



**Wabomba v Wabomba & 4 others (Environment and Land Petition E001 of 2024) [2025] KEELC 6230 (KLR) (16 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6230 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND PETITION E001 OF 2024**

**EM WASHE, J  
SEPTEMBER 16, 2025**

**BETWEEN**

**VIRGINIA MUTHONI WABOMBA ..... PETITIONER**

**AND**

**RICHARD MABONI WABOMBA ..... 1<sup>ST</sup> RESPONDENT**

**PHILIP TARUS ROTICH ..... 2<sup>ND</sup> RESPONDENT**

**JOHN KELALI EKIRU ..... 3<sup>RD</sup> RESPONDENT**

**BENJAMIN RUTO ROTICH ..... 4<sup>TH</sup> RESPONDENT**

**ROSE BIWOTT ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The 1<sup>st</sup> to 5<sup>th</sup> Respondents (hereinafter referred to as “the Applicants”) filed a Notice of Motion Application dated 11.04.2025 (hereinafter referred as “the present Application”) against the Petitioner’s (hereinafter referred to as “the Respondent”) Petition dated 01.08.2024 seeking the following Orders: -
  - a. That the Petition be struck out for being Res Judicata.
  - b. That the costs of the Application be awarded to the Respondent.
2. The prayers sought hereinabove are based on facts pleaded in the body of the present Application as well as the Supporting Affidavit therein and can be summarized as follows; -
  - i. The Respondent herein previous instituted the proceedings known as Eldoret High Court Civil Case 129 of 2007 in relation to various properties namely LR.No.Uasin Gishu/ Kimumu/736, 737, 738, 739, 740 and 741 to be declared part of her matrimonial properties.



- ii. During the pendency of the previous proceedings known as Eldoret High Court Civil Case No. 129 of 2007, the Respondent joined the 2<sup>nd</sup>-5<sup>th</sup> Applicants in the proceedings as they were in occupation and use of two properties namely LR.No. Uasin Gishu/Kimumu/738 and 739.
  - iii. The previous proceedings known as Eldoret High Court Civil Case No. 129 of 2007 dealt with the issue of ownership to various properties including LR.No.Uasin Gishu/Kimumu/738 and 739 including whether or not the same were part of the matrimonial assets between the 1<sup>st</sup> Applicant and the Respondent herein.
  - iv. In the final determination of the proceedings known as Eldoret High Court Civil Case No. 129 of 2007, the Court made a finding that there was no existing marriage between the 1<sup>st</sup> Applicant and the Respondent and therefore the properties being claimed as matrimonial properties were not in fact matrimonial properties thereof.
  - v. The 1<sup>st</sup> Applicant avers that in this instant Petition, the Respondent again claims to have acquired rights over the subject properties through the subsistence of a marriage between the two of them as a result of which, she claims to have become an owner in common and that her rights were violated.
  - vi. The 1<sup>st</sup> Applicant asserts that the issues raised herein were directly and substantially dealt with and the Respondent is hiding behind this Petition to seek the same orders that were already denied in Eldoret High Court Civil Case No. 129 of 2007.
  - vii. The 1<sup>st</sup> Applicant termed the Respondent an overzealous litigant for trying to revive a dispute that lasted 17 years before the High Court adding that litigation must come to an end and the Applicants allowed to enjoy the fruits of the judgment.
  - viii. The Applicants further averred that there are laid down procedures that a litigant ought to follow if they are not satisfied with a judgment which includes either preferring an Appeal or a Review of which the Respondent has failed to do.
  - ix. The Applicants termed the instant Petition a waste of the court's time and causing the them incur unnecessary expenses hence sought to be dismissed forthwith with costs.
3. The Respondent on the other hand opposed the present application through a Replying Affidavit dated 15.04.2025 based on the following facts:-
- i. That the pending Petition does not seek to challenge the Judgment of the matrimonial case but seeks a declaration that she is an owner in common of the suit properties alongside the 1<sup>st</sup> Applicant based on ownership rights and thus it is not a matrimonial dispute.
  - ii. The Respondent averred that Res Judicata only applies to matters that have been conclusively and finally determined, however in the matrimonial dispute, the High Court only found that she had failed to prove that she was a wife but had not determined the question of whether she was a co-owner of the property and thus entitled to a share of it.
  - iii. She deponed that for the doctrine of Res Judicata under Section 7 of the *Civil procedure Act* to apply, it must be shown that the matter in issue was directly and substantially the same in both cases, the matter must have been heard and finally determined and the parties must be the same or litigating under the same title.



