



**Odongo & another v Cheptumo & 4 others (Environment & Land Case
E040 of 2024) [2025] KEELC 4642 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4642 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E040 OF 2024**

**CK NZILI, J
JUNE 17, 2025**

BETWEEN

RENALD WAFULA ODONGO 1ST PLAINTIFF

PETER WANGERO WASWA 2ND PLAINTIFF

AND

ESTHER CHEPTUMO 1ST DEFENDANT

SELLY CHEPTUMO 2ND DEFENDANT

BOAZ MATERE WANAMBUKO 3RD DEFENDANT

BENARD WEKESA MANDILA 4TH DEFENDANT

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT 5TH
DEFENDANT**

RULING

1. By an application dated 22/1/2025, the court is asked to dismiss the suit against the 3rd defendant on account of res judicata. The reasons are contained on the face of the application and in a supporting affidavit sworn by Boaz Matere Wanambuko on 24/1/2025. The applicant contends that the subject matter in this suit was competently determined in Kitale HCCC No. 118 of 2007, which elicited no appeal or review, leading to an eviction order. He attached copies of the judgment, decree, and an eviction order as annexures BMW-1. 2(a) and (c).
2. The applicant deposes that though the parties herein were not the same in the present suit, the land dispute is the same, the defendant in the High Court was a brother to the plaintiffs herein, the land was the same and the parties herein should have sought to join the said case instead of now filing a fresh suit otherwise the defendant in the former suit was a brother to the plaintiffs herein. The applicant deposes that if the court proceeds with the matter, it will be sitting an appellate court over its judgment.



3. The application is opposed by a replying affidavits of Ronald Wafula Odongo and Peter Wangero Waswa both sworn on 12/2/2025. Though the respondents admit that there was a previous suit brought by them concerning the suit land, he says that in the instant suit, the parties are different, hence the principle of res judicata cannot apply.
4. Again, the respondents depose that the former suit was heard exparte and the issue of fraud and irregular registration of the suit land to the 3rd defendant can only be heard once witnesses testify.
5. The 1st respondent admits that the suit land initially belonged to their late mother, who caused it to be registered in the name of the elder brother, who vide Kitale CM Succession Cause No. 14 of 2018 was granted the suit land together with other property namely; Trans Nzoia/Maridadi/188 as per a grant attached as WWP-1. The 1st respondent deposes that his late mother had two parcels of land which through succession proceedings was transmitted to him and his brother.
6. The respondents deposed that in the former suit, the suit concerned Benmark Balita who is not party to this suit, and the issues of fraud and illegality in obtaining title deed in respect of the suit land were not dealt with. Therefore, the respondents urge the court to find that res judicata does not apply, for the issues raised in this suit were not disposed of and that the court has inherent jurisdiction to deal with the said issues. More so, the respondents depose that the title deed held by the 3rd defendant must have been acquired through fraud or illegality, since the plaintiffs have allotment letters that have not been canceled by the land registry.
7. Sections 6 and 7 of the *Civil Procedure Act* statutorily bar a court from hearing a matter that has been heard and determined by another competent court between the same parties. In *Gichomo & Another -vs- Kiiro Civil Appeal No. 109 of 2021 [2025] KECA 124[KLR]* (7th February 2025) (Judgement), the court set out the ingredients of res judicata as inter alia, the issue in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is invoked as a bar.
8. Secondly, that the former suit should be between same parties, or parties under whom they or any of them claim, litigating under the same title, and lastly, that the court or tribunal before which the former suit was litigated under the same title was competent and determined the suit finally.
9. In *CCK & Others -vs- Royal Media Services Ltd & Others [2014] eKLR*, the court observed that “the concept of res judicata operates to prevent causes of actions or issues from being relitigated once they have been determined on merits and that the concept encompasses not only the issues or claims but also those that may be raised in any subsequent proceedings”.
10. The applicant takes the view that there is a judgment on merit, where the issues now before the court were heard and determined by a court of competent jurisdiction, that has not been reviewed or appealed against.
11. While the respondents admit that there was a previous suit they take the view that the issue of fraud or irregular registration of the suit land to the applicant was not heard and determined on merits. In *Black Laws Dictionary 10th Edition* “heard and determined” is defined as a case, having been presented to a court that rendered judgment.
12. The text defines, a hearing session as one usually open to the public held for deciding issues of fact or of law, sometimes with witnesses testifying.
13. In *John Florence Maritime Services Ltd & Another -vs- Cabinet Secretary, Ministry of Transport & Infrastructure & Others [2021] KESC 39[KLR]*, the court held that the doctrine is based on the



principle of finality as one of the pillars upon which a judicial system is founded to prevent the multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties, and that ensures that litigation comes to an end. The court held that to invoke the doctrine, there must be the demonstration that there was a former judgment or order on merits recorded by a competent court having jurisdiction, over the subject matter and the parties and that there has to be between the first and second action, identical parties, subject matter and cause of action.

