



**Likhanga & another v Wisayi (Environment and Land Appeal
E002 of 2024) [2025] KEELC 6707 (KLR) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6707 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND APPEAL E002 OF 2024
A NYUKURI, J
SEPTEMBER 24, 2025**

BETWEEN

PROTUS AMAYI LIKHANGA 1ST APPELLANT

ELECTINE MUTAMBI AMAYI 2ND APPELLANT

AND

ANDREW MANYONYI WISAYI RESPONDENT

JUDGMENT

Introduction

1. The appellants herein filed this appeal challenging the judgment of Honourable J. R. Ndururi (SPM) delivered on 22nd March 2024 in respect of Kakamega MC ELC Case No. 45 of 2023. In the impugned judgment, the learned trial Magistrate allowed the respondent's (plaintiff's) claim, directing the 1st appellant (1st defendant) to transfer one acre of land from the parcel of land known as Isukha/Virhembe/1821 (suit property) to the respondent in 30 days and in default, the Court Administrator to do so. The trial court also allowed the respondent's claim of Kshs. 265,000/= being special damages in respect to legal fees incurred in the prosecution of Kakamega MC ELC Case No. 932 of 2018. The court further granted costs of the suit to the respondent herein and dismissed the respondent's suit as against the 2nd and 3rd defendants in the lower court.

Background

2. In a plaint dated 21st February 2023, Andrew Manyonyi Wisayi sued Protus Amayi Likanga and Electine Mutambi Amayi, being husband and wife respectively, as well as the Land Registrar Kakamega, claiming the following orders;
 - a. A declaration that a parcel measuring 1 acre excised out of Isukha/Virhembe/1821 for the plaintiff as this belongs to the plaintiff as he purchased the same from the defendants.



- b. A declaration that a parcel measuring 1 acre be excised out of Isukha/Virhembe/1821 and transferred to the plaintiff as he purchased the same from the defendants.
 - c. Order restraining the defendants from interfering in any way with the plaintiff's use and occupation of his legitimate 1 acre excised out of land parcel Isukha/ Virhembe /1821.
 - d. An order requiring the 1st defendant to immediately sign the transfer documents to the one acre portion of land owned by the plaintiff out of Isukha/ Virhembe/ 1821, failing which the Deputy Registrar/Court Administrator should be allowed to sign the transfer documents on behalf of the defendant.
 - e. In the alternative and without prejudice to the foregoing, the defendants to pay the plaintiff a total of Kshs. 133,000/= plus interest at court rates from 1997 until the money is paid in full being money paid to the defendants for purchase of 1 acre of land.
 - f. In the alternative and without prejudice to the foregoing, the defendants to pay the plaintiff a total of Kshs 265,000/= plus interest at court rates until the money is paid in full being money paid by the plaintiff to prosecute MCELC No. 932 of 2018 to defend plaintiff's purchaser's interest brought about by defendant's fraud and deception.
 - g. Damages
 - h. Any or further orders the Honourable Court deems just and fit to grant in the circumstances to serve the ends of justice.
 - i. Costs of this suit.
3. The plaintiff stated that through a series of agreements done between 6th May 1997 and 14th December 2002, he purchased a portion of land from the defendants at a consideration of Kshs. 133,000/=. That he was shown the land and had a legitimate expectation that he had purchased the same from the defendants upon which he settled, build houses, planted trees and cultivated. He averred that the 1st defendant undertook to conduct Succession regarding his late father's estate, obtain his share and transfer the purchased portion to the plaintiff, but that on 24th May 2018, the plaintiff found surveyors on his purchased portion claiming to be executing orders issued in Nairobi Succession Cause No. 495 of 2011.
 4. That the plaintiff learnt that the 1st defendant together with his siblings conducted succession secretly excluding him. He claimed to have spent a sum of Kshs. 265,000/= as legal fees in regard to Kakamega MC ELC Case No. 932 of 2018 where he alleged to have been forced to file suit claiming his land which he had legally purchased from the defendants. He stated that he was entitled to the land he purchased from the defendants which should be hived off from the 1st defendant's land awarded to him after conducting Succession secretly in Nairobi without the plaintiff's knowledge.
 5. The plaintiff alleged fraud as against the defendants and more particularly that the defendants together with their siblings conducted Nairobi Succession Cause No. 495 of 2011 behind his back knowing well that he had a purchaser's interest in the suit property; that the defendant made a series of land sale agreements with the plaintiff and received cash from the plaintiff on various dates between 1997 and 2002 for land that he had no intention of transferring to the plaintiff; and obtaining money from the plaintiff on the pretext of selling land to the plaintiff which land was not his.
 6. In response, the 1st and 2nd defendants filed a statement of defence dated 27th July 2023 denying the plaintiff's claim. They alleged that the plaintiff never entered into sale agreements with them and that he also never took any possession of any land. They contended that legitimate expectation cannot arise