- iv. She asserted that she was not litigating under the same title since the subject in Eldoret High Court Civil Case No. 129 of 2007 was the issue of marriage, while in the pending Petition, the subject matter is the issue of ownership of the property.
  - v. The Respondent further urged that the parties involved in the matrimonial case were VMW and RMW, while the Philip Tarus Rotich, John Kelali Ekiru, Benjamin Ruto Rotich and Rose Biwott who were interested parties in that suit have been included as Respondents herein.
  - vi. The Respondent explained that they had been added as parties in this suit to address the issue of ownership and therefore the parties are different hence the pending Petition cannot be Res Judicata.
  - vii. The Respondent averred that since she is seeking a determination of her rights over the property, this is a separate claim from the issue of her marital status and claimed that Res Judicata does not prevent a party from raising new issues that were not dealt with in the earlier proceedings.
  - viii. Citing the above reasons, the Respondent sought the present Application be dismissed with costs and the pending Petition heard on merit.
4. The Court directed that the present application be canvassed by way of written submissions.
  5. The Applicants duly filed their submissions dated 04.06.2025 and the Respondent filed her submissions dated 05.05.2025.
  6. The Court has duly perused the present Application, the Reply by the Respondent and the submissions filed therein and identifies the following issues for determination; -
    - Issue No. 1 – Is the pending petition res-judicata the proceedings known as Eldoret high court civil case No. 129 of 2007?
    - Issue No. 2 – Is the present application merited or not?
    - Issue No. 3- Who bears the costs of the present application?
  7. The Court having identified the above issues for determination, the same will now be discussed hereinbelow.

**Issue No. 1 – Is the Pending Petition Res-judicata the Proceedings Known as Eldoret High Court Civil Case No. 129 of 2007?**

8. The first issue for determination is whether the pending Petition is Res Judicata to the proceedings known as Eldoret High Court Civil Case No. 129 of 2007.
9. The doctrine of Res Judicata in Kenyan law is anchored on 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.”



10. From the above provision, the elements to be established before a matter can be found to be Res judicata are as follows:-
  - 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 or the parties were litigating under the same title.
  - c. The issue was heard and finally determined in the former suit.
  - d. The court that formerly heard and determined the issue was competent to try the previous suit or the suit in which the issue is raised.
11. The ingredients of Res Judicata have been held to be conjunctive rather than disjunctive, and for this reason, all the elements identified hereinabove must be present before a matter or an issue is deemed Res Judicata on account of a former suit.
12. It is therefore necessary for this Court to determine whether the above-listed ingredients are present in the pending Petition.

**a. Whether the matter in issue in this suit was directly and substantially in issue in the former suit.**

13. The first ingredient to be established is what are the issues between the former proceedings and the pending matter before the Court.
14. In undertaking this exercise, the Court is called to peruse and/or examine the decision pronounced in the former proceedings and establish if the issues therein are similar to the ones pleaded in the subsequent matter pending before the Court.
15. Unfortunately, the Applicants in the present Application did not attach the pleadings in the previous proceedings known as Eldoret High Court Civil Case No. 129 of 2007 but annexed the Judgement pronounced on the 25.01.2024 which fortunately had a summary of the issues for determination therein.
16. According to the Judgement pronounced on 25.01.2024, the Respondent herein had sought to be declared the lawful wife of the 1<sup>st</sup> Applicant based on a Customary Marriage celebrated in the year 1976.
17. According to the facts contained in the Judgement pronounced on 25.01.2024, the Respondent claimed that the property known as LR.No.kimumu/117 which was subsequently sub-divided into various properties including the suit properties herein namely LR.No.Uasin Gishu/Kimumu/738 AND 739 was acquired during her marriage with the 1<sup>st</sup> Applicant and therefore ought to be declared as part of the matrimonial properties acquired during the subsistence of the marriage between the 1<sup>st</sup> Applicant and the Respondent.
18. The Respondent claimed in the proceedings known as Eldoret High Court Civil Case No. 129 of 2007 that he had made substantial contribution to the acquisition of the original property known as LR.No.kimumu/117 despite the fact that the 1<sup>st</sup> Applicant had consequently registered the same in his personal name.
19. As a consequence, the Respondent pleaded in the proceedings known as Eldoret High Court Civil Case No. 129 of 2007 that he is entitled to a portion of the original property known as LR.No.kimumu/117 and in particular the suit properties named in the present Petition known as LR.No.Uasin Gishu/Kimumu/738 and 739 based on her contribution to the acquisition of the original property.



