



**Kimeu (Suing as Administrator of and on Behalf of Syokimau Farm Limited) v
Kakumbi; Makau & 2 others (Interested Parties) (The Administrators of the Estate
of the Late Thomas Makau Musyoki (Deceased)) (Environment and Land Case
Civil Suit E032 of 2021) [2025] KEELC 6983 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6983 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE CIVIL SUIT E032 OF 2021
AY KOROSS, J
OCTOBER 14, 2025**

BETWEEN

**PAUL MASILA KIMEU PLAINTIFF
SUING AS ADMINISTRATOR OF AND ON BEHALF OF SYOKIMAU FARM
LIMITED**

AND

MARTIN WAMBUA KAKUMBI DEFENDANT

AND

**MARTIN MUTISYA MAKAU INTERESTED PARTY
ANNE MUTHUE MAKAU INTERESTED PARTY
DIANA MUMBUA MAKAU INTERESTED PARTY
THE ADMINISTRATORS OF THE ESTATE OF THE LATE THOMAS MAKAU
MUSYOKI (DECEASED)**

RULING

1. This is a ruling in respect of a notice of motion dated 27/01/2025 filed by the defendant, expressed to have been moved within the provisions of Sections 1A, 1B, 3A & 7 of the *Civil Procedure Act* and Order 17 Rules 2 (3) of the *Civil Procedure Rules*, and all other enabling laws, and it seeks the following reliefs from this court: -
 - a. The suit herein be dismissed for being res judicata.
 - b. The suit be dismissed for want of prosecution.



- c. The plaintiff bears the costs of this motion.
2. The motion is supported by the grounds set out in the body thereof and the 2nd defendant's affidavit sworn on the instant date. A summary of the grounds in support of the motion are that: a) the matter has been directly and substantially been in issue in a former suit to wit ELC/E028 of 2022, between the same parties under whom they claim, litigating under the same title, in a court competent to try such suit in which such issue has been subsequently raised, and has been heard and finally decided by said court; and
2. B)The plaintiff has not made an application or taken a step in the suit for more than one year; c) this honourable court has the jurisdiction to grant the reliefs sought in the instant motion; d) the motion has been made without undue delay or malice on the defendant's part, and finally, e)it is, in the interest of justice, fairness and the overriding objective of the law that the orders sought herein-above be granted to pre-empt any further illegality being perpetrated by the plaintiff.
2. Notwithstanding service, the plaintiff did not file any documents in opposition to the motion and in consequence, this court directed that it be canvassed by way of written submissions. In compliance, Mr. Onguti, for the defendant, filed his dated 7/07/2025. However, it is unfortunate that to the time of composing this ruling, the plaintiff and IPs have not filed theirs and if at all they will, this court will consider them as having been filed out of time. It has also been observed that, though the law firm of Ms. Khaminwa & Khaminwa Advocates presented a notice to act alongside Ms. Panam & Co. Advocates, for the plaintiff dated 24/01/2025, it has never been paid for despite invoicing by the court. It follows that this particular law firm is not properly on record for the plaintiff.
5. Accordingly, having given careful thought to the motion, its grounds, affidavits, well-articulated submissions and legal framework and prevailing jurisprudence, the two issues that arise for determination are whether the suit is res judicata and whether the suit should be dismissed for want of prosecution. These issues shall be handled together as the outcome of the former has a bearing on the latter.
5. As regards the 1st issue, which is the legal principle of res judicata, and as correctly submitted by the defendant's counsel, the legal framework for thereto is found in our Section 7 of the [Civil Procedure Act](#) in the following terms: -
- “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.”
5. In illuminating on this doctrine, the learned authors of Mulla, [Code of Civil Procedure](#), 18th Ed. 2012, page 293 explained the purpose of the doctrine and its exceptions in the following words: -
- “The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision.”



5. In addressing this principle in the decision *Kenya Commercial Bank Limited & another v Muiri Coffee Estate Limited & 3 others* [2016] KESC 6 (KLR) that has been relied upon by the defendant’s counsel, the Supreme Court of Kenya explicated as follows: -

“ 52. Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights.”

This decision went further at paragraph 54 by stating: -

“ 54. The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.”

5. In the circumstances of this case, the defendant proffered to this court its decision in *Makau & 2 others & 2 others (Suing as the Administrators of the Estate of the Late Thomas Makau Musyoki - Deceased) v Syokimau Farm Limited & 2 others* [2024] KEELC 3981 (KLR) (“former case) which is proper as when the doctrine of res judicata arises in a suit, the court is called to scrutinize the decision and pleadings and record of the former case that is claimed to have settled the issues in question, ascertain the issues determined in the former case, and whether these are the same in the subsequent case, establish if the parties are the same, or are litigating under the same title, and whether the former case was determined by a court of competent jurisdiction.
5. Having considered this former decision vis-à-vis this decision, the competence of the court in the former suit, which determined the case with finality on merits, is undoubted. Thus, this court is left to assess the other tests, which are inter alia: (a) the parties in the suits are the same, (b) the matter in issue is identical in both suits, and (c) the parties are litigating under the same title/claim.
5. As regards test (a), this court has had an opportunity to scrutinise the former case against the instant suit and concludes that some of the parties in the former case are the same as this case. In the former case, the defendant herein, together with his co-administrators of the estate of Thomas Makau Musyoki (deceased) as plaintiffs, sued Syokimau Farm Limited, the administrator Syokimau Farm Limited (plaintiff herein) and, Chief Land Registrar, Ministry of Lands and Physical Planning, as defendants. During the hearing of this former case, Paul Masila Kimeu, who is described in the instant suit as the plaintiff’s administrator, testified in the former case as the liquidator of Syokimau Farm Limited. Thus, this court finds that the plaintiff herein is either the 1st or 2nd defendant in the former suit or both, and this court finds the parties are the same. See also Explanation (6) in Section 7 of the *Civil Procedure Act*.
5. As concerns test (b), this court has no difficulty in finding that the issue in the former suit was LR No. 12715/491 (“suit property”), which is the same property in the instant suit. Thus, this court finds the subject matter in dispute is the same.
5. Turning to test (c), in the instant suit, the plaintiff has pleaded trespass and has sought orders of permanent injunction and general damages, amongst others, against the defendant. A similar claim and



almost identical reliefs were sought by the plaintiffs in the former case. In consequence, this court finds the claims are the same. Given these findings, it follows that it is unnecessary to address the 2nd issue.

5. As this court concludes, it must mention that the issue of res judicata in this case did not arise because of any legal wrong on the part of the plaintiff herein but rather because of an abuse of the court process by the defendant herein who instead of filing a counterclaim in the instant case, he in total disregard of the legal process and doctrine of sub judice filed the former case. It is for this reason that this court finds that the defendant herein is not deserving of any costs.
5. In the end, this court finds the instant suit is res judicata. It therefore strikes out the suit with each party bearing their respective costs. This file is hereby effectively marked as closed.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 14TH DAY OF OCTOBER, 2025.

HON. A. Y. KOROSS

JUDGE

14. 10.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Josephine Court Clerk.

Mr. Nyaguti holding brief for Dr. Khaminwa for plaintiff.

Mr. Onguti for defendant.