out of an illegitimate transaction. They stated that the agreements in dispute did not demonstrate that the defendant undertook to conduct succession, and that the plaintiff knew that the suit property belonged to a deceased person but went ahead to purchase the same. They held the position that the court order made in Nairobi Succession Cause No. 495 of 2011 has never been challenged by the plaintiff.

7. The defendants further stated that the plaintiff trespassed on parcel Nos. Isukha/Virhembe/1822, 1823, 1824 and 1825; whose owners sued the plaintiff successfully vide Kakamega MC ELC Case No. 932 of 2018 and that the plaintiff lost the subsequent appeal being Kakamega ELC Appeal No. 2 of 2022, and that he subsequently voluntarily moved out of the aforesaid four parcels.
8. They averred that the plaintiff issued a 3rd party notice in Kakamega MC ELC Case No. 932 of 2018 against the 1st defendant and claimed for the suit property herein plus costs against the 1st defendant. That the trial court having heard the dispute dismissed the plaintiff's claim, which decision was upheld by the ELC on appeal. They argued that the plaintiff was therefore not entitled to the sum of Kshs. 265,000/= for legal fees because he was the one condemned to pay costs including costs to the 1st defendant in that suit. They denied the plaintiff's averment that the plaintiff paid for the consideration in regard to the suit property and denied particulars of fraud stated in the plaint. They accused the plaintiff of intermeddling with the estate of a deceased person and averred that the plaintiff had trespassed on the four parcels of land stated herein above. That the plaintiff having filed a counter claim against the 1st defendant in Kakamega CM ELC Case No. 932 of 2018 claiming for one acre comprised in parcel Nos. Isukha/Virhembe/1822, 1823, 1824 and 1825 cannot now be heard to change his mind and claim to have purchased and occupied one acre in parcel No. Isukha/Virhembe/1821 as he is stopped in law from shifting his position. They denied the allegation that the plaintiff purchased and took possession of parcel No. Isukha/Virhembe/ 1821.
9. Faulting the plaintiff's claim, the 1st and 2nd defendants stated that as the sale agreements were done between 1997 and 2002, hence the plaintiff's claim was time barred since no leave was sought or granted by court for filing the suit, on which ground they raised a preliminary objection seeking that the plaintiff's suit to be struck out. They also alleged that the land in issue was subject to controlled transactions and that therefore the impugned agreements were null and void for want of consent from the Land Control Board.
10. The defendants also maintained that the plaintiff's suit was res judicata because the plaintiff's claim was conclusively determined in Kakamega MC ELC No. 932 of 2018, which decision was upheld in Kakamega ELC Appeal No. 2 of 2022. They argued that the plaintiff by filing a fresh suit sought to have a different judgement from those made in the two suits above. They held the position that the plaintiff's claim was incompetent, frivolous and vexatious and that it ought to be dismissed.
11. No defence was filed by the 3rd defendant.
12. The matter was heard by way of oral evidence. The plaintiff presented three witnesses while the 1st and 2nd defendants did not present any witness.

