence, might have brought forward at the time” (emphasis added).

We have no doubt at all that the suits filed by Benjoh and Muiri raised issues that were previously raised or could with reasonable diligence have been raised in the previous suits. This is the basis upon which we will eventually determine whether the judge erred in not upholding KCB and Bidii contention that issues raised in the suit had already been raised and finally determined in the previous suits; that the former suits involved the same parties, and that the courts which handled those previous suits were competent.

32. Furthermore, the ingredients that underpin the doctrine of res judicata were also highlighted in the case of *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] eKLR where the Court of Appeal expounded on the doctrine in the following manner,

Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms;

- (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.

The learned Judges were fully aware and applied their minds to these elements when, applying this Court's decision in *Uhuru Highway Development Ltd v Central Bank of Kenya* [1999] eKLR they rendered the elements as;

- (a) the former judgment or order must be final;
- (b) The judgment or order must be on merits;
- (c) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and
- (d) there must be between the first and the second action identity of parties, of subject matter and cause of action.”

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 common-sensical 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 and calumny. The foundations of *res judicata* thus rest in the public interest for swift, sure and certain justice.

- 33. To my mind, the issues that are now being brought forth by the instant petitioner are issues that have hitherto been dealt with and adjudicated upon by courts of competent jurisdictions. To this end, the petitioner cannot be allowed to undertake cosmetic surgery and or facelift to the dispute and to disguise same as a constitutional matter merely to evade the snares of *res judicata*.
- 34. Before concluding on this issue, it is imperative to recall and reiterate the observation of the Court of Appeal in the case of *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)* where the court stated that:
 - 1. 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.”
- 35. In a nutshell, it is my finding and holding that the petition beforehand is barred by the doctrine of *res judicata*. In this regard, the petitioner/applicant is permanently non-suited.



36. Turning to issue number two namely; whether the instant petition constitute[s] an abuse of the due process of the court, it's important to point out that the petitioner herein has been privy and party to the previous proceedings. Furthermore, the petitioner has participated in the previous proceedings and raised the same issues now being propagated beforehand.
37. Suffice it to posit that the petitioner herein has since reverted to court in an endeavour to circumvent various decisions that have found that the suit property does not belong to him [petitioner]. In this regard, what becomes crystal clear is that the petitioner is trying his luck and chancing to see whether, in the multiplicity of suits filed, same may obtain a favourable decision. The conduct of the petitioner amounts to gambling with the due process of the court.
38. Furthermore, the filing of a multiplicity of suits cutting across various courts amounts to playing lottery with the court process. To my mind, such kind of conduct and or behaviour must not be countenanced. Nevertheless, I beg to underscore that the impugned conduct fits well within the description of what constitutes abuse of the court process [see *Muchanga Investment Limited vs Safaris Africa[unlimited] limited* 2009 eKLR; *Satya Bharna vs the Director of Public Prosecution and others* 2019 eKLR and *Rutongot Farm Limited versus Kenya Forest service* 2018 KESC].
39. Next is the issue concerning the legal implications of the orders sought by the Petitioner/ Applicant and whether same shall be disposed to affect the rights of third parties who have not been joined and or included. To start with, it is important to underscore that the suit property belongs to and is registered in the name of Severina Nchulubi [see annexure NTM1] being the warrant of eviction confirming the entitlement of the said Severina to the suit property.
40. Be that as it may, it is not lost on this court that the said Severina Nchulubi who is captured as the owner of the suit property, has not been impleaded and or included. Nevertheless, the petitioner is before this court seeking to obtain orders of temporary injunction, whose net effect is to suspend lawful court orders issued in favour of the said Severina Nchulubi.
41. I beg to underscore that the current registered owner of the suit property and in whose favour previous decrees have been issued was/ is entitled to notice, participation and involvement in the subject dispute. However, the petitioner herein has disingenuously omitted the said person, perhaps in the hope that the omission would culminate into a walk-over.
42. For good measure, I do not understand why the orders of temporary injunction are being sought against the respondents herein and not the person seeking to execute the eviction orders.
43. Quite clearly, the petitioner herein appears to have been keen to pull the rug from the feet of the owner of the suit property. However, I must point out that such an endeavour would be tantamount to condemning the registered owner of the property without being heard. Suffice it to state that the right to be heard is one of the non derogable rights and thus the invitation by the petitioner must be frowned up [see Article 25(c) and 50 of the *Constitution*] [see *standard chartered financial services versus Manchester Outfitters limited* 2016 eKLR; *County Assembly of Kisumu versus the county assembly service board and others* 2015 Eklr and *Oloo Onyango Versus Attorney General* 1997 eKLR, respectively].
44. Lastly, I beg to turn to the issue of whether the applicant has established and demonstrated the existence of a prima facie case or otherwise. To start with, it is important to highlight that every applicant seeking to partake of or procure an order of temporary injunction must first and foremost prove the existence of a prima facie case. [See *Mrao Limited versus First American Bank of Kenya Limited* 2003 eKLR; *Nguruman Limited vs Jan Bonde Nielsen & others* 2014 Eklr; and *Vivo Energy Limited versus Maloba Petrol Station and Others* [2015] Eklr]



45. Has the applicant proven and or demonstrated the existence of a prima facie case or otherwise? I am afraid that the applicant herein has failed to prove the existence of a prima facie case. Instructively, the applicant herein is keen to deploy the current constitutional petition as a vehicle for challenging execution proceedings being undertaken vide Maua SRM CC No. 85 of 1997. Such an endeavour runs contrary to the provisions of section 34 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya.
46. Additionally, it is also important to highlight that the decisions and judgments that were issued in the various cases that dealt with ownership of the Suit Land were decisions in rem. Such decisions attach to the property in question. Furthermore, the decision is deemed to be valid against the whole world. [See section 44 of the *Evidence Act* Chapter 80 Laws of Kenya]
47. On the face of the various legal hurdles which have been enumerated and referenced in the body of this ruling, it is crystal clear that the applicant herein has not demonstrated the existence of a genuine and arguable case.
48. Simply put, there is no proof of a prima facie case with a probability of success. Absent a prima facie case, a court of law is not obligated to venture forward to address the question/ issue of a repairable loss. [see Kenya National Commercial Finance Limited versus Afraha Educational Institute 2002 EA]
49. Flowing from the foregoing discussion, it is my finding and holding that the entire petition filed and or mounted by the petitioner is not only premature and misconceived, but same is legally untenable.

Final Disposition:

50. For the various reasons captured and highlighted in the body of this ruling, I come to the conclusion that both the Petition and the application before hand ought not to have been filed in the first place. Furthermore, same constitutes a classic abuse of the due process of the court.
51. In the premises, the final orders of the court are as hereunder:
 - i. The Application dated 28th May 2025 be and is hereby struck out.
 - ii. The Petition dated 30th December 2024 be and is hereby struck out.
 - iii. Costs of the Petition and the Application be and are hereby awarded to the Respondents.
 - iv. The Costs in terms of clause (iii) shall be agreed upon and in default, shall be taxed by the Deputy Registrar of the court.
52. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 18TH DAY OF JUNE 2025

OGUTTU MBOYA, FCIArb; CPM [MTI].

JUDGE

In the presence of:

Mutuma: Court Assistant.

Mr. Anyega for the Petitioner/Applicant

Ms. Miranda for the Respondent.

