



REPUBLIC OF KENYA



**Ijamii v Miraflores Apartment Ltd & 8 others (Civil Suit 382 of 2017 & 496 of 2018 (Consolidated)) [2025] KEELC 7522 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7522 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
CIVIL SUIT 382 OF 2017 & 496 OF 2018 (CONSOLIDATED)  
AA OMOLLO, J  
OCTOBER 30, 2025**

**BETWEEN**

**CALEB MIHESO IJAMII ..... PLAINTIFF**

**AND**

**MIRAFLORES APARTMENT LTD ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**PORT SAID APARTMENT LTD ..... 3<sup>RD</sup> DEFENDANT**

**STANBIC BANK LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 5<sup>TH</sup> DEFENDANT**

**DIRECTOR OF SURVEYS ..... 6<sup>TH</sup> DEFENDANT**

**JASWANT SIGNH & BROTHERS LTD ..... 7<sup>TH</sup> DEFENDANT**

**KENTEXAS LIMITED ..... 8<sup>TH</sup> DEFENDANT**

**NAIROBI CITY COUNTY ..... 9<sup>TH</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> Defendant, Miraflores Apartments Ltd (hereafter called the Applicant), filed the notice of motion application dated 7<sup>th</sup> July 2025 under the overriding objectives provisions of the [Civil Procedure Act](#) and orders 2 rule 15(1) (b), (c) and (d) of the Civil Procedure Rules. It is seeking orders:
  - a. THAT the suit herein or claims as commenced by Caleb Miheso Ijami, Kentexas Limited and Portsaid Apartment Limited as regards the property known as L.R No. 2/344 (Original No. 2/45b/2/3/3) or as converted, as owned by the 1<sup>st</sup> Defendant, Miraflores Apartment Limited, be dismissed in entirety.



- b. THAT Caleb Miheso Ijami, Kentexas Limited and Portsaid Aparüent Limited be declared vexatious litigants and be barred from interfering in anyway with Miraflores Apartment Limited's occupation and interest in the property known as L.R No. 2/344 No. 2/45b/2/3/3).
  - c. THAT the costs of this application and the entire suit be borne by Caleb Miheso Ijami, Kentexas Limited and Portsaid Apartment Limited.
2. The application is premised on several grounds listed on the face of it and reiterated in the affidavit in support thereof sworn by Hardev Singh Juttla. The grounds are inter alia that the Applicant had commenced on 1 November, 2011 in Nairobi Environment and Land Court Case No. 633 of 2011, Miraflores Apartment Limited vs. Caleb Akwera (also known as Caleb Habilson Akwera) & Another which was determined in its favour on 2020. One of the orders granted was that the plaintiff' acquired the suit property lavvfillly and it is ttle lawfillproprietor 0Tthe suitproperty L.R No. 2/344 (Original No. 2/45b/2/3/3).
3. The applicant avers that the judgment in that suit is a judgment in rem, binding all other persons claiming title or interest in the suit property, unless there is any claim that the 1<sup>st</sup> Defendant sold the suit property, which is not the case.
4. The 4th, 5th and 6th Defendants support the application.
5. However, it is opposed by the Plaintiff vide grounds of opposition dated 25<sup>th</sup> July 2025 and the 3<sup>rd</sup> Defendant, who also filed grounds of opposition. The Plaintiff pleaded thus:
  - i. The application is vexatious and scandalous, a gross abuse of the hallowed court process.
  - ii. The Application is res judicata the previous application made by the applicant
  - iii. The current suit is not res judicata as the parties in the two suits are different.
6. The submissions supporting and opposing this application were made orally on 28th July 2025, and were similar to the submissions made regarding the application dated 20th June 2025 filed by the Plaintiff. After reviewing the application, I noted that the Applicant failed to plead res judicata on the face of the orders sought. However, this point was raised in the submissions and responded to by the parties opposing the application.
7. Consequently, I pose the following questions to determine the application:
  - a. Whether this application is res judicata.
  - b. Whether or not the current suit is res judicata ELC case no. 633 of 2011.
  - c. Whether or not the orders sought should be granted.
  - d. Who bears the costs of this application?
8. The Plaintiff, in his grounds of opposition, raises the res judicata doctrine, but goes no further to give details of the previous application that had been determined, which related to the same orders now sought. I have perused both files (this one and ELC 496 of 2018) and did not come across any application made by the 1<sup>st</sup> Defendant seeking to strike out the two suits.
9. In his oral submissions, Mr Kalama advocate for the Plaintiff/Respondent only submitted that their suit is not res judicata. Thus, though raised as a ground of opposition to the application, there were no arguments presented to prove the application is res judicata.



