



**Chunga & another v Amolo & 3 others (Environment and Land Case E026 of 2024) [2025] KEELC 6403 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6403 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT SIAYA  
ENVIRONMENT AND LAND CASE E026 OF 2024**

**AE DENA, J**

**SEPTEMBER 25, 2025**

**BETWEEN**

**WILLIAM ODHOCH CHUNGA ..... 1<sup>ST</sup> PLAINTIFF**

**JOSHUA ONDIEGE GUMBA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SIMON OTOK AMOLO ..... 1<sup>ST</sup> DEFENDANT**

**JOSHUA CHRISTOPHER AMOLO ..... 2<sup>ND</sup> DEFENDANT**

**RAPHAEL JUMA ..... 3<sup>RD</sup> DEFENDANT**

**DICK KOLA AMOLO ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This suit was commenced by way of a plaint dated 30/10/2024 against the defendants for orders of injunction restraining the defendants and their agents from subdividing, advertising for sale, charging, disposing off and or in any manner interfering with parcel known as North Sakwa/Maranda/40 (suit property). The suit also seeks an order authorizing the District Land registrar delete from its records, titles issued pursuant to succession cause filed by the beneficiaries. The plaintiffs claim to be the beneficiaries of the estate of Romanus Chunga (deceased) in occupation of the suit property.
2. Together with the plaint was filed a Notice of Motion application dated 30/10/2024 seeking orders of injunction as above. It is contended by the plaintiffs that the defendants knowing very well the suit property does not belong to them had trespassed therein purporting to subdivide the same.
3. The defendants responded to the suit through a Statement of Defence dated 20/01/2025. They pleaded inter alia that the suit herein is res judicata Siaya ELCLoS No. 005 of 2022 Joshua Christopher Amolo & 3 Others Vs. Phillip Obonyo Chunga & 4 Others.



4. The defendants in further response filed a Notice of Motion application dated 16/01/2025 seeking for orders that the plaintiffs' suit be struck out and or dismissed for being resjudicata and an abuse of the court process. Further that the Verifying Affidavit was commissioned by a deceased advocate making it incurably defective and lacking in foundation.
5. The plaintiffs responded to the defendant's application dated 16/01/2025 vide a replying affidavit sworn by the 1<sup>st</sup> plaintiff on 14/03/2025. It is deponed interalia that the defendants belong in South Sakwa/Maranda/2631 owned by their father and where he was buried. The plaintiffs also filed a further affidavit which the court directed be treated as the plaintiff's supplementary affidavit in response to the defendants replying affidavit sworn on 20/01/2025.

### **Directions**

6. The court issued directions on 26/01/2025 that both applications be canvassed concurrently for efficiency by way of written submissions. The defendants' submissions are dated 10/03/2025. The plaintiffs' submissions are dated 24/03/2025.
7. I have read the affidavits sworn in support of the application and those sworn in reply. I have also given due consideration to the submissions.

### **Analysis And Determinaton**

#### **The Application dated 16/01/2025**

8. The court will first deal with the application dated 16/01/2025. Though it is not the first in time, should the court uphold it then the suit will collapse with the plaintiff's application dated 30/10/2024 seeking orders of injunction.
9. The application is premised on the provisions section 1A,3A,7 and 63e of the Civil Procedure Act, Order 11 Rule 3(2) of the Civil Procedure Rules. The court will focus on section 7.
10. The doctrine of res judicata has its genesis in Section 7 of the Civil Procedure Act, Cap. 21 of the Laws of Kenya which provides that -

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.

11. In the decided case of John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR the essence of the doctrine of res judicata was expounded 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 unravelling uncontrollably.”

12. The Court of Appeal in the case of *The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, [2017] eKLR), cited by the defendants herein espoused the factors to be considered in defence of res judicata;

“For the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must 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.”

13. Applying the above principles and the law to the present case I will proceed to discuss whether the present suit is res judicata.
14. Was there a former suit that involved the same parties as the present suit? As already noted, the former suit is pleaded by the defendants as Siaya ELCLoS No. 005 of 2022 Joshua Christopher Amolo & 3 Others Vs. Phillip Obonyo Chunga & 4 Others. It is submitted on behalf of the defendants that the 1<sup>st</sup> Plaintiff herein was the 2<sup>nd</sup> defendant in the former suit and all the defendants herein were the plaintiffs in the former suit.
15. A copy of the Decree issued on 16/2/2023 was attached. My review of the decree shows that in the former suit the plaintiffs were Joshua Christopher Amolo, Simon Otok Amolo, Raphael Juma and Dick Kola Amolo. The court notes that all these individuals are named as the defendants in the present proceedings. In the former suit the defendants are Philip Obonyo Chunga, William Odhoch Chunga, George Odhiambo Chunga, Caren Awino Otieno and Philip Mango Chunga. The court notes that only William Odhoch Chunga the 2<sup>nd</sup> defendant features as the 1<sup>st</sup> plaintiff in the present proceedings except that he has brought in the 2<sup>nd</sup> plaintiff Joshua Ondege Gumba who is a new party in both proceedings.
16. Would the inclusion of the 2<sup>nd</sup> plaintiff be of any consequence in the context of the plea for resjudicata. The 1<sup>st</sup> Plaintiff herein having been the 1<sup>st</sup> defendant in the former suit has now approached this court in the present proceedings albeit as a plaintiff. Moreover the 1<sup>st</sup> plaintiff in the present proceedings describes the 2<sup>nd</sup> plaintiff at paragraph 4 of the plaint as his sibling. In view of this deposition my view is that siblings cannot be delinked as beneficiaries of the estate of their deceased father since it is the estate that cojoins them. Being a sibling of the 1<sup>st</sup> plaintiff, the 2<sup>nd</sup> plaintiff is also deemed a member of the Kamayunje clan. The inclusion of the 2<sup>nd</sup> plaintiff would not defeat the plea of resjudicata.
17. Consequently, the court is satisfied that the former suit was between the same parties or parties under whom they or any of them claim.



