



REPUBLIC OF KENYA



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**Okoth v Onyurah (Civil Appeal 235 of 2019)
[2025] KECA 1784 (KLR) (24 October 2025) (Judgment)**

Neutral citation: [2025] KECA 1784 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL 235 OF 2019
MSA MAKHANDIA, PO KIAGE & HA OMONDI, JJA
OCTOBER 24, 2025**

BETWEEN

PATRICK SHIMOKA OKOTH APPELLANT

AND

JUD DORICE AKINYI ONYURAH RESPONDENT

(Being an appeal from the judgment and decree of the Environment and Land Court at Kakamega, (Matheka, J) dated 25th September 2019) in ELC CASE NO. 30 OF 2017)

JUDGMENT

1. This is an appeal against the judgment and decree of the Environment and Land Court, (“the trial court”), at Kakamega in ELC Case No. 30 of 2017, delivered on 25th September, 2019, by Matheka J. The facts leading to this appeal, as can be gleaned from the record, are as follows:
2. According to the appellant, Mr. Patrick Shimoka Okoth, as a vendor, he entered into a sale agreement with the respondent, Ms. Jud Dorice Akinyi Onyurah as a purchaser involving all that piece or parcel of land known as L.R. No. Butsotso/Shikoti/17207 “the suit property”.

However, due to an inadvertent error or oversight, the agreement mistakenly referred to land parcel known as Butsotso/Shikoti/1702 as the suit property. Prior to the execution of the agreement, however, the respondent had apparently appeared before the relevant Land Control Board and obtained consent for the transfer of the suit property without the appellant’s knowledge or participation. To the appellant therefore, the respondent had unlawfully obtained title to the suit property. He in the premises sought legal recourse in law by filing the suit, the precursor to this appeal, praying for; the cancellation of the title as regards the suit property and its reversion to him. He additionally sought compensation for his emotional and mental suffering, alleging that the respondent’s actions had caused him significant distress. Lastly, the appellant prayed for costs of the suit, along with any other relief that the court deemed just and appropriate to grant.



3. In response, the respondent in her defence acknowledged the existence of the sale agreement but denied any wrongdoing. The respondent maintained that she had paid a deposit of Ksh.350,000- towards the purchase price of the suit property which was duly acknowledged by the appellant. However, the delay or failure to pay the outstanding balance of Ksh.320,000- led to the appellant filing Kakamega CMCCC No. 230 of 2015, “the Kakamega suit”, to recover the amount. Following full trial, the trial court entered judgment against her and she was ordered to pay the balance of the purchase price claimed and costs. The appellant duly complied and satisfied the decree.
4. The respondent therefore denied obtaining title to the suit property fraudulently, stating that the appellant had voluntarily signed all requisite documents, including transfer forms and land control board consent approval forms. She contended that she lawfully acquired title, took possession of the suit property, and later sold and transferred portions thereof to third parties, Mr. Opwara Meshack Chuma and Ms. Mildred Gladys Balla Anyura to whom the title deeds were properly processed and issued. Additionally, she averred that the suit was res judicata, as the dispute had already been adjudicated in the Kakamega suit.
5. Upon reviewing the evidence from both sides to the dispute, the trial court barring other peripheral issues it addressed, found the substantive issue for determination to be whether the suit was res judicata. The trial court opined that the dispute had already been litigated upon and decided in the Kakamega suit, which had addressed all the issues raised in the present suit. Consequently, the trial court declared the suit res judicata and struck it out with costs to the respondent. This is how it delivered itself “I have perused the pleadings in Kakamega CMCCC No. 230 of 2015 and find that they involve the same subject matter being land parcel known as Butso/ Shikoti/ 17207 and the same parties herein. I find from the foregoing that the suit is bad in law, fundamentally defective, res judicata, scandalous vexatious, frivolous and an abuse of the due process of the court as the same does not disclose a reasonable cause of action and I strike it out with costs to the defendant “
6. The appeal before us now challenges the said determination. Through his memorandum of appeal, the appellant raised a whopping sixteen grounds of appeal which were unnecessarily prolix and repetitive, but which we have whittled down in to one single ground; whether the trial court erred in holding that the suit was res judicata.
7. When the appeal came up for hearing, there was no appearance for the appellant whereas Mr. Osango, learned counsel appeared for the respondent. Since all parties had filed their respective written submissions, the court opted to act on those submissions in determining the appeal, the absence of the appellant notwithstanding.
8. We note, however, that most of those submissions did not address the substantive issue framed above. Instead, they addressed peripheral issues such as the faulty sale agreement, the process of the respondent’s acquisition of the suit property and whether the respondent’s entitlement to the suit property was statute-barred. To that extent, most of the submissions are irrelevant to the issue at hand. Some small credit though should go to counsel for the respondent who dedicated at least a paragraph or so in defending the trial court’s finding on res judicata.
9. Counsel defended the trial court’s judgment, asserting that it rightly dismissed the suit for being res judicata, given that the Kakamega suit had already determined the same dispute which involved the same parties and subject matter. The trial court addressed at length the issues of wrong parcel of land entered in the sale agreement and how the respondent obtained the consent from the Lurambi Land Control Board, and claims of fraud. The trial court made findings on each one of them, whose overall effect was that the respondent legally and properly acquired the suit property and her title was unimpeachable, and accordingly dismissed the suit. The suit in the trial court also revolved around the



