



**Mabirika & 203 others v Director Land Adjudication & Settlement & 2 others;
National Assembly & 3 others (Interested Parties) (Environment & Land Petition
E011 of 2024) [2025] KEELC 4449 (KLR) (Environment and Land) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4449 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND PETITION E011 OF 2024**

EK WABWOTO, J

JUNE 12, 2025

BETWEEN

**DAVID MWANDAWIRO MABIRIKA 1ST PETITIONER
AGNES NAKAMBA MWAMBURI 2ND PETITIONER
NANCY NDIGHA TOTO & 201 OTHERS 3RD PETITIONER**

AND

**DIRECTOR LAND ADJUDICATION & SETTLEMENT 1ST RESPONDENT
CHIEF LAND REGISTRAR 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT**

AND

**NATIONAL ASSEMBLY INTERESTED PARTY
COUNTY GOVERNMENT OF TAITA TAVETA INTERESTED PARTY
DIRECTOR OF CRIMINAL INVESTIGATIONS INTERESTED PARTY
TAVETA FARMERS ASSOCIATION INTERESTED PARTY**

RULING

1. This Ruling is in respect to the Preliminary Objections raised by the 1st, 2nd, 3rd Respondents and 3rd Interested Party dated 21st February 2025 and the 4th Interested Party dated 29th January 2025. The said objections can be summarized as follows:-



- i. The Petition is res judicata in view of Mombasa ELC Petition No. 6 of 2019 Mathenge Ramadhan Kamonzu & 2 Others =Versus= Hon. Attorney General & 7 Others.
 - ii. The Court of Appeal at Mombasa is now ceased with the matter in view of Mombasa Civil Application No. E058 of 2023, Simon Mwangi and 5 Others =Versus= The Hon. Attorney General & 7 Others and thus this court is functus officio and has no jurisdiction to entertain the Petition.
2. The objections were opposed by the Petitioners and pursuant to the directions issued by this court, parties were directed to file written submissions and equally granted an opportunity to highlight on the same.
 3. The Respondents, 3rd and 4th Interested Parties filed written submissions dated 11th April 2025 and 24th March 2025 respectively.
 4. The Respondents and 3rd Interested Party submitted that in ELC Petition No. 6 of 2019, Mathenge Ramathani Kamozu & Others =Versus= The Hon. Attorney General & 7 Others, the suit therein was instituted by 1135 Petitioners. Therein the suit property related to LR. No. 5865/2. In the Petition, the Petitioners claimed to have been the former employees of Basil Criticos who was former proprietor of the suit property. Basil Criticos had charged the suit property and subsequently defaulted and the Bank sold the property to Settlement Fund Trustees (SFT) who were charged with purposed of resettling squatters. The Petitioners contended that they were squatters in the suit property. Alleging that the Respondents, who were the Hon. Attorney General, Settlement Fund Trustees, Kenya Anti-Corruption Commission, Commissioner of Lands, Taveta Town Council, Public Service Commission, The Director Land Adjudication & Settlement had by their action divested the squatters of their right to the property as squatters.
 5. It was further submitted that the Learned Judge of the Superior Court, Justice Munyao heard and determined the matter on merits. The Court held that:-

“Prayers 1, 2, 3 and 5 of the Petition cannot be granted as they are spent and/or overtaken by events. Prayer 1 seeks a permanent injunction to stop the 2nd, 4th and 5th Respondents from allotting land and issuing titles pending the setting of rules giving priority to the Petitioners who reside on the suit property. Prayer 2 of the Petition seeks a permanent injunction to stop the survey, demarcation and distribution of the suit land until the determination of the suit. Prayer 3 seeks an order of injunction to stop the public servants from evicting the Petitioners until the determination of the suit. Prayer 5 seeks an injunction to stop the SFT from dealing with the suit land.”

Prayer 4 of the Petition seeks a declaration that the suit land was illegally sold to the SFT in contravention of court order....

Prayer 6 of the Petition seeks a declaration that the Petitioners are entitled to be given first priority to own the suit property....

Para 90. From the above discourse, it will be seen that I am not persuaded to grant prayer 6 of the Petition. This is actually the backbone of this Petition.”
 6. It was further submitted that in line with the the above analysis of the prayers, findings and orders, the Learned Judge has finally determined the rights concerning the ownership, proprietorship, and interests that concern the Petitioners and all other persons. The prayers of which are strikingly similar to the ones sought before this Honourable Court.



