



Muiru & 4 others v County Government of Nyeri & 5 others (Environment and Land Petition E003 of 2023) [2025] KEELC 7148 (KLR) (14 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7148 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND PETITION E003 OF 2023
LG KIMANI, J
OCTOBER 14, 2025**

BETWEEN

**JAMES KARIMI MUIRU 1ST PETITIONER
JAMES GITATA HIRUM 2ND PETITIONER
JOHN NDIRANGU KIBOGA 3RD PETITIONER
PAUL GACHENGO WACHIRA 4TH PETITIONER
JOHN MOYO MUGAMBI 5TH PETITIONER**

AND

**COUNTY GOVERNMENT OF NYERI 1ST RESPONDENT
MINERVA (NOMINEES) EAST AFRICA LTD 2ND RESPONDENT
COUNTY LAND REGISTRAR-NYERI 3RD RESPONDENT
NATIONAL LAND COMMISSION 4TH RESPONDENT
THE ATTORNEY GENERAL 5TH RESPONDENT
BOARD OF MANAGEMENT KAGUMOTEACHERS TRAINING
COLLEGE 6TH RESPONDENT**

RULING

1. What is before the court for determination is the Preliminary Objection by the 3rd, 5th and 6th Respondents dated 3rd October 2023 opposing the Petition on the following points:
 1. That this matter is res judicata as the matters raised have already been determined by a court of competent jurisdiction, hence the suit is bad in law, vexatious, and an abuse of the court process and as such, it ought to be dismissed with costs.



2. That the doctrine of res judicata is set out in the *Civil Procedure Act* at Section 7 (as quoted).
3. That the issues in this suit are similar to those which were previously in dispute, having involved the same parties and the same having been determined on merit by a court of competent jurisdiction in the case of John Ndirangu Kiboga & others v. The Hon. Attorney General & others-ELC Petition No.12 of 2015, whose determination was dated and delivered on 7th February 2019.
4. Further, Justice J.O. Olola, in his ruling dated 2nd February 2023, rendered this Petition res judicata and subsequently struck it out. The Petitioner had filed yet another suit, Nyeri High Court Civil Case No.19 of 2006, where the subject matter was the same as the suit herein.
5. That the parties herein cannot escape the doctrine by simply undertaking cosmetic surgery to their pleadings, as it was held in the case of Omondi v. National Bank of Kenya Ltd. In this manner, the petitioners are out of order for attempting to evade the doctrine by merely substituting and interchanging names.
6. That the rule of res judicata serves the aim of bringing finality to litigation, as it is a waste of the court's time and resources for the petitioners to wait a few years later only for them to file another suit in the guise of a constitutional petition seeking to be declared the owners of the same land.
7. That the foundations of the aforementioned doctrine rest in the public interest of swift, sure and certain justice, therefore, the petitioners' resurfacing this suit has been done in clear disregard of the already determined issues, is an abuse of the due process of this Honourable Court

The Respondents pray that the suit be dismissed with costs.

2. The background to this suit is a Petition dated 26th June 2023, filed by the 5 Petitioners, who aver that they are the descendants and members of the family of the late Mr. Karigi, who hailed from Gaaki sub-location of Aguthi Location of Nyeri County, belonging to the Anjiru Clan. The Petitioners bring this Petition on their behalf and on behalf of the family members of Karigi, the 'Karigi clan and Karigi Welfare Group, from the same family and home. They claim to have been the owners of land where the colonial government started a school for training teachers in 1932, now known as Kagumo Teachers Training College.
3. The Petitioners aver that the whole of the aforesaid land measuring 108 acres was their ancestral land and that the Colonial Government regularly paid rent to the family of the late Mr. Karigi until the year 1934, when all the people staying and cultivating on the land were removed therefrom and were not compensated for the same, contrary to the due process of the law in *the Constitution* of Kenya and Articles 3, 12 and 17 of the Universal Declaration of Human Rights (1948). They thus seek full compensation for this historical injustice.

The Petitioners' answer to the preliminary objection.

