



Kamula v Odembo & another (Environmental and Land Originating Summons E028 of 2025) [2025] KEELC 7191 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7191 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E028 OF 2025**

E ASATI, J

OCTOBER 23, 2025

BETWEEN

HADIJA NANJIRA KAMULA APPLICANT

AND

JOSEPH OUMA ODEMBO 1ST DEFENDANT

JOHN ODHIAMBO OWUOR 2ND DEFENDANT

RULING

1. This ruling is in respect of a preliminary objection raised by the Respondents vide the Notice of Preliminary Objection dated 11th June, 2025. The Preliminary Objection is raised on the grounds that;
 - a. The matter herein is res judicata to ELC Case No..109 of 2013 Kamula Sudi v Joseph Ouma Odembo, and Kisumu CMC EL Case No.145 of 2024 Hadija Nanjira Kamula v Joseph Ouma Odembo & Another.
 - b. The Honourable court is functus officio as the court had pronounced itself.
 - c. The suit does not meet the required standards as provided for under sections 7, 17, 37 and 38 of the *Limitation of Actions Act*.
 - d. That the Originating Summons dated 12th May, 2025 is incompetent, defective, misbegotten, misconceived and an abuse of the court process.
2. The Respondents sought that the Originating Summons be dismissed with costs.
3. The Preliminary Objection was heard by way of written submissions. It was submitted on behalf of the Respondents that the common issue in both former suit and the present suit is the ownership of land parcel No.Kisumu/Mukendwa/191.



4. Counsel referred to the cases of Richard Otieno & 9 others v Michael Otieno Wagude & Another, Kisumu ELC NO.46 of 2020 and section 7 of the *Civil Procedure Act*, Cap.21 Laws of Kenya and the case of E.T. v Attorney General & Another (2012)eKLR among others and submitted that the Applicant herein is directly linked and/or connected to the Defendant in the previous suits and that the subject matter is the same. That the Applicant cannot lament that she was not aware of the previous suits as they were together as husband and wife. That the Applicant is the wife of Kamula Sudi, deceased. That Kamula Sudi had filed Case No.. Kisumu ELC Case No..109 of 2013 which case was dismissed.

That the Applicant filed Kisumu CMC EL Case No..E145 of 2024.

5. On whether the court is functus officio, Counsel relied on the case of Telkom Kenya Limited v John Ochanda (suing on his behalf and on behalf of 996 Former Employees of Telkom Kenya Limited and submitted that the court having discharged its duties and pronounced itself vide orders issued on 25th April, 2018, the court has no jurisdiction as it is functus officio.
6. Counsel submitted further that the Originating Summons does not meet the required standards under sections 7, 17 and 38 of the *Limitation of Actions Act*.
7. Counsel urged the court to dismiss the suit with costs to the Respondents.
8. On behalf of the Applicant, it was submitted that Kisumu ELC Case No..109 of 2013 was dismissed for want of prosecution. That the same was not heard and finally determined. That the orders sought in the instant suit are not similar with those sought in the dismissed suit.
9. Counsel relied on the case Tee Gee Electrics and Plastic Company Ltd v Kenya Industrial Estates Limited [2005]KLR 97 and the case of Michael Bett Siror v Jackson Koech [2019]eKLR to support the submissions.
10. Counsel submitted that Case No.. ELC 109 of 2013 having been dismissed for want of prosecution does not amount to a suit that has been heard and finally determined and does not therefore satisfy the requirements of section 7 of the *Civil Procedure Act*.
11. On whether the court is functus officio, relying on the case of Election Petition Numbers 3, 4 and 5 Raila Odinga & Others v IEBC & Others [2013]eKLR where it was held, inter alia, that according to the doctrine of functus officio, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter, Counsel submitted that having made a finding that the instant Originating Summons does offend the doctrine of res judicata, it follows that the court cannot be said to be functus officio.
12. On whether or not the Applicant has capacity to sue, Counsel submitted that the Applicant brings the Originating Summons for her personal claim based on adverse possession and that the same has nothing to do with previous proceedings where her deceased husband was a party to Case No..ELC 109 of 2013. That she therefore has locus standi to bring the suit.
13. Counsel urged the court to dismiss the Preliminary Objection with costs.
14. I have considered the Preliminary Objection and the submissions filed by both parties. The ingredients of the doctrine of res judicata as provided for under section 7 of the *civil Procedure Act* are that:
 - i. The matter in issue has been directly and substantively in issue in a former suit,
 - ii. That the former suit must have been between the same parties or parties under whom they claim,



- iii. That the parties must be litigating under the same title,
 - iv. The issues must have in a court of competent jurisdiction to try the subsequent issue,
 - v. And that the matter has been heard and finally decided by such court.
15. To demonstrate the existence of the previous suits, the Respondent filed a copy of court order dated 25th April, 2018 vide which Case No.. 109 of 2013 was dismissed for want of prosecution.
 16. No pleadings, proceedings, judgements or rulings in respect of the former suits were filed. Without these, the court is unable to determine whether the subject matter, the parties, the issues for determination and the cause of action in the former suit(s) were the same as the suit herein and whether the former suits were finally determined by court of competent jurisdiction. In the case of Mukisa Biscuit Manufacturing Co. Ltd – vs- West End Distributors Ltd [1969] E.A 696 , it was held that a Preliminary Objection must be based on points of law which have been pleaded or which flow from the pleadings.
 17. The grounds upon which the Preliminary Objection is based require production of evidence prove the same.
 18. The court finds that the Preliminary Objection lacks merit and hereby dismisses it with costs to the Plaintiff.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 23RD DAY of OCTOBER, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Abira h/b for Maua for the Applicant.

N/A for the Respondents.

