



**Kiprotich v Catholic Diocese of Nakuru Registered Trustees & another (Civil Case E044 of 2020) [2025] KEMC 199 (KLR) (7 August 2025) (Ruling)**

Neutral citation: [2025] KEMC 199 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CIVIL CASE E044 OF 2020  
PA NDEGE, SPM  
AUGUST 7, 2025**

**BETWEEN**

**LIVINGSTONE KIPLANGAT KIPROTICH ..... PLAINTIFF**

**AND**

**CATHOLIC DIOCESE OF NAKURU REGISTERED TRUSTEES .... 1<sup>ST</sup>  
DEFENDANT**

**ROSEMARY RONO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling determines two Notices of preliminary objections dated 20<sup>th</sup> November 2024, raised by Ndung'u Gichui & Co Advocates for the 1<sup>st</sup> Defendant (hereinafter referred to as the 1<sup>st</sup> Preliminary Objection) and another dated 13<sup>th</sup> March 2025 raised by Musembi Ndolo & Co. Advocates for the 2<sup>nd</sup> defendants (hereinafter referred to as the 2<sup>nd</sup> Preliminary Objection). The 2 notices were consolidated and disposed of together.
2. In the 1<sup>st</sup> preliminary objection, the 1<sup>st</sup> defendant raised an objection on the grounds that a similar suit in respect to the matter was dismissed for want of prosecution in Nakuru ELC No.153 of 2023 and that consequently this matter is res judicata as it had been decided in a court of competent jurisdiction. Learned counsel relied on the decision in *Mumira v Attorney General* (2022) KEHC 271 (KLR).
3. In the 2<sup>nd</sup> Preliminary objection, the 2<sup>nd</sup> defendant raised an objection on the ground that the suit is an abuse of court process for reasons that it offends section 5 of The *Civil Procedure Act* as read together with Order 17 Rules 2 and 6 *Civil Procedure (Amendment) Rule*, 2020. Additionally, that the suit is time barred under section 7 of the *Limitation of Actions Act* as the cause of each action arose on 29<sup>th</sup> January 1999 when the 2<sup>nd</sup> defendant took possession of the suit property from 29<sup>th</sup> January 1999.



4. The final ground raised for the objection by the 2<sup>nd</sup> defendants counsel was that the suit is an abuse of court process for reasons that it offends section 5 of The Civil Procedure Act as read together with Order 17 rule 2 and the Civil Procedure (Amendment) Rule, 2020.
5. In Qayrat Foods Limited v Safiya Ahmed Mohamed & 6 others (2020) eKLR, the court cited James Karanja alias James Kioi (Deceased) (2014) eKLR, which outlined the ingredients of res judicata as:  
For the doctrine of *Res Judicata* to apply, three basic conditions must be satisfied. The party relying on it must show: -
  - a) That there was a former suit or proceeding in which the same parties as in the subsequent suit litigated.
  - b) The matter in issue in the latter suit must have been directly and substantially in issue in the former suit.
  - c) That a court competent to try it had heard and finally decided the matters in controversy between the parties.
6. The counsels further submitted that the act by the plaintiff to add another defendant to the matter is wrong and an attack at the judicial system aimed to try and evade the critical elements of the matter res judicata.
7. I have gone through the written submissions filed by the learned counsel herein and I do agree that this suit is res judicata. The issue here is whether res judicata applies after a case is dismissed for want of prosecution. Whereas a suit dismissed or struck out for nonattendance or want of prosecution is not synonymous with a suit that has been heard and determined on merits, the most important issue herein is whether it is open for a party to file a fresh suit based on the same facts and circumstances after the earlier suit is dismissed for want of prosecution. As held by Mativo J. (as he then was) in Mumira v Attorney General (2022) KEHC 271 (KLR), it is not open for a party to file a fresh suit after the earlier suit is dismissed for want of prosecution.
8. In my view, the proper cause of action for the Plaintiff was to either apply to set aside the order dismissing the Plaintiff for want of prosecution or apply for review the order or prefer an appeal against the dismissal. It is not open for the Plaintiff to institute a fresh suit in another court, a lower court, and adding another party while replicating the same issues. Such an approach is impermissible and if allowed, it would create endless litigation and open a window for parties to evade orders dismissing suits for want of prosecution or for non-attendance and then file fresh suits vexing Respondents twice with the same suit. On this ground alone, I find and uphold the Notices of Preliminary Objection and dismiss the Plaintiff's suit herein with costs to the defendants.

**DATED SIGNED AND DELIVERED AT NAKURU THIS 07th DAY OF August, 2025**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Plaintiff's Counsel: n/a

Ist Defendant's Counsel: Ndungu

2<sup>nd</sup> Defendant's Counsel: Ndungu h/b Musembi

Plaintiff: n/a



2<sup>nd</sup> Defendant: n/a

