



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Tengele v Kamau & 4 others (Environment and Land Petition
E004 of 2025) [2025] KEELC 6740 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6740 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND PETITION E004 OF 2025**

MAO ODENY, J

OCTOBER 7, 2025

BETWEEN

JAMES KIPKURUI TENGELE APPLICANT

AND

SIMON NJUGUNA KAMAU 1ST RESPONDENT

SINENDET FARMERS COMPANY LIMITED 2ND RESPONDENT

LAND REGISTRAR, NAKURU 3RD RESPONDENT

CHIEF, MAU SUMMIT C/O KURIA MBURU 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion Application dated 19th May, 2025 and the 1st Defendant/Respondent's Notice of Preliminary Objection dated 30th May, 2025. The Plaintiff seeks the following orders in the Notice of Motion application:
 1. Spent
 2. Spent
 3. Spent
 4. Spent
 5. Spent
 6. That pending inter-parties hearing and determination of this suit a temporary injunction be issued in the first instance prohibiting the 1st Defendant/Respondent by himself, his servants,



agents, or otherwise be restrained from interfering, selling, alienating and constructions on the parcel of land known as Kamara - Mau Summit Block 1/207. (sic)

7. That pending inter-parties hearing and determination of this suit a temporary injunction be issued in the first instance prohibiting the 2nd Defendant/Respondent by himself, his servants, agents, or otherwise be restrained from making any alterations in the company register with regard to the parcel of land known as Kamara - Mau Summit Block 1/207.
 8. That pending the inter-parties hearing and determination of the suit, this Honourable court be pleased to issue orders of temporary injunction restraining the 3rd Defendant/Respondent by himself, his servants, agents, or otherwise be restrained from making any alterations in the land register with regard to the parcel of land known as Kamara - Mau Summit Block 1/207.
 9. That pending the inter-parties hearing and determination of the suit, this Honourable court be pleased to issue orders of temporary injunction restraining the 4th Defendant/Respondent by himself, his servants, agents, or otherwise be restrained from making any more letters or declarations with regard to the parcel of land known as Kamara - Mau Summit Block 1/207.
 10. That cost of this Application be provided for.
2. The application is supported by the annexed affidavit of James Tengele, the Plaintiff/Applicant, who deponed that being, a shareholder of the 2nd Defendant, he was given Plot Nos. 434, 435, and 436 by the 2nd Defendant, which were later, renamed as Plot Nos. 215, 216, and 217. It was his deposition that Mr. Michael Milgo, equally a shareholder, was allocated plot Nos. 67, 68 and 69 by the 2nd Defendant which plots were later renamed as Plot No. 38.
 3. The applicant further deponed that through a proxy, the Plaintiff and Mr. Milgo swapped the parcels of land, but the swap agreement was revoked due to a dispute, hence Mr. Milgo who had bought from the Plaintiff Plot Nos. 517 and 518 (renamed as Plot No. 207) reverted the said plots to the Plaintiff.
 4. It was the Plaintiff's deposition that the judgment on the swaps and reversion was made before the council of elders in Land Dispute 7 of 1989, which was adopted as an order of the Court. He also stated that the 2nd Defendant's original register does not show the 1st Defendant in any of its entries as he was not a shareholder.
 5. The Applicant further deponed that the 1st Defendant in collusion with the 2nd Defendant manipulated the 2nd Defendant register to reflect that both the 1st Defendant and Mr. Milgo owned Plot No. 207. It was his case that he is apprehensive that the 1st Defendant has advertised the suit property for sale and it may change hands anytime and urged the court to grant the injunctive orders as prayed.
 6. Simon Njuguna Kamau, the 1st Defendant/Respondent filed a Replying Affidavit sworn on 30th May, 2025, and deponed that the application is res judicata and an abuse of the court process. He also stated that he is the registered owner of the parcel of land known as Kamara/Mau Summit Block 1/207 (KIBIKO).
 7. It was his deposition that he paid for one acre at Kshs 14,000/= and later the applicant offered to sell another acre for which he paid Kshs 13,380/= however, an issue arose when the applicant was selling the same land to another party at Kshs 38,000/- per acre. He deponed that he reported the matter to the area Chief, where it was resolved that the applicant refunds the money he paid for the two acres so that he could purchase the land from the rightful owner, Michael Milgo.
 8. The 1st Defendant/Respondent further deponed that he went with Michael Milgo to Kirigo & Co Advocates (now deceased) in Kericho and wrote an agreement for the entire land (Plot Number 207)



for Ksh 85,000/= . It was his deposition that the owner of the said land took him to the 2nd Defendant/ Respondent's Company and his name was inserted alongside the owner, as title deeds had not been processed.