Plaintiff's evidence

13. PW1 was Andrew Manyonyi Wesayi, who adopted his witness statement dated 21st February 2025 as his evidence in chief, and produced documents attached to the list of documents dated 23rd February 2025. His testimony was that he purchased one acre of land from the 1st defendant on diverse dates being 6th May 1997, 11th July 1997, 23rd December 1997 and 14th December 2002. He stated that the 2nd defendant is the wife of the 1st defendant and she was a witness to the sale agreements. According



to him, he paid a total of Kshs. 133,000/= as consideration for the land and that parties agreed that the 1st defendant was to conduct succession proceedings in regard his late father's estate so as to ensure that the purchased portion of land is transferred to the plaintiff. He further stated that on 24th May 2018, he found some surveyors on his portion of land claiming to be executing orders issued in Nairobi Succession Cause No. 495 of 2011 and that that was when he learned that the 1st defendant and his siblings had conducted Succession secretly without involving him, yet he had a purchaser's interest in the suit property. He claimed to have been using the suit property since 1997 where he has built houses, planted crops and trees and that neither the defendants nor their siblings have interfered with his use or possession of his land from 1997 until 2018.

14. This witness claimed to have been forced to file a suit being Kakamega MC ELC Case No. 932 of 2018 where he alleged to have spent legal fees in the sum of Kshs. 265,000/= to prosecute that suit. He alleged that the defendants are owners of parcel No. Kakamega/Virhembe/1821 and that they should give him one acre out of that parcel of land. In the alternative he sought for a refund of the sum of Kshs. 133,000/= being the alleged purchase price paid and the sum of Kshs. 265,000/= being legal fees paid to prosecute Kakamega CM ELC No. 932 of 2018 where he was allegedly forced to prosecute his claim of one acre. He further sought interest and damages.
15. PW2 was Jessica Naliaka Shitanda, the wife of the plaintiff. She stated that she had adopted her witness statement as her testimony in chief. The date of her statement was not stated, and the same was not part of the record. That marked the close of the plaintiff's case.
16. On the hearing date, although the counsel for the 1st and 2nd defendants had been in court earlier in the day when time allocation for hearing of the matter was fixed, at the time of hearing, the said defendants and their counsel were not in court. Therefore on the close of the plaintiff's case, their case was also marked as closed.
17. Upon hearing the plaintiff and having considered the pleadings, evidence and submissions, the trial court found that the plaintiff had proved his case against the 1st defendant and proceeded to declare the plaintiff as being entitled to one acre portion of land to be excised from parcel No. Isukha/Virhembe/1821 registered in the name of the 1st defendant. The trial court further ordered the 1st defendant in 30 days of the judgement, to executive all transfer documents to vest one acre from parcel No. Isukha/Virhembe/1821 into the plaintiff's name and directed that in default, the Court Administrator shall have power to do so. The court also ordered the 1st defendant to pay the plaintiff the sum of Kshs. 265,000/= in respect of special damages, and costs of the suit were awarded to the plaintiff. On the other hand, the trial court dismissed the plaintiff's case as against the 2nd and 3rd defendants.
18. Aggrieved by the trial court's decision, the appellants herein challenged the same by way of a Memorandum of Appeal dated 2nd April 2024, citing the following seven grounds of appeal;
 - a. The trial court erred in law and fact by condemning the 1st and 2nd defendants unheard.
 - b. The trial court erred in law and in fact by holding that the plaintiff is entitled to one acre portion of land on land parcel No. Isukha/Virhembe/1821 registered in the names of the 1st defendant.
 - c. The trial court erred in law and fact by holding that the 1st defendant within 30 days to execute all documents required to transfer a one acre portion of land on land parcel No. Isukha/Virhembe/1821 into the name of the plaintiff, failure to which the court administrator will be at liberty to do so.