7. It was contended that it would therefore, be a waste of this Honourable's Court's judicial time to hear and determine this matter for a second time as it first, wastes the judicial time and secondly, offends the principle of res judicata and that Petition must come to an end.
8. The 4th Respondent equally submitted that this court sitting in Mombasa, in Mombasa ELC Petition No. 6 of 2019 between Mathenge Ramathani Kamozi & 2 Others =Versus= The Hon. Attorney General & 7 Others was invited by the parties therein to determine:
 - a. The question as to who the real squatters living on LR No. 5865/2 were;
 - b. The legality of exercise conducted by the Settlement Land Trustee of surveying, adjudication and allocation of the parcels that resulted from the process to various people;
 - c. The issuance and legitimacy of the title deed issued to more than 15,000 individuals from the subdivision and allocation process of LR No. 5865/2;
 - d. The acquisition of LR No. 5865/2 from the National Bank of Kenya by auction;
 - e. The question of alleged third party 'foreigners' who benefitted from the allocation;
 - f. The questions on the right to property, security and livelihood of individuals who claimed to be the legitimate squatters and natives of the Basil Criticos Land;
 - g. The question of public participation and the involvement of the people of Taveta during the survey, demarcation and allocation of the suit land and
 - h. A consideration of the prayer for a permanent injunction on eviction of squatters and illegal occupiers of the titled parcels/plots that resulted from the adjudication process.
9. On 23rd January 2024 this court pronounced itself on all the above issues comprehensively. The decision was made, and applies across and in rem. Further decision still stands because it has not been stayed or reviewed or overturned on appeal.
10. It was also submitted that the change of parties in this Petition does not cure the fatality in the said Petition as the same remains to be res judicata and reliance was placed in the case of Nancy Mwangi T/A Worthlin Marketers =Versus= Network (K) Ltd (Formerly Celtel Kenya Ltd) & 2 Others (2014) eKLR.
11. It was further submitted that the court is functus officio to the extent that this matter is now seized by the Court of Appeal in Mombasa Civil Application No. E058 of 2023.
12. It was also submitted that the Petition is fatally defective for want of a supporting affidavit and reliance was placed on Rule 11 of the Mutunga Rules and the case of Maureen Nyambura Ngigi Warui =Versus= Board of Directors, Kenya Power & Lighting Company Limited & 2 Others (2020) eKLR and Isaac Aluoch Polo Aluochier =Versus= The National Alliance and 542 Others (2016) eKLR and Bryson Mangla =Versus= Attorney General & Others Nairobi HC Petition No. 284 of 2016.
13. The court was also urged to dismiss the Petition pursuant to Rule 3(8) of the Mutunga Rules and reliance was placed on the case of Kenya Planters Cooperative Union Limited =Versus= Kenya Cooperative Coffee Millers Limited & Another (2016) eKLR.
14. The Petitioners in their written submissions dated 5th May 2025 submitted that it is not disputed that there existed another petition, the Mathenge Kamozi Petition which was decided upon by Justice Sila Munyao in Mombasa. However, at the onset, the said petition involved different parties from the parties herein mostly the petitioners.



15. It was contended by the Petitioners that in the Petition by Mathenge Kamozi, the claim by the petitioners therein was against the Settlement Fund Trustees amongst others. Their claim was for infringement of their rights by the Settlement Fund Trustees. Their pleadings, centrally revolved around the actions of the Settlement Fund Trustees who had illegally allocated the land to other people.
16. In terms of the prayers, the Mathenge Kamozi Petition, sought for permanent injunction preventing the issuance of allotment letters, from surveying the land, from forcibly evicting the Petitioners, a declaration that the land was illegally sold to the Settlement Fund Trustees, a declaration that the Settlement Fund Trustees had failed in its mandate amongst others.
17. It was further submitted that in contrast, this current petition, is mounted against the Director of Land Adjudication and the Chief Land Registrar with the Director of Criminal Investigations, the County Government and the National Assembly as the initial Interested Parties for their roles in the disputes that has been raging. Thus this current petition seeks for orders that the Petitioners' rights of acquiring land and benefiting from the settlement scheme were violated, that by their long and uninterrupted possession, they were entitled to benefit from the settlement scheme. The Petitioners have also sought for orders that the Respondents do undertake a resurvey of the suit land with a view of settling them in the portions they occupy and have them issued with title deeds. They as well, have sought for permanent injunction against their eviction and general and exemplary damages for the violation of their rights.
18. It was further contended that this current petition seeks distinct prayers from the previous petition and raises serious fundamental constitutional issues which were not available for determination by the court in the Mathenge Kamozi Petition. It was also contended that this petition seeks to enforce the Petitioners' rights which have accrued as a result of long and uninterrupted occupation of the suit land.
19. It was also submitted that the determination of the Petition did not bar the commencement of other petitions by petitioners whose rights have been freshly violated and continue to be violated and were not parties in the previous petition.
20. It was contended that the Petition has clearly outlined the violations which have continued to be visited upon the Petitioners herein despite having settled on the land for several years now. The court was urged to invoke Articles 159(2)(d) and Article 50(1) of the *Constitution* and dismiss the said objections.
21. During the hearing of the objections, the Learned Counsel Mr. Mwanyumba appeared for the Petitioners, Learned Counsel Mr. Motuka appeared for the 4th Interested Party while Learned Counsel Ms. Kagoi appeared for the Respondents and the 3rd Interested Parties.
22. Having carefully considered the Preliminary Objections, written submissions filed and oral submissions made by Counsel for the parties, the following issue fall for determination; whether this court lacks jurisdiction to hear and determine the Petition in view of it being res judicata and whether this court is functus officio.
23. The Black's law Dictionary 10th Edition defines "res judicata" as