9. The 1st Defendant also stated that the 2nd Defendant was to forward his name to the 3rd Defendant to process the title deed in his name, however the same was processed in the name of Michael Milgo. He deponed that the same was rectified by the 3rd Defendant after he presented the necessary documents.
10. The deponent stated that the Plaintiff filed Nakuru, ELC No 19 of 2015 and Molo Criminal Case No 214 of 2019, and that the Nakuru ELC file was transferred to Molo Law Court and given Molo ELC No 14 of 2020.
11. It was the 1st Defendant's case that the ELC case was dismissed for want of prosecution on 8th July, 2024, and that the criminal case was determined on 3rd October 2024, whereby he was acquitted. He urged the court to dismiss the application with costs.
12. James Tengele, the Plaintiff/Applicant filed a further affidavit sworn on 24th June, 2025, and deponed that the 1st Defendant/Respondent claims to have purchased land from Michael Milgo but has not provided any proof of the money being paid or the purported contract leading up to the said sale.
13. It was his evidence that the inclusion of the 1st Defendant in the registry and title deed is proof of the fraudulent scheme, as the 1st Defendant admitted that Michael Milgo died in 2010. Further that the 1st Defendant's title in 2014 ought to be through a succession process further proving the Defendant's fraudulent scheme.
14. The 1st Defendant filed a Notice of Preliminary Objection dated 30th May, 2025 which was on the following ground:
 - a. That the instant claim is re judicata as there are other suits number Nakuru ELC NO 19 OF 2015 transferred to Molo Law Court and given Land Case No. 14 OF 2020 and MOLO Criminal Case No 214 OF 2019 and in all the cases the subject was land title number Kamara/ Mau Summit Block 1/207 (KIBIKO). (sic)

Plaintiff's Submissions

15. Ms. Wanyama, counsel for the Plaintiff, filed submissions dated 24th June, 2025 and identified the following issues for determination:
 - a. Whether the Plaintiff/Applicant has satisfied the limbs for injunctive orders to be granted?
 - b. Whether the suit filed by the Plaintiff/Applicant is res judicata?
16. On the first issue, counsel submitted that by filing the plaint and particularizing fraud and prayers sought therein, he has established a prima facie case, and relied on the cases of *Giella v Cassman Brown* [1973] EA 358, *Agnes Nyang'anyi Omwamba v Samuel Bosire Nyaruna* [2022] eKLR and *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] eKLR.
17. On showing irreparable harm that cannot be compensated by damages, counsel submitted that should the sale of the suit property proceed and the land be subdivided, the substratum of the suit will be lost, and relied on the case of *Gituku v Waithaka & another* (Environment & Land Case E055 of 2024) [2024] KEELC 4928 (KLR). Counsel submitted that the balance of convenience is in favor of the applicant.



18. On the second issue, Ms. Wanyama submitted that Molo Criminal Case No 214 of 2019 cannot be res judicata as the parties and reliefs sought in criminal cases is substantially different from those in civil cases. Counsel further submitted that in respect of Molo ELC No. 14 of 2020 the parties are different from the present suit as Sinendet Farmers Company Limited and Chief Mau Summit were not parties in the Molo suit. It was counsel's submission that fraudulent activities have never been addressed in any other suit. Counsel urged the court to find that the suit is not res judicata, hear, and determine it on merits.

1st Defendant's Submissions

19. The 1st Defendant filed submissions dated 11th July, 2025 and identified the issues for determination as:
- Whether the Plaintiff/Applicant has satisfied the limbs for granting an injunction?
 - Whether the suit herein is res judicata and an abuse of court process?
20. The 1st Defendant submitted that the Plaintiff/Applicant has not established a prima facie case as he has no title to land parcel No. Kamara/Mau Summit Block 1/207 (KIBIKO), and cited Section 26 (1) of the *Land Registration Act* and the cases of *Giella v Cassman Brown & Co Ltd* [1973] EA 358 and *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] KLR 125.
21. Simon Njuguna Kamau, further submitted that the Plaintiff has not shown that he stands to suffer any irreparable harm that cannot be compensated by damages, as he has no proprietary interest to protect. He submitted that he has been in occupation and possession of the subject land for more than thirty years. Further that the Plaintiff relies on a decree issued against one Michael Milgo (now deceased) and yet he has never executed the same during the lifetime of the deceased.
22. It was the 1st Defendant's submission that the filing of multiple suits on the same issue in different courts amounts to forum shopping and the suit is therefore barred by the doctrine of res judicata. He relied on Article 40 of *the Constitution* of Kenya and the case of *E.T v Attorney General & Another* [2012] eKLR, and urged the court to dismiss the application with costs.

