



**Chebiego v Flora Chelimo & 3 others (Suing as the Legal Representative of the Estate of Joseph Kipyator Chelimo - Deceased) & another (Environmental and Land Originating Summons E001 of 2024) [2025] KEELC 7464 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7464 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2024  
CK YANO, J  
OCTOBER 30, 2025**

**BETWEEN**

**JOHN CHESIRE CHEBIEGO ..... PLAINTIFF**

**AND**

**FLORA CHELIMO FRED CHELIMO SYLVESTER CHELIMO AMBROSE  
KIPTOO CHELIMO (SUIING AS THE LEGAL REPRESENTATIVE OF THE  
ESTATE OF JOSEPH KIPYATOR CHELIMO - DECEASED) ..... 1<sup>ST</sup> DEFENDANT  
KIPTALAM CHERUNYA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Vide a Notice of Motion Application dated 19<sup>th</sup> July, 2013, the Defendants/ Applicants sought the following orders: -
  - i. That the applicants be substituted as applicants in place of Joseph Chelimo, now deceased.
  - ii. That the Plaintiff/Respondent John Chesire Chebiego be evicted from land parcel L.R. No. Irong/Kessup/65 measuring 10 acres.
  - iii. That the OCPD Iten Police Station do provide security to the Court Bailiff on the execution of the orders granted herein.
  - iv. That costs be in the cause.
2. The application is premised on the 3 grounds on the face thereof, the Supporting Affidavit sworn by one Fred Chelimo on even date, a Supplementary Affidavit dated 06.05.2025 and a Further Supplementary Affidavit dated 03.09.2025. He confirmed that the applicants are the legal representatives of the estate of the late Joseph Kipyator Chelimo.



3. It was his claim that the late Joseph Kipyator Chelimo is the registered owner of the suit land L.R. No. Irong/Kessup/65 and annexed the certificate of official search thereof in support of the said averments.
4. That vide the judgment dated and delivered by Hon. Lady Justice R. Nambuye (as she then was) on 21.02.2003; the late Joseph Kipyator Chelimo obtained orders against the plaintiff/respondent and whose effect was to evict the respondent from the suit land.
5. He contends that despite the respondent being served with demand letter asking him to vacate the suit parcel, he has refused and/or neglected to vacate the same and has remained in the land to date.
6. It is therefore his claim that unless the respondent is evicted from the suit land, they stand to be prejudiced and denied the opportunity to enjoy the fruits of their judgment. He maintained that the application had been filed in good faith and in the best interest of all the beneficiaries of the estate of the deceased and urged the court to allow the same as prayed.
7. The application was opposed. The 2<sup>nd</sup> Respondent, Sammy Kipkorir Cherunya filed a Replying Affidavit sworn on 5<sup>th</sup> May, 2025 in response to the application. He dismissed the application as being incurably incompetent and amounts to an abuse of the court process.
8. It was his contention that the judgment sought to be implemented was delivered on 21<sup>st</sup> February, 2003 and that the statutory period within which to enforce the said decree has long lapsed. He deponed that 22 and 12 years have since lapsed after the delivery of the judgment in question sought to be enforced/executed.
9. It was also his claim that the plaintiff, who is sought to be evicted from the suit land died in the year 2014 and thus the orders sought cannot be executed against the deceased person.
10. Further, he averred that the judgment in question merely dismissed the suit and there is therefore no judgment or decree capable of enforcement as the same was negative in nature. He thus maintained that the prayers sought can only be anchored upon a substantive suit or a positive decree.
11. In conclusion, he urged the court to dismiss the application with costs.
12. In response to the averments raised in the Replying Affidavit, the Applicants filed a Supplementary Affidavit dated 06.05.2025 and a Further Supplementary Affidavit dated 03.09.2025, both sworn by one Ambrose Kiptoo Chelimo, on his own behalf and on behalf of his co-applicants.
13. In the Supplementary Affidavit, he denied the contents of paragraph 1, 2 and 3 in the Replying Affidavit. Even though he admitted that the judgment sought to be enforced is dated 21.02.2003, he averred that there have been other proceedings in the mater and which made it clear that the plaintiff/respondent had no rights on the suit parcel. In this regard, he relied on the decision by Hon Justice R. Nyakundi in the Ruling issued on 11.10.2024.
14. He attributed the delay occasioned in seeking the enforcement of the said judgment to the two parallel succession proceedings on behalf of the estate of the plaintiff and on the part of the estate of the defendant, whom they represent. That after the succession proceedings, there were also objection proceedings which were all decided in their favor.
15. In the Further Supplementary Affidavit, he deponed that the substantive rights of the parties were determined in three different cases; the Originating Summons judgment dated 21.02.2003, the Ruling delivered by Hon. Justice Kaburu Bauni dated 13.11.2007 and the Ruling delivered by Hon. Justice R. Nyakundi dated 11.10.2024.



16. He asserted that the respondent had no locus standi over the estate of John Chesire Chebiego and accused the respondent of delaying the finalization of the matter.
17. He deponed that execution proceedings need not await the grant of letters of representation pursuant to the provisions of Order 24 Rules 3, 4, 7 and 10. In conclusion, he urged the court to allow the application and grant the orders sought.
18. The Application was canvassed by way of written submissions. Both parties filed their rival submissions. The applicants filed their submissions dated 03.09.2025. Even though the 2<sup>nd</sup> respondent indicated to the court that they had filed their submissions, I have not seen any submissions on his behalf either in the court record or on the CTS platform. Be that as it may, I have read and considered the submissions by the applicants and will proceed to render my decision as hereunder.