14. In the present suit, the respondents admit that indeed there was previous litigation over the same subject matter, and substantially the same parties litigating over the same umbrella. The respondents, however, urges the court to find that the issues raised herein were not raised or determined to finality, in the former suit.
15. In *John Florence Maritime Service Ltd (supra)*, the court held that whenever a 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 the record of the previous case, and the instant case to ascertain the issue determined in the previous case and establish whether these are the same in the subsequent case. The court observed that the duty of the court is to ascertain whether the parties are similar, or litigating under the same title and whether the previous case was determined by a court of competent jurisdiction. The court guided by *Bernard Mugo Ndegwa -vs- James Nderitu Githae & Others [2010] eKLR*, summarized the test as:
 - i. The matter in issue is identical in both suits.
 - ii. The parties are the same.
 - iii. Sameness of the title or claim.
 - iv. Concurrence of jurisdiction.
 - v. Finality of the previous decision.
16. In this suit, the plaintiffs do not dispute that there was a previous suit over the same subject matter, between the same or similar parties, over the same or similar issues, and where judgment was rendered by a competent court after the suit was heard and determined on merits.
17. The philosophy behind res judicata is that there must be an end to litigation. It exists to protect the public interest so that a party should not be endlessly dragged into litigation over the same issue or subject matter that a court of competent jurisdiction has conclusively determined.
18. Res judicata as held in *IEBC -vs- Maina Kiai & Others [2017] eKLR*, is effectively raised or upheld on account of a former suit after the following elements are satisfied in conjunctive terms:
 - (a) The suit or issue was directly and substantially in issue in the former suit.
 - (b) The 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.
19. The court observed that the doctrine aims to bring finality to litigation and afford parties closure and respite from the specter of being vexed, handled, and bounded by issues and suits that have already been determined by a competent court. It was further stated that the doctrine is designed as a pragmatic



and common-sense protection against the management of time and resources, in an endless bound of litigation at the behest of intrepid pleaders, hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favorable. The court observed that without *res judicata*, there would be no end to litigation, and the judicial process would be rendered a nuisance and brought to disrepute or calumny.

20. In this suit, the applicant has demonstrated that there was a former judgment on merits, tendered by a competent court having jurisdiction over the subject matter and the parties and that parties are identical, subject matter and cause of action in both actions. See also *CCK & Others -vs- Royal Media Services & Others* [2014] eKLR.
21. In *E.T. -vs- Attorney General & Another* [2012] KLR, it was observed that the court must be vigilant to guard against litigants evading the doctrine by introducing new causes of action to seek the same remedy before the court, the test is whether the second suit is trying to bring before the court in another way and in form of a new cause of action, which had been resolved by a court of competent jurisdiction.
22. In *Omondi -vs- NBK & Others* [2001] E.A. 177, the court held that parties cannot evade *res judicata* by merely adding other parties or causes of action in a subsequent suit, otherwise, there will be endless litigation over the same issue with the same opponent before courts of competent jurisdiction by a party growing some cosmetic facelift on every occasion he comes to court, over the same issue with the same opponent.
23. In *Mairani & Others -vs- Director of Land Adjudication & Settlement & Others*, Civil Appeal No. E097 of 2022 [2025] KECA 400 [KLR] (21st February 2025) (Judgment), the court observed that the doctrine of *res judicata* is founded on public policy that litigation must come to an end, and a party should not be harassed twice with the same accord as litigation. The court cited *KCB Ltd -vs- Muriri Coffee Estate Ltd & Another* [2016] eKLR, on the threshold of *res judicata* by ascertaining the issues determined in the previous suit, if they are the same in the subsequent suit, whether the parties are the same or litigating under the same title and whether the previous case was determined on merit by a competent court.
24. In *John Florence Maritime (Supra)*, the court observed that *res judicata* protects a respondent from repetitive litigation over the same matter, ensures economic use of judicial resources and timely termination of cases, promotes stability of judgments, reduces inconsistent uses by courts of concurrent jurisdiction, promotes confidence in the courts and its predictability and maintain respect for justice and the rule of law.
25. Flowing from the foregoing, to constitute *res judicata*, there must be adjudication that conclusively determined the rights of the parties concerning all or any of the matters in controversy as held in *Suleiman Said Shablal -vs- IEBC & Others* [2014] eKLR. *Res judicata* aims to bring finality in litigation and afford parties closure to litigation to avoid reopening the concluded matter unless on appeal or review. To avoid this, parties cannot litigate in piecemeal. In *Clement Kungu Waibara -vs- Anne Wanjiku Kibeh & Another* [2020] KECA 572 [KLR], the court cited *John Florence Maritime (Supra)*, that *res judicata* ensures the economic use of court limited resources and timely termination of cases, promotes confidence in courts and predictability to maintaining respect for justice and the rule of law.
26. In this suit, the 1st respondent does not dispute that there was a competent judgment of this court between the same parties or parties litigating under the same title, on merits, which has not been set aside, reviewed, or appealed. The respondent says that the issue of fraud or illegality was left out and not litigated in the previous suit. Litigating piecemeal or in installment to evade *res judicata* is discouraged by courts. It amounts to vexing an opponent twice over the same issue. See *Kenfit Ltd -vs- Consolata Fathers* [2015] KECA 630 [KLR]. A piecemeal approach to litigation is what the plaintiffs are doing here.



