



REPUBLIC OF KENYA



Kangethe & another v Wamae & 3 others (Commercial Miscellaneous Application E511 of 2022) [2025] KEHC 13513 (KLR) (Commercial and Tax) (25 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13513 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E511 OF 2022**

PM MULWA, J

SEPTEMBER 25, 2025

BETWEEN

SAMUEL KANGETHE 1ST RESPONDENT

JOSEPHINE NJERI THOME 2ND RESPONDENT

AND

SAMMY NJIHIA WAMAE 1ST APPLICANT

MARY WANJIKU NDEGWA 2ND APPLICANT

AND

ISAIAH WAWERU NGUMI 1ST RESPONDENT

STARLINE AUCTIONEERS 2ND RESPONDENT

RULING

1. Before me is the Preliminary Objection dated 12th February 2025, by the Applicants, Sammy Njihia and Mary Wanjiku. It is premised on the grounds that the applications dated 2nd January 2025, 16th January 2025, and 10th February 2025 are res judicata within the meaning of Section 7 of the *Civil Procedure Act*, Cap 21 Laws of Kenya. It is contended that the said applications are identical to earlier applications dated 2nd October 2024 and 13th December 2024, which were dismissed by this Court on 19th October 2024 and 16th January 2025 respectively.
2. The Applicants further argue that the 1st and 2nd Respondents, namely, Samuel Kangethe and Josephine Njeri Thome, are not parties to the substantive suit and hence lack locus standi. It is also urged that the repeated filing of similar applications amounts to an abuse of the due process of the



Court. Lastly, the Applicants submit that the decisions of the Chief Magistrate’s Court in MCELC E070 of 2023 cannot bind this Court.

3. In support of the objection, the Applicants filed submissions dated 13th February 2025, reiterating that the present application mirrors the one filed on 2nd October 2024, which was dismissed, and is therefore barred by res judicata.
4. The Respondents, Samuel Kangethe and Josephine Njeri, filed submissions dated 12th February 2025 opposing the Preliminary Objection. They contend that the objection lacks merit as the doctrine of res judicata is inapplicable where there are changed circumstances and new material facts. Reliance was placed on *Ngugi v Ngugi* [1986] KLR 101, which held that res judicata does not apply where material facts have changed. They also argue that the earlier applications were dismissed summarily without substantive determination, citing *Kenyatta University v Kanyiri* [2009] eKLR.
5. On locus standi, the Respondents maintain that they have sufficient interest and were duly granted audience through their application of 19th January 2025, citing *George Gikubu Mwaura v Attorney General* [2015] eKLR.
6. They deny that the applications are frivolous or vexatious, asserting that they seek relief based on new facts. Reliance was placed on *Karanja v KPLC* [2009] 2 EA 433.
7. On jurisdiction, both parties are in agreement that the decision of the Chief Magistrate’s Court at Kikuyu cannot bind this Court, but the Respondents argue that disclosure of the decision was proper in line with *Kenya Airports Authority v Obwocha* [2018] eKLR.
8. Finally, the Respondents submit that issues of whether an application is frivolous or vexatious require factual inquiry and cannot properly be raised by way of a preliminary objection. They rely on the celebrated case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 and *Oraro v Mbaja* [2005] 1 KLR 141.

Analysis and determination

9. Having considered the pleadings and submissions, the issues for determination are:
 - a. Whether the application dated 10th February 2025 is barred by the doctrine of res judicata under Section 7 of the *Civil Procedure Act*.
 - b. Whether the 1st and 2nd Respondents lack locus standi.
 - c. Whether the Preliminary Objection meets the threshold in the Mukisa Biscuit Case.
10. On the first issue of res judicata, Section 7 of the *Civil Procedure Act* provides:

“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...and has been heard and finally decided by such court.”
11. The Supreme Court in *Independent Electoral and Boundaries Commission v Maina Kiai & 5 others* [2017] eKLR reiterated the elements that must be satisfied for res judicata to apply, namely: identity of parties, subject matter, and issues, and that the matter was heard and finally determined.
12. The doctrine bars re-litigation of matters already conclusively determined. However, as was held in *Ngugi v Ngugi* [1986] KLR 101, res judicata does not apply where there are changed circumstances or where new facts emerge that materially alter the issue for determination.



13. In the present case, the record shows that the applications dated 2nd October 2024 and 13th December 2024 were dismissed on 19th October 2024 and 16th January 2025 respectively.
14. The Respondents contend that the present application is grounded on new developments. Whether such alleged new facts indeed exist and whether they materially alter the case are factual questions that cannot be resolved on a preliminary point. On this basis, I find that the plea of res judicata has not been satisfactorily established.
15. On the issue of locus standi, the Applicants have argued that the 1st and 2nd Respondents are strangers to the suit. However, it is on record that they were duly granted audience through their application of 19th January 2025. In *George Gikubu Mwaura v Attorney General* [2015] eKLR, the Court held that locus standi is satisfied where a party demonstrates a sufficient interest in the matter. Whether such interest exists in the present case is again a matter of factual evaluation and not one that can be conclusively determined at this stage.
16. Accordingly, I find that the Respondents have demonstrated sufficient interest and cannot be shut out at this stage on grounds of lack of locus standi.
17. In the *Mukisa Biscuit* case (supra), Law, JA stated that a proper preliminary objection must raise a pure point of law, which if argued as a preliminary point may dispose of the suit. Similarly, in *Oraro v Mbaja* [2005] 1 KLR 141, Ojwang J. (as he then was) cautioned that a preliminary objection cannot be sustained where facts are contested or where evidence is required.
18. From the foregoing, it is clear that the issues of whether there are changed circumstances, or whether the application is frivolous or vexatious, require examination of evidence and are unsuitable for determination as preliminary objections.
19. For the foregoing reasons, I find that the Preliminary Objection dated 12th February 2025 lacks merit. The same is hereby dismissed. Costs will be in the cause.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Wangai for Applicants

N/A for Respondents

Court Assistant: Carlos