- d. The trial court erred in law and fact in holding that a sum of Kshs. 265, 000/= is to be paid to the plaintiff by the 1st defendant.
 - e. The trial court erred in law and facts in declining to grant the defendants a chance to participate in the suit herein despite numerous attempts by the defendants advocate urging the court to grant the defendants the chance to defend the claim.
 - f. The trial court erred in law fact by failing to do justice when it had been moved properly by the defendants vide a formal application which the court overlooked and went on to deliver judgment without granting the defendants adequate chance to be heard.
 - g. The trial court erred in law and fact rendering a judgment in the suit despite the plaintiff's issues having been hard and determined in Kakamega MC ELC No. 932 of 2018 and confirmed on appeal in ELC Appeal No. 2 of 2022 by this very court. Consequently the trial court lacked jurisdiction to deal with the matter but however proceeded to pronounce itself on the matter despite these issues being raised by the appellants.
19. Consequently the appellants sought the following orders;
- a. The appeal be allowed with costs.
 - b. The judgment by the trial court be set aside.
 - c. The respondent to pay costs of the appeal.
20. This appeal was disposed by way of written submissions. On record are submissions filed by the appellants dated 30th June 2024 as well as the respondent's submissions dated 8th October 2024.

Appellants' submissions

21. In regard to ground one of the appeal, counsel for the appellant submitted that a look at the defence shows that the appellants had a strong case that raised triable issues which ought to have been considered by the trial court. Reliance was placed on the case of Shade Motors Ltd versus D.T Dobie & Company (K) Ltd & Joseph Rading Wasombo Civil Appeal No. 38 of 1998, for the proposition that a defence on merit does not mean that the defence must succeed, as it ought only raise triable issues.
22. Regarding grounds two, three and four of the appeal, counsel contended that the trial court was wrong in overlooking what was recorded by court in Kakamega CM ELC Case No. 932 of 2018 and submitted that it was wrong for the trial court to arrive at a finding that the appellants had admitted the respondent's claim in Kakamega CM ELC Case No. 932 of 2018 as there was no evidence that they had admitted liability.
23. The court was referred to the case of Kenya Airways Limited versus Satwant Singh Flora [2013] eKLR for the argument that no court should enforce illegal contracts or allow itself to be made an instrument in enforcing an illegal transaction. Counsel insisted that the impugned sale agreements were illegal. Further that the trial court was wrong in ordering the appellants to pay the respondent Kshs. 265, 000/= in respect of legal fees incurred in Kakamega CM ELC No. 932 of 2018 because it was the respondent who was ordered to pay costs in that case.
24. It was further submitted for the appellants that the trial court was wrong in ordering that the 1st appellant transfers the suit property to the respondent in 30 days when there was no valid agreement between the parties. Counsel maintained that the trial court was wrong in failing to declare that the respondent's suit was res judicata in view of the respondents claim in Kakamega CM ELC Case No.



932 of 2018 and the subsequent appeal being Kakamega ELC Appeal Case No. E002 of 2022 where the ELC found that the respondent had not proved his counterclaim and dismissed his appeal.

25. On grounds five and six of the appeal, counsel submitted that the appellants filed an application on 27th June 2023 for review of the orders to allow the matter to proceed by way of formal proof but that that application was never considered. They faulted the trial court for proceeding with the hearing of the matter and relied on the case of *Shanzu Investment Limited v Commissioner of Lands Civil Appeal No. 100 of 1993*. Regarding ground seven of the appeal, counsel relied on the case of the *Owners of Motor Vessel "Lilian" v Caltex Oil Kenya Ltd (1989)* and argued that where the court has no jurisdiction it must down its tools.