20. In the former proceedings known as Eldoret High Court Civil Case No. 129 of 2007, the Respondent pleaded various prayers including a declaration that she was the lawful owner of the suit properties known as LR.No.Uasin Gishu/Kimumu/738 and 739, an Order for the transfer of the same to her name and a Permanent Injunction restraining the Applicants herein from interfering with the said two properties.
21. Turning to the pending Petition before the Court, the prayers sought by the Respondent includes a declaration that the Respondent's Constitutional Rights as provided under Article 10,23,27 (3,4 and 5), 28,40,45(3),57(c and d) and 60 (1) of the Constitution has been infringed.
22. In addition to the above, the Respondent is seeking to be declared as the lawful and legitimate owner of the suit properties known as LR.No.Uasin Gishu/Kimumu/738 and 739 and that the same be registered in her name.
23. Lastly, the Respondent sought to have the sub-division of the original property known as LR.No.kimumu/117 declared null and void for lack of spousal consent hence the subsequent transfers of the sub-divided portions to the 2<sup>nd</sup> to 5<sup>th</sup> Applicants also null and void.
24. The Court having had the opportunity to go through the Judgement pronounced on 25.01.2024 and the pending Petition herein, it is clear that the issues in the former matter known Eldoret High Court Civil Case No. 129 of 2007 was whether or not the Respondent had any legal ownership rights in the original property known as LR.No.kimumu/117 which created various sub-division including the suit properties namely LR.No.Uasin Gishu/Kimumu/738 and 739 in the pending Petition.
25. In the pending Petition before this Court, the Respondent in Paragraph 10 and 11 is alleging that she is the 1<sup>st</sup> wife of the 1<sup>st</sup> Applicant and as such, she has an overriding Interest over the properties belonging to the 1<sup>st</sup> Applicant and by extension ownership rights over the original property known as LR.No.kimumu/117 which created the suit properties known as LR.No.Uasin Gishu/Kimumu/738 and 739.
26. Consequently, the Respondent is seeking for a declaration that is in an owner in common with the 1<sup>st</sup> Applicant over the original property known as LR.No.kimumu/117 and subsequently the suit properties namely LR.No.Uasin Gishu/Kimumu/738 and 739 should be transferred to her based on the fact that the 1<sup>st</sup> Applicant dispossessed off over properties to the 2<sup>nd</sup> to 5<sup>th</sup> Applicants without her consent.
27. From the above analysis, it is clear that the issues for determination in the former proceedings was whether or not the Respondent herein was lawfully married to the 1<sup>st</sup> Applicant to the extent that the original property known as LR.No.kimumu/117 could be deemed as a matrimonial property wherein she had an overriding interest on the same.
28. In the pending Petition, the Respondent has again made a claim that she is the 1<sup>st</sup> wife of the 1<sup>st</sup> Respondent and is seeking this Court to deem the original property known as LR.No.kimumu/117 to be a matrimonial property within which she had an overriding interest and the same would not be alienated without her spousal consent.
29. Clearly, the issues raised in the pending Petition are similar and in fact the same as those that had been raised in the former suit known as Eldoret High Court Civil Case No. 129 of 2007.



**b. Whether the former suit was between the same parties or parties under whom they or any of them claim or the parties were litigating under the same title.**

30. The second ingredient is whether the parties in the previous suit are the same as those in pending suit.
31. In the previous matter known as Eldoret High Court Civil Case No. 129 of 2007, the Plaintiff herein was the Respondent who is the Petitioner in the pending Petition.
32. The 1<sup>st</sup> Defendant in the former matter is the 1<sup>st</sup> Applicant herein who is also the 1<sup>st</sup> Respondent in the pending Petition.
33. The 2<sup>nd</sup> to 5<sup>th</sup> Applicants are the 2<sup>nd</sup> to 5<sup>th</sup> Respondent in the pending Petition were the Interested Parties in the previous matter known as Eldoret High Court Civil Case No. 129 of 2007.
34. The properties that were litigated upon in the previous proceedings known as Eldoret High Court Civil Case No. 129 of 2007 namely LR.No. Uasin Gishu/Kimumu/738 and 739 are the same properties that are being litigated on the pending Petition before Court.
35. Consequently, it is clear that the parties in the previous proceedings known as Eldoret High Court Civil Case No. 129 of 2007 are the same as those that are in the pending Petition before this Court.
36. Similarly, the properties and/or titles that are under litigation in the pending Petition are similar and the same as those that were litigated in the previous proceedings known as Eldoret High Court Civil Case No. 129 of 2007.