4. The Petitioners, through their advocates, filed an answer to the preliminary objection, denying that Nyeri ELC Petition No.12 of 2015 was concluded. They stated that the same office of the Attorney General that filed the preliminary objection had filed an application dated 16th February 2016 seeking orders that the National Land Commission, the County Government of Nyeri and Minerva Nominee(East Africa) Limited be added as the Respondent or party to the Petition.



5. They stated that the aforesaid application was never heard and instead, the National Land Commission determined the Petition, which was brought about by State Counsel.
6. The Petitioners also aver that the preliminary objection does not disclose whether the State Counsel is objecting to the application dated 29th June 2023 before the Court or the Petition, which is not yet fixed for hearing.
7. Their position is that the said Nyeri Petition No.12 of 2015 was illegally heard by the National Land Commission and its findings prematurely gazetted to beat the true, fair and constitutional justice whereas there is proper documentary evidence to prove that the compensation which was supposed to be paid by the Colonial Government from the year 1932 to the time Kenya attained its independence has never been paid by the dependents.
8. They therefore state that State Counsel should not refer to a case which was not concluded, quoting Articles 2(5) and (6) and Article 40(3) of *the Constitution*, as well as Articles 2,3,12 and 17 of the Universal Declaration of Human Rights of 10th December 1948 which states that everyone or their dependents should be compensated when the Government takes their property. The land in question was taken by the colonial government and established Kagumo School(now Kagumo Teachers' Training College), for which the government had suggested that the compensation be made to "Githaka" owners who were alive by 1932 and are now being represented by their dependents.
9. The Petitioners therefore pray that the preliminary objection be dismissed with costs as the petition is properly before the Court for hearing and proper determination in accordance with the relevant law.

The 3rd, 5th and 6th Respondents' submissions in support of the preliminary objection

10. Principal State Counsel A.M Njagi, filed written submissions stating that the issues in this suit are similar to those previously in dispute, having involved the same parties and the same having been determined on merit by a court of competent jurisdiction in Nyeri ELC Petition No. 12 of 2015: John Ndirangu Kiboga G others v The Hon. Attorney General 1G others - whose determination was dated and delivered at Nairobi on 7th February 2019.
11. Quoting section 7 of the *Civil Procedure Act* on the doctrine of res judicata, State Counsel stated that the doctrine is a prohibition from dealing with a similar issue already dealt with finality by a court of competent jurisdiction.
12. It is their submission that pursuant to the above provision of the law, this matter is res judicata as the matters raised have already been determined by a court of competent jurisdiction, hence the suit is bad in law, vexatious, and an abuse of the court process and as such, it ought to be dismissed with costs.
13. Further, Justice J.O. Olola in his ruling dated 2nd February, 2023, rendered this Petition res judicata and subsequently struck it out following the fact that the Petitioner had filed yet another suit, Nyeri High Court Civil Case No. 19 of 2006, where the subject matter was the same as the suit herein.
14. Their submission, therefore, is that this court cannot interfere in a matter already adjudicated, unless there is an appeal or review on the same. That in this case, the plaintiffs have only changed the parties, though the subject matter is the same, as they relied on the cases of: George W M Omondi & another v National Bank of Kenya Ltd & 2 others [2002] eKLR, Diocese of Eldoret Trustees v The Attorney General & another [2020] eKLR
15. They concluded that a decision of the court must be respected, as this is fundamental to any civilised and just judicial system. Judicial determinations must therefore be treated as binding and conclusive,



as they stated that there is no bar for this Honourable Court to allow this preliminary objection and dismiss the petition with costs.

