



REPUBLIC OF KENYA



**Munene & 2 others v Kibuchi & 3 others (Environment and Land Case  
E016 of 2024) [2025] KEELC 4436 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4436 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND CASE E016 OF 2024**

**JM MUTUNGI, J**

**JUNE 12, 2025**

**BETWEEN**

**GRACE WAINOI MUNENE ..... 1<sup>ST</sup> APPLICANT**

**FRANCIS NGATIA KINYUA ..... 2<sup>ND</sup> APPLICANT**

**DAVID KIBUCHI KINYUA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**LYDIA WANJIRU KIBUCHI ..... 1<sup>ST</sup> RESPONDENT**

**MARTIN MUTHII KIBUCHI ..... 2<sup>ND</sup> RESPONDENT**

**ELIZABETH NYAMBURA KIBUCHI ..... 3<sup>RD</sup> RESPONDENT**

**PAUL MACHARIA KIBUCHI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The Applicants instituted the present suit vide an Originating Summons dated 28<sup>th</sup> July 2022 and prayed for the following orders:-
  1. That the Applicants be declared to have become entitled by adverse possession of over 12 years to half of that parcel of land registered under the Land Act No. 6 of 2012, the Land Registration Act No. 5 of 2012 and the Registered Land Act Cap 300 (repealed) and comprised in the title number Mutira/Kaguru/1XX4.
  2. That the Applicants be registered as the sole proprietor of half share of the land parcel number Mutira/Kaguru/1XX4.
  3. That the land registrar, Kirinyaga, does register the Applicants as proprietors of a half share of the land parcel number Mutira/Kaguru/1XX4.



4. That the respondents be ordered to pay the cost of this suit to the Applicants.
5. That such further orders be made as may be just and expedient.
2. The Originating summons was supported on the supporting Affidavit sworn by Francis Ngatia Kinyua, the 2<sup>nd</sup> Applicant herein.
3. The Respondents filed a Replying Affidavit and a Notice of Preliminary Objection dated 4<sup>th</sup> July 2024, where they contended that the current suit was res judicata, as previous suits on the same subject matter and raising similar issue had been heard and determined by Courts of competent jurisdiction.
4. On 13<sup>th</sup> November 2024, the court, with the consent of both parties, directed that the Preliminary Objection be disposed first through written submissions, and the parties in compliance with the directions filed their written submissions.
5. In their submissions, the Respondents argued that the current suit was barred by the doctrine of res judicata, having been preceded by multiple suits involving the same subject matter, same parties (or their privies), and similar causes of action. The Respondents referred to following cases:
  1. Nyeri HCCC No. 60 of 1995 – filed by Jeniffer Wangechi Kibuchi against Munene Irangi (now deceased). The matter was referred to the Kirinyaga District Land Dispute Tribunal, whose award dated 9<sup>th</sup> October 1998 was adopted in Nyeri SMRCC Award No. 77 of 1999. The subsequent appeal in Nyeri HCCA No. 23 of 2000 was dismissed on 13<sup>th</sup> July 2009.
  2. Nairobi Succession Cause No. 2844 of 2004 – Relating to the estate of Jeniffer Wangechi Kibuchi, where an application for revocation of grant filed by Munene Irangi was dismissed in 2014.
  3. Kerugoya ELC No. 26 of 2019—Filed by the first Applicant seeking a declaration of trust. The suit was struck out for being res judicata.
  4. Kerugoya ELC No. E020 of 2021 – The Applicants brought a claim based on adverse possession which was dismissed on grounds of res judicata.
6. The Respondents have submitted that the aforementioned proceedings demonstrate a consistent pattern of repetitive litigation over the same land parcel, by virtually the same parties and/or parties under whom the Applicants claim. It is the Respondents submission that the Applicants are engaging in litigation in piecemeal, previously pursuing claims under trust and now recasting their claim under adverse possession. They rely on authorities including Kenya Commercial Bank Limited v Muiru Coffee Estate Ltd & Another (2016) eKLR and E.T V Attorney General & Another (2012) eKLR, arguing that repeated litigation undermines finality in Judicial proceedings.
7. The Applicants on their part, contend that the doctrine of res judicata was inapplicable. The thrust of their argument is that the issue of adverse possession had never been heard and determined on merit in any of the proceedings referred to by the Respondents as constituting previous litigation.
8. The Applicants assert that:-
  1. The Land Disputes Tribunal had no jurisdiction to determine issues of trust or adverse possession.
  2. The issue of adverse possession was never ripe in Nyeri HCCC 60 of 1995, and even if raised, it was not adjudicated.



