



REPUBLIC OF KENYA



KENYA LAW
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Thuo & another v Gikera & another (Environmental and Land Originating Summons E003 of 2025) [2025] KEELC 6591 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6591 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E003 OF 2025

MN GICHERU, J

SEPTEMBER 30, 2025

**IN THE MATTER OF LAND PARCEL NOS. LOC.2/
KINYONA/4191 AND LOC.2/KINYONA/4192**

**IN THE MATTER OF SECTION 38 OF THE LIMITATION
OF ACTIONS ACT, CAP 22 LAWS OF KENYA**

AND

IN THE MATTER OF ACQUISITION OF LAND BY ADVERSE POSSESSION

BETWEEN

MILKA NJERI THUO 1ST PLAINTIFF

SIMON MAINA NGANGA 2ND PLAINTIFF

AND

PAULINE WANGARI GIKERA 1ST DEFENDANT

MWANGI GIKERA 2ND DEFENDANT

RULING

1. This ruling is on the preliminary objection dated 25-3-2025. The objection which is by the Defendants is on the following points of law.
 1. That the originating summons is frivolous, vexatious and it amounts to abuse of the court process.
 2. That the suit is res judicata and the same should be dismissed and/or struck out for offending Section 7 of the [Civil Procedure Act](#).



3. That the same subject matter herein has been determined in other suits, i.e. *Murang'a ELC No. 72 of 2017*, *Nyeri Civil Appeal No. 68B of 2009* and *Thika PMCC No. 30 of 1990*.
4. That therefore the originating summons should accordingly be struck out/and dismissed with costs.
2. That preliminary objection is anchored on the replying affidavit of Mwangi Gikera dated 28th March 2025 and a supplementary affidavit of Pauline Wangari Gikera which is undated. In the two affidavits the Defendants depose as follows. Firstly, the suit is res judicata because *Murang'a ELC Case No. 72 of 2017* said so. Secondly, LR no Loc.2/Kinyona/94 was subdivided lawfully giving rise to LR no 4191 and 4192. Thirdly, there was no trust or gift as alleged by the Plaintiffs. Fourthly, it is not true that the Plaintiffs have been in open, continuous and peaceful occupation of the suit parcels. Finally, the suit was also heard and determined in *Thika Civil Case No. 30 of 1990*.
3. In opposing the preliminary objection, the Plaintiffs state as follows. Firstly, *ELC Murang'a 72 of 2017* was about LR no 94 and not LR no 4192. Secondly, while the cause of action in *ELC CASE no. 72 of 2017* is about customary trust, the cause of action in the current suit is on adverse possession. The question of adverse possession has not been determined in any court and this court should proceed to deal with this unanswered question.
4. I have carefully considered the preliminary objection in its entirety including the available record, the affidavits and the written submissions by the Plaintiffs' counsel. I find that the preliminary objection fails short of the test of preliminary objections for the following reasons. Firstly, all the proceedings and judgments in the earlier cases have not been pleaded. They include *Nyeri Civil Appeal No. 68B of 2009* and *Thika PMCC No. 30 of 1990*, the Kigumo Land Disputes Tribunal case and the Nyeri Provincial Land Appeals Committee case. These are the proceedings which will inform this court of what was in issue in those cases. Without them, it is not clear to this court what has been determined so far and what has not been determined.
5. Secondly, striking out pleadings is a draconian move that deprives a party the right to a fair hearing of a dispute as required under Article 50(1) of the *Constitution*. Striking out pleadings must be on very clear and sound grounds disclosed in the pleadings or admitted by the adverse party. As per the holding in the case of *Oraro v Mbaja* [2005] IKLR 141,

“...a preliminary objection ...must not be blurred with factual details liable to be contested... Any assertion... which claim to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not... a true preliminary objection”.

In this case, there are many unknowns especially what the cause of action was in the previous suits and if they included the cause of action herein, namely adverse possession and if there has been a specific finding on it by a Court of competent jurisdiction.

6. For the above stated reasons, I find no merit in the preliminary objection dated 25-3-2025 which I dismiss accordingly.

Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 30TH DAY OF SEPTEMBER, 2025.



M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiffs’ Counsel – Miss Mutava

Respondents’ Counsel – Mr Makura