same questions. It was therefore res judicata and the trial court correctly and properly held that it was, he urged.

10. Ultimately, the respondent prayed that the appeal be dismissed with costs.
11. Having considered the rival arguments set out above and the law, we deem that, as already stated, the only one issue for determination is whether the suit in the trial court was res-judicata. The doctrine of “res judicata” is provided for under Section 7 of the Civil Procedure Act in terms that:

“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 issue in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
12. According to Mulla, Code of Civil Procedure, 18th Ed 2012, the principle of res judicata, is a judicial device on the finality of court decisions, and is subject only to the special scenarios of fraud, mistake or lack of jurisdiction. The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage and has little to do with the merit of the decision.
13. Further, 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. (See *Nicholas Njeru v Attorney General & 8 others* Civil Appeal 110 of 2011 (2013) eKLR)
14. The Supreme Court in *Communications Commission of Kenya & 5 others - v- Royal Media Services Limited & 5 others* [2014] eKLR expressed itself as follows on the issue:

(317) The concept of res judicata operates to prevent causes of action, or issues from being re-litigated 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....

[319] There are conditions to the application of the doctrine of res judicata: (i) the issue in the first suit must have been decided by a competent Court; (ii) the matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and (iii) the parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title *Karia and Another v. The Attorney General and Others*, [2005] 1 EA 83, 89.
15. From the above authorities, it is clear that the doctrine of res judicata bars courts from retrying matters that have already been substantially and directly determined previously by a court of competent jurisdiction involving the same parties under the same title. A fundamental requirement for its



application is the existence of a prior final determination of the same dispute either directly or indirectly.

16. From the record, the judgment in the Kakamega suit conclusively resolved the financial obligations arising from the land transaction between the appellant and the respondent. Besides, the appellant raised the issue of the mistake in the sale agreement, fraud on the part of the respondent in obtaining the Land Control Board consent and the claim of the suit property by the respondent being statute barred. All these issues were addressed leading to a judgment ordering her to pay the outstanding sum plus costs and which Evidence on record shows the respondent fully complied and the appellant accepted the payments in full and final settlement of the dispute.
17. This makes it a final and binding determination under the doctrine of res judicata. Moreover, for the doctrine to apply, the prior judgment must have been rendered by a court with competent jurisdiction over the subject matter and parties. We have no doubt at all that the Kakamega Chief Magistrate's Court, that determined the dispute was clothed with the necessary jurisdiction over land-related contractual disputes, and had the authority to determine whether the appellant was entitled to the outstanding balance or any further relief. The fact that the dispute was fully litigated before a court of competent jurisdiction which issued a binding judgment reinforces the applicability of res judicata.
18. According to Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others (supra), res judicata bars the litigation of a case where the parties, subject matter, and cause of action remain unchanged from a prior suit. Comparing the Kakamega suit with the suit that was before the trial court, the parties remain the same, the subject matter involves ownership and transactions related to the same suit property. The subsequent cause of action equally related to the validity of the sale agreement, financial obligations, and alleged fraudulent registration over the suit property and overlaps significantly with the issues raised in the prior suit. This alignment further satisfies the elements required for res judicata to apply.
19. Consequently, based on the foregoing analysis, invoking res judicata by the trial court was justified, barring re-litigation of issues already settled in the prior case. The record fails to demonstrate any exceptions, such as fraud, mistake, or lack of jurisdiction that would have allowed the trial court to find otherwise. Having established that the suit was indeed res judicata, we uphold the trial court's decision and consequently dismiss the appeal with costs to the respondent.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF OCTOBER, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

P.O. KIAGE

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JUDGE OF APPEAL

H.A. OMONDI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed



DEPUTY REGISTRAR