The Petitioners' submissions

16. Counsel for the Petitioners submitted that they moved to court for historical injustices, having lost over 108 acres currently occupied by Kagumo Teachers' Training College. In response to the instant preliminary objection, they cited the cases of *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd*(1969) EA 696, *Quick Enterprises Ltd vs. Kenya Railways Corporation*, Kisumu HCCC No.22 of 1999 and *Avtar Singh Bhamra & Another vs. Oriental Commercial Bank*, Kisumu HCCC, as cited in the case of *Margaret Nyiha Gatambia & 2 others v. Peninah Ngechi Njaaga & 3 others*(2019)eKLR on the requirements of a preliminary objection.
17. On the question of res judicata, Counsel relied on the holding in the case of *Richard Wefwafwa Songoi v. Ben Munyifwa Dongoi*(2020)KECA 942(KLR), which the Supreme Court case of *Communications Commission of Kenya & 5 others v. Royal Media Services Limited & 5 others*(2014)eKLR was cited and relied upon.
18. They submit that no judgment has been placed before this Court, having been decided by a court of competent jurisdiction to warrant the court finding this matter res judicata. Further, it is submitted that the respondents are calling upon the court to go outside the pleadings before it so as to determine the preliminary objection, which goes against the rules set in the locus classicus case of *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd*(1969) EA 696.
19. It is therefore their submission that the preliminary objection as brought by the 3rd, 5th and 6th Respondents fails on all aspects of a preliminary objection, and submit that costs should be awarded to them for being wrongfully dragged into the misguided preliminary objection, while relying on the holding in the case of *Cecilia Karuru Ngayu v. Barclays Bank of Kenya & Another* (2016)eKLR.

The 1st Respondent's submissions

20. The 1st Respondent submitted that the Petition herein ticks all the boxes in offending the doctrine of res judicata, since the same issues in ELC Petition No.12 of 2015, *John Ndirangu Kiboga & others vs. Attorney General & others* 2015, are the same in the Petition herein, fulfilling the requirements provided for in Section 7 of the *Civil Procedure Act*.
21. Counsel cited and relied on the authority in the Court of Appeal case of *The Independent Electoral and Boundaries Commission v. Maina Kiai & 5 others*(2017)eKLR, where the elements of res judicata were broken down and elaborated. The 1st Respondent submits that Nyeri ELC Petition 12 of 2015 shows that the parties were the same in the instant petition, and that the matter was referred to the National Land by consent, which was adopted as an order of the Court on 7th November 2017.
22. Their submission is that the National Land Commission is a competent forum to handle matters of historical injustice as per Article 67(2)(e) of *the Constitution* of Kenya.
23. Submitting that the Petition herein therefore offends the doctrine of res judicata, Counsel cited and relied upon the decision of the Court of Appeal in *John Florence Maritime Services Ltd & another v. Cabinet Secretary for Transport and Infrastructure & 3 others*(2015)eKLR, where the court discussed the doctrine of res judicata at length, and prayed that the Petition be dismissed to save the court's limited time.



Analysis and Determination

24. According to Black's Law Dictionary, a Preliminary Objection is defined as being:

“In a case before the tribunal, an objection that if upheld, would render further proceeding before the tribunal impossible or unnecessary.....”

25. The above legal preposition has been cemented in the now famous case of Mukisa Biscuit Manufacturing Co. Ltd –VS- West End Distributors Ltd. [1969] E.A. 696. The Court then held that: -

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary objection. A preliminary Objection is in the nature of what used to be a demurrer; it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought in the exercise of judicial discretion. The improper raising of points by way of Preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. This improper practice should stop”

26. Section 7 of the [Civil Procedure Act](#) establishes the Kenyan statutory basis for the doctrine of res judicata and provides that:

“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.”

27. This doctrine was discussed by the Supreme Court in the case of Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others (Petition 14, 14A, 14B & 14C of 2014 (Consolidated)) [2014] KESC 53 (KLR) cited by the petitioners herein, where it was evaluated thus:

“There are conditions to the application of the doctrine of res judicata:

- i. The issue in the first suit must have been decided by a competent Court.
- ii. The matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and
- iii. The parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title, *Karia and Another v. The Attorney General and Others*, [2005] 1 EA 83, 89.”

28. A preliminary objection should be capable of determination without going into matters of evidence and ascertainment of contradictory facts. In the above case, the Court held that res judicata was a preliminary point of law as long as it was not based on contested facts or involving the exercise of judicial discretion.



