



Principles Styles Limited v Pasha & 4 others (Environment and Land Case E025 of 2025) [2025] KEELC 6309 (KLR) (25 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6309 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E025 OF 2025
MD MWANGI, J
SEPTEMBER 25, 2025**

BETWEEN

PRINCIPLES STYLES LIMITED PLAINTIFF

AND

LEONARD ROIPA PASHA 1ST DEFENDANT

LAND REGISTRAR KAJIADO 2ND DEFENDANT

DISTRICT SURVEYOR, KAJIADO 3RD DEFENDANT

**THE MINISTRY OF LANDS, HOUSING – AND URBAN
DEVELOPMENT 4TH DEFENDANT**

THE HONOURABLE ATTORNEY GENERAL 5TH DEFENDANT

(In respect of the 1st Defendant's preliminary objection dated 2nd April 2025 challenging the Plaintiff's suit on the basis of res judicata)

RULING

Background

1. Before this court for determination is a preliminary objection dated 2nd April 2025, in which the 1st Defendant seeks the dismissal of the Plaintiff's Notice of Motion 3rd March 2025 and/or the entire suit on the following grounds:
 - a. That the suit is res judicata.
 - b. That the suit is bad in law, misconceived, and discloses no reasonable cause of action against the Defendants.
 - c. That the suit amounts to an abuse of the process of the court.



- d. That the suit be dismissed with costs.
2. The 1st Defendant premises the objection on the assertion that the Plaintiff was the 2nd Interested Party in Kajiado ELC No. 401 of 2017, in which judgment was delivered on 29th July 2024, determining the issue of ownership over the suit property. He contends that the Plaintiff has now re-opened the same issues without appealing the earlier decision, thus rendering the present matter res judicata.

Directions

3. The court directed that the hearing of the preliminary objection be canvassed by way of written submissions. I have considered the submissions file in the writing of this ruling.

Analysis and Determination

4. The central question before the Court is whether the objection, as framed, meets the legal threshold of a preliminary objection as set out in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, where Law JA stated that:

“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

Sir Charles Newbold, P., in the same case, cautioned that:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law... A preliminary objection cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

5. The plea of res judicata is governed by Section 7 of the *Civil Procedure Act*, which provides in mandatory terms 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.”

6. For a plea of res judicata to succeed, the court must examine the pleadings, the proceedings, and judgment or ruling in the former suit to determine whether the matters directly and substantially in issue in that former suit are identical to the matters directly and substantially in issue in the current suit, and whether the parties or their privies are the same. This necessarily involves the consideration of evidence beyond the face of the current pleadings.



7. It is now settled law that such an inquiry cannot be undertaken within the strict confines of a preliminary objection. In *George Kamau Kimani & 4 Others v County Government of Trans-Nzoia & Another* [2014] eKLR, the court held that:

“One cannot raise a ground of res judicata by way of preliminary objection. The best way to raise a ground of res judicata is by way of notice of motion where pleadings are annexed to enable the court to determine whether the current suit is res judicata.”

8. Similarly, in *Henry Wanyama Khaemba v Standard Chartered Bank (K) Ltd & Another* [2014] eKLR, the court stated that:

“The issues of res judicata... will require probing of evidence... These are not pure points of law to be handled as preliminary objections.”

9. In the present case, determining whether the doctrine of res judicata applies would require this Court to call for and examine the record of that previous suit. This exercise goes beyond a pure point of law and involves evidentiary interrogation.

10. In light of the foregoing, the Court finds that the issues raised in the 1st Defendant’s Notice of Preliminary Objection do not meet the threshold of a preliminary objection as established in law. The plea of res judicata and the allegation of want of reasonable cause of action require factual interrogation and are therefore not suitable issues for determination through a preliminary objection.

11. Accordingly, the Preliminary Objection is hereby dismissed with costs in favour of the Plaintiff to be borne by the 1st Defendant.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF SEPTEMBER 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ngetich for the Plaintiff

Mr. Aswani for the 1st Defendant

Mr. Odongo for the 2nd – 5th Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