### **Analysis and Determination:**

19. I have carefully considered the application, the various affidavits in support of the application and the annexures therein, the Replying Affidavit and the annexure thereto as well as the applicants' submissions in totality. Consequently, it is my considered view that the following issues arise for determination: -
  - i. Whether the instant application offends the doctrine of res judicata.
  - ii. Whether the applicants are entitled to the grant of the orders sought in the application.
  - iii. Who shall bear the costs of the application

### **Whether the instant application offends the doctrine of res judicata;**

20. The law on the doctrine of res judicata is found under section 7 of the [Civil Procedure Act](#) which provides as follows: -

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. (emphasis added)

21. The Supreme Court in the case of Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others [2014] eKLR while discussing the operation of the doctrine of res-judicata held as follows:-

“The concept of res judicata operates to prevent causes of action, or issues from being relitigated once they have been determined on the merits. It encompasses limits upon both issues and claims, and the issues that may be raised in subsequent proceedings. In this case, the High Court relied on “issue estoppel”, to bar the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents' claims. Issue estoppel prevents a party who previously litigated a claim (and lost), from taking a second bite at the cherry. This is a long-standing common law doctrine for bringing finality to the process of litigation; for avoiding multiplicities of proceedings; and for the protection of the integrity of the administration of justice? all in the cause of fairness in the settlement of disputes.



22. Further, the Supreme Court in the case of John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 Others [2021] eKLR outlined the elements that must be proved in a claim for res judicata at paragraph 86 and held as follows:-

“We restate the elements that must be proven before a court may arrive at the conclusion that a matter is res judicata. For res judicata to be invoked in a civil matter the following elements must be demonstrated:-

- a. There is a former Judgment or order which was final;
- b. The Judgment or order was on merit;
- c. The Judgment or order was 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 identical parties, subject matter and cause of action.”

23. It is not in dispute that there was a previous application before this court, differently constituted, dated 07.09.2005. This fact was further confirmed by the applicants in their submissions at paragraphs 8 and 9.

24. In determining whether the instant application offends the doctrine of res judicata, it is important to compare and critically analyse the two applications in question, the application dated 07.09.2007 and the instant application and determine whether the essential elements of the doctrine of res judicata have been satisfied.

25. In the Application dated 07.09.2007, the defendants/applicants sought the following orders: -

1. The plaintiff/respondent be evicted forthwith from the defendant’s parcel of land to viz Irong/Kessup/65.
2. The plaintiff, his relatives, servants or agents be permanently restrained from trespassing on the said defendant’s parcel of land.
3. The Honourable Court be pleased to direct the OCS Iten Police Station to aid in the execution of the eviction order sought in prayer 1 above.
4. The costs of this application be provided for.

26. The said application was heard and determined vide the ruling by Hon. Justice Kaburu Bauni issued on 13.11.2007. The court in allowing the application held in part as follows: -

“I feel the provisions of Order XXI Rule 30(1) of the Civil Procedure Rules can equally apply in this case by virtue of section 3 of the Civil Procedure Act even though the decree does not specifically order for eviction. The court found the respondent has no claim over the land yet he continues occupying it. It will not make sense to ask the applicant to file a fresh suit to seek his eviction. Section 3A of the Civil Procedure Act gives this court inherent powers to make orders that are necessary to meet the ends of justice. This is a fit case to issue the orders sought.



In the circumstances, the court allows the application to the extent that the respondent be evicted forthwith from the suit premises. The applicant should however seek the services of a court bailiff and not the police as prayed.”

27. From a look at the two applications, it is not in dispute that they are similar and are seeking similar orders. In the earlier/previous application the applicants sought eviction orders and the assistance of the OCS Iten Police Station in executing the same. In the instant application, the applicants are also seeking eviction orders with the aid of OCPD Iten Police Station in enforcing the orders.
28. It is also not in contest that both applications are between the same parties, over the same subject matter being L.R. No. Irong/Kessup/65 and in respect to the same cause of action.
29. I have carefully looked at the decision by Hon Justice Kaburu Bauni issued on 13.11.2007 and it is important to note that the said decision was made on merit and the orders issued therein are final in nature. The ruling and orders have never been set aside, reviewed or vacated in any manner or by any court.
30. Both the issue of eviction and the use of the OCS Iten Police station are issues that were substantially raised in the previous application and were substantially heard and determined.
31. Consequently, it is the finding of this court that the instant offends the doctrine of res judicata. As a result thereof, issue no. (ii) on whether the applicants are entitled to the reliefs sought falls by the way. The doctrine of res judicata prohibits a court from trying any issue which has substantially been in issue in an earlier suit or application as in the instant case.

#### **Who shall bear the costs of the application;**

32. It is well settled that costs follow the event unless the court directs otherwise.
33. I have noted the nature of the claim herein. The orders sought were against the plaintiff and his estate. The 2<sup>nd</sup> respondent has not established any nexus between him and the estate of the plaintiff to warrant the award of costs in defending the application, even though the same was not against him directly. I therefore find no reason to award him the costs of the application.
34. In the circumstances therefore, I direct each party to bear their own costs of the application.

#### **Conclusion**

35. In view of the foregoing, it is the finding of this court that the Notice of Motion Application dated 19<sup>th</sup> July, 2013 is not merited on account of being res judicata and is hereby dismissed with no orders as to costs.
36. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN ELDORET THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025.**

**HON. C. K. YANO**

**ELC, JUDGE**

Ruling delivered virtually in the presence of: -

Dr. Chebii for the Defendants/Applicants.

Mr. Kibii for the Plaintiff/Respondents.