29. Gikonyo J in *Henry Wanyama Khaemba v Standard Chartered Bank (K) Ltd & another* [2014] eKLR, found that in examining issues of *res judicata*, the Court would be required to probe evidence, which is contrary to the nature of a true preliminary objection. The Court found as follows:

“That re-statement of the limited scope of a preliminary objection brings me to the point where I hold that the Preliminary Objection by the 1st Defendant is not a true Preliminary Objection in the sense of the law. The issues of *res judicata*, duplicity of suits and suit having been spent will require probing of evidence, as it is already evident from the submissions by the 1st Defendant. They are incapable of being handled as preliminary objections because of the limited scope of the jurisdiction on preliminary objections. Courts of law have always had a well-founded quarrel with parties who resort to raising preliminary objections in improperly. See the words of Newbold P. in registering a strong deprecation on such improper preliminary objections in the *Mukisa Biscuit* case that:

“That the improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.”

30. Angote J, in the case of *Roman Mutuku Kisini & 2 others v Mary Mwikali Muasya & 3 others* [2021] eKLR, was of a similar opinion when he held that:

“To determine whether this suit is *res judicata* or not, this court has to consider the proceedings that were before the Minister, and the decision of the Minister thereof. Those proceedings could only be brought to the attention of this court by way of an Application and not a Preliminary Objection. Considering that a preliminary point only raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct, and in view of the fact that a preliminary point cannot succeed if any fact has to be ascertained or if what is sought is the exercise of judicial discretion, I decline to allow the two Preliminary Objections.”

31. In the present case, the pleadings and judgement in *Nyeri ELC Petition No.12 of 2015: John Ndirangu Kiboga & others v. The Hon. Attorney General & others and High Court Civil Case No. 19 of 2006*, which are said to have been heard and determined and to have dealt with the subject matter of the suit herein, are not before the Court for consideration of whether the doctrine of *res judicata* applies.
32. In submissions filed before this court, Counsel for the 1st Respondent has invited this court to look at the cited files to ascertain the facts that the dispute herein was referred to the National Land Commission and that the said NLC heard and determined the dispute and the same was gazetted. The answer to the preliminary objection filed by Counsel for the Petitioners states that the National Land Commission illegally heard the petition and prematurely gazetted its findings in order to beat the true, fair and constitutional justice.
33. State Counsel for the 3rd, 5th and 6th Respondents stated that Justice J.O. Olola, in his ruling dated 2nd February, 2023, rendered this Petition *res judicata* and subsequently struck it out. However, the Court notes that this petition was filed on 26th June 2023. State Counsel and Counsel for the 1st Respondent, who supported the preliminary objection, urged the Court to call from the archives for the files they claim were previously heard and determined and investigate the same. The Court’s view is that this would be tantamount to the court going on a fact-finding mission, which would be beyond the court’s mandate in determining the issues at hand. This would also go outside the scope of a Preliminary Objection as stated in *Mukisa Biscuit Manufacturing Ltd* case.



34. Without the pleadings and judgments in the cases that are said to have been previously determined, the Court finds that the 3rd, 5th and 6th Respondents have not shown that the conditions set out in Section 7 of the *Civil Procedure Act* and the above cited Supreme Court case of Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others (supra) for application of the doctrine of res judicata to a particular case have been met. The said conditions require ascertainment of whether or not the issues in the previously decided cases were decided by a competent Court; this has not been shown. The Court further finds the Respondents have not shown that the matter in dispute in the former suits is directly or substantially in dispute in the present suit.
35. The doctrine of res judicata requires the court to determine whether the parties in the former suit are the same parties, or parties under whom they or any of them claim, litigating under the same title. The Court finds that the 3rd, 5th and 6th Respondents have not demonstrated that this condition has been met.
36. In the Court's view, the preliminary objection fails on the grounds that there was no evidence presented to the Court to compare with the present Petition to determine whether it is res judicata or not.
37. The final order of the court is that the preliminary objection dated 3rd October 2023 lacks merit and it is hereby dismissed with costs to the Petitioners.

DATED, SIGNED AND DELIVERED AT NYERI THIS 14TH DAY OF OCTOBER, 2025

HON. LADY JUSTICE L.G. KIMANI

JUDGE

In the Presence of:-

C. Kendi: Court Assistant

Muthui - For the 3rd, 5th and 6th Respondents

Kiprono - For the 1st Respondent

No Attendance for other Respondents

Ms. Ndirangu holding brief for Muchangi for the Petitioners