3. The Probate Court in Nairobi Succession Cause No.2844 of 2004 dealt only with issues of fraud and trust, not adverse possession.
  4. The dismissal in Kerugoya ELC No. 26 of 2019 and ELC No. E020 of 2021 was procedural, not substantive, and did not involve a final adjudication on adverse possession.
  5. They argue further that denying them a hearing on a claim of adverse possession, which requires an evidentiary analysis, would violate their right to a fair trial under Article 50 of *the Constitution*.
9. The Applicants in support of their submission place reliance on the following cases:-  
Joseph Muriithi Imathiu V Land Adjudication Officer (ELC Petition 5 of 2020, Meru), David Nthiga v Thenderu Mbare (ELC Appeal 30 of 2018, Embu), and Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696.
10. Section 7 of the *Civil Procedure Act* Cap 21 Laws of Kenya bars the institution of suits by the same parties on similar issues that have been litigated and determined in a previous suit. It 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.
11. The rationale for the res judicata doctrine is that litigation has to come to an end and that parties that have had a litigation that has been concluded should not be allowed to open a new front of litigation before another Court on the same issues that have previously been litigated before another Court. If parties were to be allowed to file fresh suits on issues that have been concluded before another Court, litigation would never come to an end and a successful litigant would never take a deserved rest as he would not be assured the litigation would not be reopened in another Court. The Court in the Case of ET –vs- Attorney General & Another (2012) eKLR stated as follows:-
- “The Courts must always be vigilant to guard against litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the Court. The test is whether the Plaintiff in the second suit is trying to bring before the Court in another way and in a form of a new cause of action which has been resolved by a Court of competent jurisdiction. In the case of Omondi –vs- National Bank of Kenya Ltd & Others (2001) EA 177 the Court held that, ‘Parties cannot evade the doctrine of resjudicata by merely adding other parties or causes of action in a subsequent suit’. In that case the Court quoted Kuloba, J, in the case of Njangu –vs- Wambugu & another HCCC No. 2340 of 1991 (unreported) where he stated, ‘If parties were allowed to go on litigating forever over the same issue with the same opponent before Courts of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he comes to Court, then I do not see the use of the doctrine of resjudicata.’”
12. In the present case, the parcel of land known as Mutira/Kaguru 1XX4 has a protracted history of litigation spanning nearly three decades. The land was originally registered in the name of Jeniffer Wangechi Kibuchi, who was the deceased mother of the current respondents. The first major dispute regarding the land was heard by the arbitrators under the Chairmanship of the District Officer, Ndia