"An issue that has been definitely settled by judicial decision...the three essentials are (1) an earlier decision on the issue, (2) a final Judgment on the merits and (3) the involvement of same parties, or parties in privity with the original parties..."
24. A person may not commence more than one action in respect of the same or a substantially similar cause of action and the Court must attempt to resolve multiple actions involving a party and determine all matters in dispute in an action so as to avoid multiplicity of actions.



25. It is now settled that to succeed in a res judicata claim, a party must demonstrate that there was a former judgment or order which was final; the judgment or order was on merit; the judgment or order was rendered by a court having jurisdiction over the subject matter and cause of action; and there had to be between the first and the second action, identical parties' subject matter and cause of action. See *John Florence Maritime Services Limited & another =Versus= Cabinet Secretary Transport & Infrastructure & 3 Others* (2021) KESC 39 (KLR) where the Apex Court set out its purpose in certain terms as follows:

“The doctrine of res judicata was based on the principle of finality which was a matter of public policy. The principle of finality was one of the pillars upon which the judicial system was founded and the doctrine of res judicata prevented a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensured that litigation came to an end and the verdict duly translated into fruit for one party and liability for another party conclusively”

26. The Objectors urged the court to find that the Petition is res judicata as submitted and that this court is functus officio.

27. Commencing with Mombasa ELC Petition No. 6 of 2019, the said suit was instituted by 1135 Petitioners and its related to property LR No. 5865/2 which is also the suit property herein. In the said suit the Petitioners contended that they were squatters in the suit property and that the Respondents therein, the Hon. Attorney General, The Settlement Fund Trustees, Ethics and Anti Corruption Commission, Director Land Adjudication Settlement among others had by their action divested the squatters of their right to the property as squatters.

28. In the said Petition, the Petition had sought the following reliefs:-

1. A permanent injunction be issued preventing the 2nd, 4th, and 5th respondents (respectively the SFT, Commissioner of Lands and Taita Town Council) its servants or agents from issuing letters of allotment of titles and titles or certificate of lease pending the setting up of rules giving priority to the rights to own land to the petitioners who reside on the suit land LR No 5865/2 Taveta.
2. A permanent injunction be issued against the government servants, public officers, or any private surveyor from surveying, demarcating, or distributing the suit land LR No 5865/2 Taveta until the determination of this petition or further orders of the court.
3. A permanent injunction be issued preventing all government public servants and officers from forcibly evicting the petitioners and all persons presently residing and occupying the suit land LR No 5865/2 Taveta until the determination of this petition and further orders of the court.
4. A declaration that the suit land was illegally sold to the 2nd respondent by the 1st interested party in contravention of court orders.
5. A declaration that the Settlement Fund Trustees has failed in its mandate to settle landless people in Kenya and should be enjoined from dealing with the suit land LR No 5865/2 Taveta until rules have been set up providing for equitable and fair distribution of land with priority being given to the landless citizens of Kenya.
6. A declaration that the petitioners are entitled to be given priority to own land out of the subdivisions from LR No 5865/2 Taveta and that the 2nd, 4th, 5th, and 7th respondents should



be mandated to carry out a survey of all petitioners and determine their entitlement to a fair and equitable distribution of the land.