Analysis And Determination

23. The issues for determination are whether the 1st Defendant's Notice of Preliminary Objection dated 30th May, 2025 has merit on the ground that this suit is res judicata, and whether the Plaintiff/Applicant has met the threshold for the grant of an injunction.
24. On whether the issue of res-judicata can be raised through a preliminary objection, in the case of *George Kamau Kimani & 4 Others v County Government of Trans Nzoia & Another* (2014), eKLR, the Court held that:

“I have considered the points raised by the 1st Defendant. All those points can be argued in the normal manner. They do not qualify to be raised as Preliminary Points. One cannot raise a ground of res judicata by way of Preliminary Objection. The best way to raise a ground of res judicata is by way of Notice of Motion where pleadings are annexed to enable the court to determine whether the current suit is res judicata. Professor Sifuna did not raise the issue of res judicata by way of Notice of Motion. Professor Sifuna only annexed a ruling in respect of a case which was struck out. This is not a proper way of issues which require ascertainment of facts by way of evidence. They cannot be brought by way of Preliminary Objection”.

25. This does not mean that if a case has been heard and determined by a competent court and the relevant documents are attached to prove the same, the court can turn a blind eye to not declaring a suit as res



judicata. While res judicata can sometimes be raised through a preliminary objection, this is in very glaring cases, but it is best handled by way of a Notice of Motion where, the judgments or rulings can be attached to verify the facts and the Respondent given an opportunity to respond to the facts.

26. If the court upholds the preliminary objection then it will be a futile exercise to deal with the issue whether the plaintiff has met the threshold for the grant of a temporary injunction.
27. Section 7 of the *Civil Procedure Act* provides for the doctrine of res judicata, which bars the court from trying any suit, or issue, which had been finally determined by a court of competent jurisdiction in a former suit involving the same parties or parties litigating under the same title. Res judicata applies if the following are proved:
 - a. The suit or issue raised was directly and substantially in issue in the former suit
 - b. The former suit was between the same party or parties under whom they or any of them claim
 - c. That those parties were litigating under the same title.
 - d. That the issue in question was heard and finally determined in the former suit.
 - e. That the court, which heard and determined the issue was competent to try both the suit and the issue was raised and subsequent suit.
28. In the case of *Diocese of Eldoret Trustees (Registered) v Attorney General (on behalf of the PS Treasury) & Another* [2020] eKLR this court stated thus:

“Courts must always be vigilant to guard against litigants who metamorphose to bring suits as new litigants or add others to circumvent the doctrine of res judicata. Adding or subtracting litigants in a suit that is substantially or directly related to a previous suit with the same subject matter does not sanitize the suit to make it a fresh suit. It actually worsens the situation by making the suit terminate prematurely vide a preliminary objection. I find that this suit is res judicata and an abuse of the court process. The preliminary objection has merit and hence upheld. Plaintiff’s case is dismissed with costs”.
29. The Respondent claimed that this suit is res judicata because there was a suit No. ELC No 19 of 2015 which was transferred to Molo Chief Magistrate’s Court and a Judgment in a Criminal case 214 of 2019 where he was acquitted Criminal case process is different from a civil case as the complainant is the Republic and the outcome of the criminal case is persuasive as evidence but does not determine ownership rights with declarations on what to be done to a title.
30. In the case of *Uhuru Highway Development Ltd v Central Bank of Kenya* [1999] eKLR, the court offers useful guidance on the element of Res judicata. It rendered the elements as:
 - a. The former judgment or order must be final;
 - b. The judgment or order must be on merits;
 - c. It must have been rendered by a court having jurisdiction over the subject matter and the parties; and
 - d. There must be between the first and the second action identity of parties, of subject matter and cause of action.



31. There is no evidence that this suit was heard and determined. If there is such evidence, then the Respondent will adduce such evidence during the hearing of this suit. I find that the preliminary objection lacks merit and is therefore dismissed with costs in the cause.
32. On the issue of whether the Applicant has met the threshold for a grant of an injunction, the principles for grant of a temporary injunction are well settled. In the case of *Nguruman Limited v. Jan Bonde Nielsen & 2 Others* [2014] eKLR, the Court of Appeal pronounced itself as follows:

“On the second factor, that the Applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the Applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the Applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”
33. The Plaintiff/Applicant informed this court that he is apprehensive that the 1st Defendant has advertised the suit property for sale and, it may change hands anytime. The Applicant has attached an advertisement excerpt in his supporting affidavit, which was marked as JT-10.
34. The Respondent has not denied that there is an advertisement for the sale of the suit property or that he does not intend to sell, dispose of, alienate or change the character of the suit land while this case is pending. It would be in the interest of justice to order that the status quo be maintained pending the hearing and determination of this suit. This will not prejudice the Respondent as he claims to be residing on the suit land.
35. Parties should comply with order 11 and fix this matter for hearing and determination. Costs of the Application in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 7TH DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