- Division in HCCC No. 566/78, where Jeniffer filed a suit against Gabriel Mithamo, the son of Kamonde Kibira, the late husband of the 1<sup>st</sup> Applicant. In that suit, Jeniffer sought to have a portion of 5 acres of Land Parcel Mutira/Kaguyu/093 (the original suit land) transferred to her. She claimed that her late husband had purchased this land for Kshs. 3,000, along with an additional Kshs. 700/- and a jar of honey, and that he had died before his portion was officially transferred to him. The arbitrators issued an award directing that 5 acres of the original suit land be excised and transferred to Jeniffer. This award was adopted as an order of the Court in Nairobi HCCC No. 566 of 1978.
13. In Nyeri HCCC No. 60 of 1995, Jeniffer Wangechi Kibuchi sued Munene Irangi, the late husband of the 1<sup>st</sup> Applicant, Grace Wanoi Munene together with the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants seeking their eviction from the suit land. The Applicants, then Defendants in the suit claimed to have occupied the suit land since 1960 and raised adverse possession as an alternative defence. By consent, the matter was referred to the Kirinyaga District Land Dispute Tribunal, which rendered an award on 9<sup>th</sup> October 1998. The Tribunal made findings on trusteeship and eviction, but did not address the adverse possession claim. That award was adopted as a Judgment of the Court in Nyeri SRMCC Award No. 77 of 1999. The Defendants (Applicants herein) appealed the decision, however the Appeal in Nyeri HCCA No. 23 of 2000 was dismissed on 13<sup>th</sup> July 2009, thereby rendering the award final.
  14. Following Jeniffer Wangechi Kibuchi's death, her son Geoffrey Karubiu Kibuchi petitioned for letters of administration in Nairobi Succession Cause No. 2844 of 2004. The suit land was the only estate asset. The grant of letters was confirmed on 2<sup>nd</sup> November 2005. Munene Irangi's attempt to revoke the grant, citing fraud and the existence of a trust, was dismissed by the probate court on 31 January 2014. This confirmed the distribution of the land within the Kibuchi's family.
  15. Subsequently, the 1<sup>st</sup> Applicant filed Kerugoya ELC No. 26 of 2019, asserting that the Respondents held the suit land in trust for her and seeking subdivision into equal shares. That suit was dismissed on the grounds that it was res judicata, with the court citing the prior Tribunal and succession proceedings. In Kerugoya ELC No. EO20 of 2021, the Applicants then shifted their claim to adverse possession, asserting a right to half of the suit land. However, the court again upheld a preliminary objection, holding that the Applicants were attempting to re-litigate the same interest under a different legal label, and the suit was dismissed for being res judicata.
  16. The present suit, ELC No. E016 of 2024 now seeks similar relief premised on the doctrine of adverse possession in respect of the same parcel of land against the same family of Respondents. The Respondents contend that this suit is yet another attempt to reopen matters that have already been litigated or ought to have been litigated in prior proceedings and have once more raised a Preliminary Objection on the ground of res judicata.
  17. I am satisfied that the issues deliberated upon in the arbitration and the Disputes Tribunal, whose decisions were ultimately adopted by the Nyeri Magistrate's Court, pertained to the ownership of land parcel Muiira/Kaguyu/1XX4. In my view, this is the same issue that arises in the present suit. The Applicants contend that the matter of adverse possession has not been substantively resolved in the previous proceedings. However, the record shows that, in Nyeri HCCC No. 60 of 1995, the Applicants (who were then the defendants) raised the issue of adverse possession. That case was referred to the Kirinyaga District Land Disputes Tribunal, which did not have the jurisdiction to determine claims of adverse possession. The Tribunal found on matters of trusteeship and eviction, and these findings were adopted as a Judgment in Nyeri SPMCC Award No. 77 of 1999, which was subsequently upheld on appeal in Nyeri HCCA No. 23 of 2000.
  18. In ELC No. E 20 of 2021 where the Applicants herein were the Plaintiffs and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein were the Defendants, this Court while considering a Preliminary Objection and



having considered and reviewed the previous other litigations between the parties at Paragraph 21 of the Ruling stated thus:-

21. "In the present case, the Plaintiffs have abandoned the previous claims of beneficial interest and trust and now want to anchor their claim on the doctrine of adverse possession to pursue the same interest that they have previously litigated on. The Plaintiffs in my view are attempting to have a third or fourth bite of the cherry by panel beating their case to come up with a new cause of action. The doctrine of res judicata cannot allow them to do so. Never mind that I do not consider that a claim founded on beneficial interest and/or trust can mutate to become a claim under adverse possession. Even if it was possible for the action to be sustained, I fail to see how the Plaintiffs could establish the ingredients of adverse possession, in the face of the various litigations between the parties where it is evident both the Plaintiffs and/or their representatives and the Defendants and/or their representatives have participated in."

19. In the above case where the present Applicants were making a claim of adverse possession, I made a determination that the suit was resjudicata albeit on a Preliminary Objection taken by the Defendants. The Applicants did not Appeal against the Ruling but have instead instituted the present suit once more predicated on the doctrine of adverse position. I do not consider anything has changed that would persuade me to depart from the Ruling I rendered in ELC No. E 20 of 2021. I cannot as it were, sit on Appeal against my own decision. That in effect is the invitation the Applicants are making. Like in the earlier case I am persuaded the present case is res judicata as it involves the same subject matter, the same issues and the parties are the same.
20. I accordingly uphold the Preliminary Objection and determine that the present suit is res judicata and constitutes an abuse of the Court process.
21. The Originating summons is struck out with costs to the Respondents.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 12<sup>TH</sup> DAY OF JUNE 2025.**

**J. M. MUTUNGI**

**ELC - JUDGE**