18. While the plaintiffs responded to the application the closest, they came to responding to this plea is at paragraph 7 of the replying affidavit averring that they were informed that the action of subdivision was initiated by a court order in a case which the deponent alleges he never participated or heard any knowledge of the proceedings. I must point that whether or not the 1<sup>st</sup> plaintiff was or was not aware of the former suit is neither here nor there. It is not one of the considerations envisaged by the law and precedent. It cannot therefore serve as ‘defence’ to the plea of resjudicata.
19. I will now look at the issues in the present suit and whether they were directly and substantially in issue in the former suit. The first port of call would be to ascertain the subject of the present suit. In the present suit the subject is North Sakwa/Maranda/40. A look at the decree in the former suit which is attached reveals that the subject matter was North Sakwa/Maranda/40. Therefore, the subject matter is the same parcel of land.
20. Concerning the issues, my review of the plaint herein appears to me as a claim for ownership of the suit property by the plaintiffs. They claim to be in occupation and purport that the defendants are not beneficiaries and have trespassed therein. At paragraph 7 of the plaint, it is pleaded the defendants may not have rightful claim to North Sakwa/Maranda/40. What about the former suit?
21. It is noteworthy that the pleadings in the former suit were not attached by the applicants. All that was attached by the defendants is the decree. From the decree it is apparent that the defendants herein who were the plaintiffs in the former suit had sought orders of adverse possession. While this could serve as a useful guide, the court appreciates that pleadings are pertinent since the parties’ cases are hinged on their pleadings. In addition, the judgement would also be necessary for an evaluation of the rest of the requirements.
22. Pursuant to the inherent power of the court donated by section 3A of *Civil Procedure Act* the court called for the file to enable it have a better appreciation of the issues. The court has to look at the interests of justice in a situation where there is a possibility of summary rejection of a suit.
23. Having perused the pleadings (Supporting Affidavit) and the judgement in the former suit, I further noted that other than adverse possession there was also a claim of beneficial interest under customary trust of the suit property by the defendants herein against the defendants in the former suit who included the 1<sup>st</sup> plaintiff herein. All were said to belong to the Kamayunje Clan. This explains the final orders in the decree.
24. I have also considered the claim as raised in the present suit and the determination in the former suit and considering the subject of both suits was the same, I’m persuaded that the issues in the present suit were directly and substantially in issue in the former suit.
25. Were the issues heard and finally determined in the former suit and was the court of competent concurrent jurisdiction? On jurisdiction the former suit was heard by this court and its jurisdiction was not questioned. The present suit is before this court.
26. Was the matter finally decided? The gist of Section 7 of the *Civil Procedure Act* defines the principle of res – judicata to apply where the issues in the previous suit ought to have been “heard and finally decided.” The Black’s Law Dictionary 10th edition defines the terms “heard and determined” as follows: -

“Of a case, having been presented to a Court that rendered Judgment.”



27. The term “hearing” is defined in the same dictionary as follows: -

“A judicial session usually open to the public held for the purpose of deciding issues of fact or of law sometimes with witnesses testifying.”

28. From the judgement the suit was heard on its merits. Both parties tendered their evidence and called witnesses who were cross examined and re-examined and a judgement dated 16/02/2023 was rendered. The court issued a declaration that the defendants herein were entitled to the portion of North Sakwa/Maranda/40 being 4 HA under customary trust. The court also directed the land registrar to hive off the portion thereof and register it in the names of the plaintiffs, the defendants in the current proceedings. These orders in my view were substantive and final orders.

29. I see a party who is firstly revisiting the matter in the succession proceedings. The court is being invited to issue orders for cancellation of title deeds issued pursuant to succession proceedings which is outside the jurisdiction of this court. I have already pointed that the averment that the plaintiff did not participate are of no assistance to the plaintiffs in the context of a plea of resjudicata. If the plaintiff contends that he did not participate in the proceedings then his remedy does not lie in filing a fresh suit.

30. Having had the benefit of looking at the pleadings in both the former suit and the present suit vis a vis the judgement this court is of the view that the issues raised were fully determined on merits in the former suit. What I see is a party who wants to reopen issues and litigate them afresh before the same court. This must be frowned upon. It is also an abuse of the court process. There must be an end to litigation and which is the very essence of the doctrine of resjudicata.

31. The upshot of the foregoing is that the present suit is resjudicata and the court cannot entertain it by dint of the provisions of section 7 of the Civil Procedure Act. The suit must be struck out.

32. In view of the above finding I see no need to make a determination of the Notice of Motion application dated 30/10/2024. The application collapses with the suit.

33. The costs of the suit shall be awarded to the Defendants.

**DELIVERED AND DATED AT SIAYA THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025**

**HON. LADY JUSTICE A.E. DENA**

**JUDGE**

**25/09/2025**

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Odongo for the Defendants

William Odhoch Chunga 1<sup>st</sup> Plaintiff appearing in person

Joshua Onda Gumba 2<sup>nd</sup> Plaintiff appearing in person

Court Assistant: Ishmael Orwa