10. The second question is whether or not this suit is res judicata ELC 633 of 2011 which was determined between the Applicant and two other parties who are not named as parties to the current proceedings. In the grounds pleaded in support of the application, the 1<sup>st</sup> Defendant has not pleaded any nexus between the Defendants in the previous suit and the present Plaintiffs. However, it argues that the judgment in the previous suit is a judgment in rem.
11. The doctrine of res judicata is defined and described at length in section 7 of the *Civil Procedure Act*. It is defined 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.”
12. Gleaning from the filed pleadings, there is no dispute that the 1<sup>st</sup> Defendant/Applicant and the Plaintiff in ELC 382 of 2017 are claiming a parcel of land occupying the same geographical position. The 3<sup>rd</sup> Defendant’s (Plaintiff in ELC 496 of 2018) claim is linked to the rights/interests of the Plaintiff in 382 of 2017 by way of purchase.
13. The Applicant filed a list of authorities in support of its case, inter alia; Muchanga Investments vs Safaris Unlimited (Africa) Ltd and Two Others (2009) KECA 453 KLR and TARDA versus Jeremiah Kimingo and three Others (2015) KECA 674 KLR. The highlighted portions of the judgment discuss what constitutes abuse of court process.
14. The Plaintiff/Respondent in his submissions pointed out that the 1<sup>st</sup> Defendant/applicant had not annexed a copy of the judgment referenced in his affidavit sworn in support of the application. A copy of the said judgment was filed in court on 28<sup>th</sup> July 2025, at 11am same date the parties highlighted their submissions.
15. I had the opportunity of reading the said judgment and in its introduction, the learned judge, S. Okong’o gives a summary of the claim by the Applicant herein. In brief, the Applicant pleaded that the 1<sup>st</sup> Defendant Caleb Akwera (in the former suit 633/2011) had, by an indenture of conveyance dated 31<sup>st</sup> December, 1990, transferred to the Applicant all his rights, interests and title in the suit property. That it took possession of the said property and remained quietly in possession until October 2011 when it discovered the suit property had been transferred to the 2<sup>nd</sup> Defendant in that suit.
16. In the present suit, the current Plaintiff is seeking to be declared as the owner of L.R. 2/344 I.R. No. 178704, claiming he was allotted the land in August 1996 by the Ministry of Lands. At paragraph 5 of the plaint, the Plaintiff/Respondent alleges that he is in possession and continues to hold title of the suit property. He considers the actions of the 1<sup>st</sup> Defendant on the suit land to constitute a trespass and seeks a permanent injunction against them.
17. As already stated, the Applicant did not plead or submit on the existence of any relationship between the two defendants in the former suit and the current suit for the proposition that this claim would have been brought in the previous claim. It is my considered opinion that the two claims are distinct as the first judgment questioned the action of the vendor who decided to transfer land which was already registered in the name of the Applicant to a third party without the Applicant’s consent.
18. In the current suit, the issue for determination can be summarised as, which of the registered title holders hold valid title documents. Although the 1<sup>st</sup> Defendant/Applicant’s title bears an earlier date



compared to the certificate of title of the Plaintiff, it would be premature to make declarations without allowing the Plaintiff to present his case.

19. It is my further considered view that the cause of action in this matter could not have been heard together with the already determined matter. Therefore, although this suit was pending when the previous one had not been concluded, the joinder of the Plaintiff/Respondent if any would have convoluted the hearing of the claim as between the Applicant and the two parties it had sued.
20. The judgment determined the question of ownership as between the Applicant and the parties in that suit arising from the contract executed on 31<sup>st</sup> December, 1990. It is on this account that I decline to hold that the judgment in ELC 633 of 2011 closes the Plaintiff from challenging the Applicant's title.
21. The 1<sup>st</sup> Defendant/Applicant also urged the court to declare the Plaintiff, the 3<sup>rd</sup> and 8<sup>th</sup> Defendants as vexatious litigants. Black's Law Dictionary, Tenth edition, defines a vexatious litigant as "a litigant who repeatedly files frivolous lawsuits."
22. There is no disclosure of any previous cases filed by the three parties who the Applicant want declared as vexatious litigants. The cases cited by the Applicant in their list of authorities dated 24<sup>th</sup> July 2024 discussing the principle of abuse of the court process come close in terms of application to the Plaintiff's application dated 20<sup>th</sup> June, 2025. Learned counsel did not explain their relevance to the application under review.
23. In light of the foregoing analysis, I find the application dated 7<sup>th</sup> July 2025 to be lacking in merit and proceed to dismiss it with costs to the Plaintiff. I award no costs to the 3<sup>rd</sup> Respondent, although they opposed the application, because their case is dependent on the outcome of the Plaintiff's case.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025**

**A. OMOLLO**

**JUDGE**