7. An order directing the 3rd, 6th, and 8th respondents to investigate all public officers concerned with the allotment of land arising out of subdivision from LR No 5865/2 Taveta and to give a concise account of all proceeds received from the issuance of allotment letters and the sale of sisal proceeds since September 2007 to the date of judgment in the present matter and file the report in court within 30 days of the order of the court.
 8. An order directing the 5th and 7th respondents to give a concise breakdown of all public officers and private citizens who have been allotted land and the amount that each paid for the letters of allotment. The breakdown should attach the letters of allotment.
 9. A declaration that the petitioner is entitled to protection under the Constitution to their right to land acquired by the government to settle them.
 10. The court do issue such orders and give such directions as it may deem fit to meet the ends of justice.
29. It was also contended that the said Petition was brought on behalf of all the other Kenyans presently residing on the suit land and who may be evicted at that time.
30. The said Petition was heard by both affidavit and viva voce evidence and the court upon considering the Petition on merit, it was unable to grant the reliefs sought and it proceeded to dismiss the Petition with costs in its judgment delivered on 23rd January 2023.
31. Having the aforesaid information in mind, does that then render the current Petition res judicata?
32. In the instant petition, the Petitioners have averred that they have brought the instant Petition on behalf of other 150 Petitioners residing on LR 5865/2 in Taveta and which has currently been subdivided into several plots. They have sought the following reliefs:
- a. A declaration that the Petitioners' rights to property guaranteed under Article 40 of the Constitution of acquiring and benefiting from the Settlement Scheme in respect of the suit land formerly known as L.R No. 5865/2 located in Taveta Sub-County have been violated and infringed.
 - b. A declaration that as a result of the long, uninterrupted and continuous occupation of the suit land formerly known as LR No. 5865/2, the Petitioners are entitled to acquire title and benefit from the scheme pursuant to their rights to own and occupy the portions suit land they occupy have since crystallized and should be protected and promoted under Article 40 of the Constitution.
 - c. An order for permanent injunction be issued against the respondents and the interested parties, their agents and or servants or anyone else claiming through them or acting under their instructions or anyone for that matter from evicting, threatening or in any other manner whatsoever interfering with the Petitioners' peaceful possession, use and occupation of the suit land.
 - d. An order against the 1st and 2nd Respondents in conjunction with the 2nd Interested Party to undertake a resurvey of the suit land formerly known as L.R No. 5865/2 with a view to settling the Petitioners herein on the parcels they currently occupy.



- e. An order that upon resurvey and recording of the petitioners herein as beneficiaries therein, the petitioners be issued with the title deeds in respect to the specific portions they occupy.
 - f. General and exemplary damages be assessed and awarded to the petitioners for gross violation of their fundamental rights to property and loss of property suffered as a result of the actions by the respondents.
 - g. Any other relief this court would be pleased to issue.
 - h. Costs of the Petition.
33. In considering this Petition, this court would be required to deal with the issues that relate the suit parcel L.R No. 5865/2 before rendering its decision. It is clear that the issues raised in the said Petition together with the reliefs sought were considered on merit by the court in respect to Mombasa ELC Petition No. 6 of 2019. The said petition was heard by both affidavit evidence and viva voca evidence and as such allowing this court to reconsider the said issues afresh would amount to re-opening the said matter and thus being an abuse of the court process. While in the current Petition the Petitions have sought to modify and include some new parties together with some additional reliefs, the gist of the Petition from the facts pleaded is that it seeks various reliefs relating to their occupation of the suit formerly known as L.R No. 5865/2 having pleaded that they were working in the said farm before the subdivision of the said parcel into various portions. As stated earlier the court in Mombasa ELC Petition No. 6 of 2019 and rendered its judgment on 23rd January 2023 having heard the said Petition on merit. As earlier stated the said Petition was brought and filed on behalf of 1131 persons who were residing on the suit parcel being employees of Mr. Basil Criticos and were working on the said farm.
34. The doctrine of res judicata 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 serves the cause of order and efficacy in the adjudication process. It ensured that litigation comes to an end and prevents a multiplicity of suit over the same subject title.
35. In the circumstances, it is the finding of this court that this petition has a substantially similar cause of action with Msa ELC Petition No. 6 of 2019 and has an involvement with the parties in privity with the said petition and as such it is res judicata in view of MSA ELC Petition No. 6 of 2019.
36. Having found as such, I need not address myself on the other issues raised by the parties in the said objections.
37. In conclusion, this court proceeds to issue the following orders:-
- i. The Petition filed herein is hereby struck out for being res judicata in view of MSA ELC Petition No. 6 of 2019 Mathenge Ramathani Kamozi & Others =Versus= Attorney General and 7 Others.
 - ii. Each party to bear own costs of the Petition.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY/OPEN COURT AT VOI THIS 12TH DAY OF JUNE 2025.

E. K. WABWOTO

JUDGE

In the presence of:-



Mr. Mwanyumba for the Petitioners.

Ms. Kagoi for the Respondents and 3rd Interested Party.

Mr. Motuka for the 4th Interested Party

Court Assistant: Mary Ngoira.