Respondent's submissions

26. Counsel for the respondent argued that the 1st appellant entered into an agreement for sale of the appellants' ancestral land which claim the 1st appellant admitted in Kakamega CM ELC No. 932 of 2018. That the 1st appellant ensured that his sisters were registered as owners of the parcel of land where the respondent was residing and thereafter the sisters sued the respondent for eviction which they succeeded on a technicality on the basis that the respondent was not a beneficiary of their father's estate. In supporting the trial court's judgment, counsel for the respondent argued that as the 1st appellant was a beneficiary of the deceased's estate and having admitted to having sold one acre of land to the respondent, the trial court made the right decision based on substantive justice in ordering the 1st appellant to transfer the suit property to the respondent or refund the purchase price.
27. It was contended for the respondent that the 1st appellant had dragged the responded through unnecessary litigation in Kakamega MC ELC Case No. 932 of 2018 which led to the respondent incurring massive legal fees due to a fault not of his own but of the 1st appellant. Counsel argued that the trial court had the wisdom not to be bound by technicalities so as to administer substantive justice.
28. On whether the appellants were condemned unheard, counsel submitted that the appellants had had five months to file their defence but failed to do so. Reliance was placed on provisions of Order 7 Rule 1 of the Civil Procedure Rules for the argument that a defence ought to be filed within 14 days upon entry of appearance. Counsel also cited the case of *Gerald Mwithia v Meru College of Technology & Another [2018] e KLR* for the argument that a party ought not hide behind failure of their advocates when they fail to do what they are required to do.
29. In answer to grounds five and six of the appeal, counsel argued that the appellants knew their rights but failed to file defence for a period of five months and cannot cry foul at this stage. Counsel argued that the appellant did not seek leave of court to file defence out of time and that he did not come to court with clean hands. Reference was made to the case of *Ibrahim Mungara Mwangi v Francis Ndegwa Mwangi [2014] eKLR* for the proposition that a party seeking equitable relief must come to court in good faith and with clean hands. It was further submitted for the respondent that nevertheless, the trial court considered the appellants' defence in its judgment and further considered the determinations made in Kakamega MC ELC Case No. 932 of 2018 as well as the judgment in Kakamega ELC Appeal No. 2 of 2022.
30. In supporting the findings of the trial court, counsel argued that the respondent filed the suit in the lower court because he was evicted from the land but that the he was entitled to specific performance against the 1st appellant who had admitted his claim in Kakamega MC ELC 932 of 2018.



Analysis and determination

31. The court has carefully considered the grounds of appeal, the entire record as well as submissions filed by parties. The following issues arise for the court's determination namely;
 - a. Whether suit before the trial court was res judicata,
 - b. Whether the respondent's claim was time barred and
 - c. Whether the trial court was right in granting orders made in favour of the respondent.
32. This being a first appeal, the duty of this court is to re-evaluate, the record and determine whether the conclusions arrived at by the trial court should stand and give reasons either way.
33. The duty of the first appellate court was discussed in the case of *Gitobu Imanyara & 2 Others v. Attorney General* [2016] eKLR, where the Court of Appeal stated as follows;

“An appeal to this court from a trial by the High Court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must consider the evidence, evaluate it itself and draw its own conclusions, although it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect.”
34. The doctrine of res judicata is anchored in Section 7 of the *Civil Procedure Act*, which provides as follows;

“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.”
35. The doctrine of res judicata bars a court from trying a suit or an issue that was directly and substantially in issue between the same parties or their privies in a former suit, where a competent court has already determined such suit or issue on merit and with finality.