27. The plaintiffs had an opportunity to bring all their claims in the previous suit. In *Dock Workers Union Kenya -vs- Kenya Ports Authority* (Civil Appeal 112 of 2019) [2021] KECA 87 (KLR) (8 October 2021) (Judgment), the court held that the purpose of res judicata is to lock out a party who has already been heard before a competent court, coming back with the same issues against the same party to have a second bite of the cherry.
28. In *Sanga & Others -vs- Karim*, Civil Appeal No. E072 OF 2022 [2025] KECA 184 [KLR] (7th February 2025 (Judgment), the court cited *Henderson -vs- Henderson* [1843] 3 Hare 100, 115, that when a matter becomes the subject of litigation in and of adjudication by a court of competent jurisdiction, the court requires parties to that litigation to bring forward their whole case, and will not except sparingly, pursue the same parties to open the same subject of litigation in respect of a matter that might have been brought forward as part of the subject in content, but which was not brought forward out of negligence, inadvertence or accident.
29. Looking at the contents of the plaint, the plaintiffs have not disclosed the existence of Kitale HCCC No. 118 of 2007 regarding parcel No. Trans Nzoia/Maridadi/190, whose decree was issued on 22/5/2009 in favor of the 3rd defendant for eviction and permanent injunction.
30. The plaintiffs now seek prayers No. (a) (b) (c) and (d) which fly against a decree of this court in favor of the 3rd defendant which has not been reviewed, appealed against, or set aside.
31. The 1st respondent in paragraph 4 of the replying affidavit admits the existence of the previous suit and its outcome. The 1st respondent in paragraph 6 of the replying affidavit admits the previous suit was heard on merits though in his view *ex parte* but left out the issue of fraud and irregular registration of the suit land to the applicant.
32. The plaintiffs now want to relitigate the issue afresh when there is a competent judgment on merits that is against them yet to be set aside on review or appeal. The addition of fresh parties to avoid res judicata by giving a suit a cosmetic facelift is what res judicata aims to safeguard against. See *Registered Trustees of African Gospel Church -vs- Kamunge & Others NLC (IP)* Civil Appeal No. E756 of 2022 [2023] KECA 1117 [KLR] (22nd September 2023) (Ruling).
33. In *KCB Ltd -vs- Murii Coffee Estate Ltd & Another* [2016] eKLR, the court observed that the doctrine of res judicata in effect, allows a litigant only one bite at the cherry and prevents a litigant or person claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action and serves the cause of order and efficacy in the adjudication process, so that litigation comes to an end where the verdict translate into fruit for one part and liability for another party, conclusively.
34. In this suit, a look at the plaint dated 17/10/2024 shows that the plaintiffs are in essence seeking the court to re-hear or overturn issues and overrule determinations of the same already litigated in the previous suit with finality, to vex the 3rd defendant twice, yet he has a competent judgment, to seek the court reach a different outcome, to entertain itself yet there is a competent judgment in place, which has not been appealed against or set aside.
35. The law is that where a judicial decision was made by a court of competent jurisdiction, it holds correct and is final in a civilized society, and that the doctrine holds the jurisdiction of the court to protect the finality of the decision the effect being the court is prevented from trying the case in limine as held in *Registered Trustees of African Gospel Church* (supra). In my view, the plaintiffs cannot evade the wrath of res judicata by trying to manage the character of this suit through the addition of more parties, reliefs, or giving the parties or issues new clothes, to have the court reach a different outcome from the



previous decree. See Clement Kungu Waibara (supra) and Julius Muthoka Ndolo -vs- Paul Towers Ltd & Others [2019] KECA 1054 [KLR].

36. The plaintiffs had an opportunity to appeal against the previous judgment or seek to have it set aside, instead of mounting a fresh suit. The upshot is that I find the application dated 22/1/2025 with merits. It is allowed with costs. The suit is dismissed with costs.
37. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 17TH DAY OF JUNE 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Parties present

Mr. Ndarwa for Munialo for the 3rd defendant/applicant

Majanga for the plaintiff/respondent