**c. Whether the suit/issue was heard and finally determined in the former suit.**

37. The third ingredient is whether or not the issues raised in the previous proceedings her heard and determined with finality.
38. The Applicants in the present Application produced a Judgement pronounced on the 25.01.2024 in the previous suit known as Eldoret High Court Civil Case No. 129 of 2007.
39. A perusal of the Judgement pronounced on the 25.01.2024 confirms that all the issues raised in the proceedings known as Eldoret High Court Civil Case No. 129 of 2007 were heard on merit and a decision made.
40. Consequently, there are no pending issues for determination within the previous suit known as Eldoret High Court Civil Case No. 129 of 2007.

**d. Whether the court that formerly heard and determined the issue was competent to try the previous suit or the suit in which the issue is raised.**

41. The final ingredient is whether the issues raised in the former/previous proceedings were heard and determined by a Court of competent Jurisdiction.
42. Based on the Judgement dated 25.01.2024, the previous proceedings were before the High Court in Eldoret.
43. It is not contested that the High Court has original and unfettered jurisdiction to hear and determine all issues including those touching on matrimonial disputes and/or assets acquired therein.
44. All the parties in the proceedings known as Eldoret High Court Civil Case No. 129 of 2007 admitted and recognized that fact that the High Court is the forum where their issues were to be heard and determined as was eventually done.



45. In essence, this Court is of the view and finding that the previous proceedings known as Eldoret High Court Civil Case No. 129 of 2007 were done before a Court of Competent jurisdiction as required by law.

### **Issue No. 2 – Is the Present Application Merited or Not?**

46. The second issue is whether or not the pending Petition is Res-Judicata or not.
47. Based on the findings in Issues No. 1 hereinabove, it is clear that the issues and reliefs sought in the previous proceedings known as Eldoret High Court Civil Case No.129 of 2007 are the same as though before the pending Petition.
48. The parties that litigated in the proceedings known as Eldoret High Court Civil Case No. 129 of 2007 are the same as those in the pending Petition.
49. Fortunately, the issues raised by the Respondent in the pending Petition were duly heard on merit and determined with finality on the 25.01.2024 in the proceedings known as Eldoret High Court Civil Case No. 129 of 2007.
50. It is unfortunate that the Respondent herein despite knowledge of the previous proceedings known as Eldoret High Court Civil Case No. 129 of 2007, there was no disclosure in the pending Petition before this Court.
51. The Respondent's attempt to distinguish the pending issues in the pending Petition with those in the previous proceedings known as Eldoret High Court Civil Case No. 129 of 2007 did not assist because pleadings speak for themselves.
52. Lastly, there is no doubt that the previous proceedings were undertaken before a Court of Competent jurisdiction and therefore the Judgement pronounced on the 25.01.2024 is binding and legal in the eyes of the law.
53. Based on the above findings, this Court is of the view and finding that the present Application is merited as the pending Petition is Res-Judicata the previous proceeding known as Eldoret High Court Civil Suit No. 129 of 2007.

### **Issue No. 3- Who Bears the Costs of the Present Application?**

54. The Applicants having succeeded in the present Application, costs are awarded to them payable by the Respondent.

### **Conclusion**

55. In conclusion therefore, the Court hereby makes the following Orders in determination of the present Application; -
- a. That the petition dated 01.08.2024 be and is hereby struck out for being res-judicata to the proceedings known as Eldoret High Court Civil Case No.129 of 2007.
  - b. That the respondent is ordered to pay the costs of the present application as well as the petition to the applicants herein.

**DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC THIS 16<sup>TH</sup> DAY of SEPTEMBER 2025.**

**EMMANUEL.M. WASHE**



## **JUDGE**

In the presence of:

Court Assistant: Brian

Advocate for the Applicants: Ms. Adongo

Advocate for the Respondents: Ms. Akinyi