36. The elements of res judicata are as follows;
- a. The suit or issue was directly and substantially in issue in the former suit.
 - b. That 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 issue in which the issue is raised.
37. In the case of *The Independent Electoral and Boundaries Commission v. Maina Kiai & 5 Others* [2017] eKLR the Court of Appeal aptly captured the purpose of the doctrine of res judicata as follows;
- “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 multiplicity of suits and, to obtain at last outcomes favourable to themselves. Without it there would be no end to litigation, and the judicial process would be rendered noisome nuisance and brought to disrepute or calumny. The foundations of res judicata this rest in the public interest for swift, sure and certain justice.”
38. In the instant case, from the facts on record as demonstrated from the pleadings and evidence, it is clear that the respondent and the 1st appellant entered into several land sale agreements for purchase of a portion of land to be excised from parcel No. Isukha/ Virhembe/1167 registered in the name of Likhanga Lukhalo Petro the late father of the 1st appellant. It is also confirmed by both parties that at the time of the sale, no succession proceedings in regard to the estate of the late Likhanga had been taken out. The fact that the respondent took possession of the land upon purchase was not disputed. When succession was eventually done, the 1st appellant’s sisters were allocated titles for the land where the respondent was occupying. These are parcel Nos. Isukha/ Virhembe/1822, 1823, 1824 and 1825. The four sisters sued the respondent seeking eviction and injunction against the respondent vide Kakamega CM ELC Case No. 932 of 2018. In that suit, the respondent successfully joined the 1st appellant as a 3rd Party and counterclaimed against him one acre of land. The trial court then allowed the said plaintiffs’ suit, granted eviction against the defendant and dismissed the defendant’s counterclaim. Dissatisfied, the defendant therein (respondent herein) appealed against the said judgment vide Kakamega ELC Appeal Case No. E002 of 2022. That appeal was dismissed and the trial court’s findings upheld.
39. Now, the respondent filed Kakamega CM ELC No. 45 of 2023, in regard to parcel No. Isukha/ Virhembe/1821 which is registered in the name of the 1st appellant. The decision of that case is the subject of this appeal. In that case, besides suing the 1st appellant, the respondent added the wife of the 1st appellant and the Land Registrar as 2nd and 3rd defendants. While the appellant raised the issue of res judicata which touches on the jurisdiction of the court, the trial court did not address itself to that issue which in my respectful view was erroneous because issues raised in the pleadings ought to be addressed in the judgment and jurisdiction is the first issue that the court must address before delving into the merits of a matter.



40. On whether the parties in this matter are the same as those in the former suit, having noted that the 1st appellant was a party in the former suit against whom the respondent made a counterclaim, the addition to the subsequent suit of the appellant's wife and the Land Registrar in my view was merely cosmetic as the wife of the 1st appellant did not sell land to the respondent and no fault was alleged as against the Land Registrar. Therefore, that addition is immaterial and I hold and find that the parties in the former suit and Kakamega CM ELC No. 45 of 2023 are the same.
41. On the issue of the subject matter, it is clear that what was in dispute in Kakamega ELC No. 932 of 2018 and Kakamega ELC Appeal No. E002 of 2022 were the sale agreements entered into between the respondent and 1st appellant and his occupation of the land in dispute. That is the same subject matter in the case before this court and therefore, although there was the question of eviction and injunction by the plaintiffs in the former suit, the issues raised by the respondent against the 1st appellant in his counterclaim and on appeal are the same as those in the current suit. In any event, having sued the 1st appellant in regard to the sale agreements herein, the respondent was in law expected to raise all his claims in regard to the 1st appellant and he cannot lawfully make two separate claims against the same person in regard to the same subject matter as that would amount to litigation in instalments which the law frowns upon. The court that made the decision in the former suit and the appeal are courts that were competent to determine the dispute, and the findings made both in the trial court and on appeal were merit determinations.
42. For the above reasons, I find and hold that the suit filed in the trial court in Kakamega CM ELC No. 45 of 2023 was res judicata and the trial court had no jurisdiction to try the same and ought to have downed its tools from the moment the matter was filed. I therefore find and hold that the trial court was wrong in not addressing its mind to the question of res judicata and in proceeding to determine a matter in which it had by operation of the law been barred to try.
43. On who should bear the costs of this appeal, section 27 of the *Civil Procedure Act* provide that costs are awarded at the court's discretion and they follow the event. The circumstances of this case clearly show that the 1st appellant abused the law to avoid accountability in regard to the consideration he received on the respondent's purchase of the suit property by ensuring that his share of his father's estate fell outside the ground occupied by the respondent. This was clearly mischievous. For that reason, the appellants do not deserve costs. In the premises, I allow this appeal, set aside the findings and judgment of the trial court and substitute them with an order that the respondent's suit in the lower court is res judicata and therefore hereby dismissed. I make no orders as to costs.
44. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 24TH DAY OF SEPTEMBER, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Mr. Shaka holding brief for Mr. Mukavale K. For the appellants

Mr. Malala for the respondents.

Court assistant – Delphine

