



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MILIMANI**  
**ELC MISCELLANEOUS APPLICATION NUMBER E175 OF 2021**

**PURITY KATHOKI MAWEU.....**  
**.....RESPONDENT**

**VERSUS**

**HEZEKIAH NJUKI MWANGI.....1<sup>st</sup>**  
**RESPONDENT**  
**HEROES SECURITY SERVICES LIMITED.....2<sup>nd</sup>**  
**RESPONDENT**

**AND**

**HYPAC INVESTMENTS**  
**LIMITED.....INTERESTED PARTY**

**AND**

**LUCY NKATHA**  
**FRANCIS.....OBJECTOR/APPLICANT**

**RULING**

1. By a Notice of Motion dated 13<sup>th</sup> June 2025, brought under Order 22 Rule 22, 51, 52 & 53, Order 51 of the Civil Procedure Rules and Article 159 of the Constitution of Kenya, the Objector seeks the following orders:-
  - i. Spent;*
  - ii. **THAT the Respondent and the Interested Party be restrained from injecting, repossessing,***

***attaching, evicting, auctioneering and in any way interfering with the Applicant/Objector's enjoyment of L.R. Number Nairobi Block 115/1192 [hereinafter referred to as 'the suit property' until hearing and determination of the suit.***

- iii. THAT this Honourable Court be pleased to grant an order to restrain the 2<sup>nd</sup> Respondent, its agents, employees and servants from interfering with the Applicant/Objector herein from blocking her and her family from accessing the suit property or interfering with her right of enjoyment of the suit property until hearing and determination of the suit.***
- iv. THAT this court be pleased to set aside, revoke, quash all orders issued by this Honourable court on 21<sup>st</sup> December 2021 and 11<sup>th</sup> October 2023 issued by Mogeni J pertaining the suit property till hearing and determination of the suit.***
- v. THAT this Honourable Court grant leave for the Applicant herein to settle the decretal amount claimed by the Interested Party as mortgage granted to the 1<sup>st</sup> Respondent/Applicant.***
- vi. THAT the costs be provided for.***

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of the Objector sworn on even date.

### **THE OBJECTOR/APPLICANTS' CASE**

3. The Objector averred that she is one of the beneficiaries of the suit property as she is the wife of the 1<sup>st</sup> Respondent. She further averred that she was not involved in the loan and the proceedings herein.
4. She asserted that the property was purchased through their joint effort, so she was entitled to be notified about all issues regarding the loan.
5. She further averred that OCS Mihango Police Station came to the house and instructed her to vacate the premises because her husband had an unpaid loan. She deposed that she was not informed about the proceedings.
6. She further stated that the proper eviction procedure was not followed, because no proclamation or warrant of attachment of sale was issued by a competent authority therefore, due process of law was not observed.
7. She maintained that she is ready to pay the decretal sum to salvage her matrimonial home.
8. She argued that the said process should be reverted and the Respondent and interested party be restrained from interfering with their right of enjoyment in the suit property until hearing and determination of the suit.

### **THE RESPONDENT'S CASE**

9. The Respondent filed a Replying Affidavit dated 4<sup>th</sup> July 2025 in opposition to the application. She argued that the application is a calculated abuse of the judicial process meant to obstruct the lawful execution of a valid court decree and to unduly frustrate her right to enjoy the fruits of her judgment from the decree and the appeal outcome.
10. She contended that the Objector had failed to present any evidence to demonstrate or substantiate ownership of the suit property or her proprietary interest therein, whether directly or indirectly.
11. She further averred that the court rendered its final judgment on 25<sup>th</sup> November 2021, confirming that she was the lawful purchaser and registered proprietor, and eviction orders were issued.
12. She also stated that the Objector had previously filed similar applications to be joined in the proceedings and challenge the execution process, which application was dismissed.
13. According to the deponent, the application is res judicata and a blatant attempt to re-litigate matters that had already been decided. It contradicts the principle of finality in litigation and the doctrine of functus officio.
14. She contended that the eviction had already occurred, rendering the Objector's application mute and an afterthought.
15. She further asserted that the Objector had not satisfied the criteria necessary for the award of temporary relief.

16. In conclusion, she urged the court to dismiss the application with costs.
17. The application was canvassed by way of written submissions.

### **THE OBJECTOR'S SUBMISSIONS**

18. The Objector filed her submissions dated 3<sup>rd</sup> September 2025.
19. On behalf of the Objector, Counsel reiterated the contents of the affidavit in support of the application. Counsel further submitted that the eviction orders were invalid because they were issued contrary to Section 19 of the Civil Procedure Act and Order 3 Rule 1 of the Civil Procedure Rules. Counsel contended that a party cannot enforce a right through a miscellaneous application. It was further submitted that the Applicant was not afforded an opportunity to be heard when their application was dismissed

### **THE RESPONDENT'S WRITTEN SUBMISSIONS**

20. The Respondent filed her submissions dated 4<sup>th</sup> July 2025.
21. Counsel submitted that the principle of finality in litigation ensures that parties rely on the outcomes of litigation, promoting legal certainty, preserving judicial resources, and fostering confidence in the rule of law. It was submitted that a case cannot be re-litigated through new or proxy parties once it is conclusively settled.
22. Counsel argued that the matter was concluded by the Ruling delivered on 25<sup>th</sup> November 2021 and by the Court of Appeal

on 29<sup>th</sup> August 2024. They stated that the application was belated, procedurally flawed, lacking in merit, and should be dismissed.

23. Counsel submitted that the application is mainly duplicative and an abuse of process, but also manifestly belated. There is no pending issue for the court to adjudicate, as the orders have been executed.
24. Counsel argued that the judgment debtor was found to lack a legal interest in the property. The objector's occupation of the suit property could not serve as a foundation for an independent legal claim.
25. Counsel relied on the case of **Precast Portal Structures versus Kenya Pencil Company Limited [1993]**, where it was held that an Objector must demonstrate both legal interest and possession in their own right before executing.
26. Counsel maintained that the application is res judicata, functus officio and offends the law governing objection proceedings.
27. It was further submitted that the application is a mere afterthought calculated to derail a lawful completed execution process.
28. Counsel urged the court to dismiss the application with costs and affirm its previous orders.

### **ANALYSIS AND DETERMINATION**

29. Having considered the application, the respective affidavits, and the submissions by the Respondent, the issue for

determination is whether the instant application is res judicata.

30. The doctrine of *res judicata* is anchored in Section 7 of the Civil Procedure Act, Cap 21 Laws of Kenya, 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.***

31. The doctrine of *res judicata* has been defined in **Black's Law Dictionary, 9<sup>th</sup> Edition** as follows:

***"a thing adjudicated" 1. An issue that has been definitively settled by judicial decision. 2. An affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been but was not raised in the first suit."***

32. The elements which must be present to succeed on a defence of *res judicata* were enunciated in the case of **Independent Electoral & Boundaries Commission Vs Maina Kiai & 5 Others [2017] eKLR** where the Court of Appeal held that:-

***“Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms;***

***The suit or issue was directly and substantially in issue in the former suit.***

***That former suit was between the same parties or parties under whom they or any of them claim.***

***Those parties were litigating under the same title.***

***The issue was heard and finally determined in the former suit.***

***The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”***

33. The doctrine of *res judicata* is founded on public policy and is aimed at achieving two objectives namely; that there must be finality to litigation and the individual should not be

harassed twice with the same account of litigation. The essence of the doctrine of *res judicata* is to bring an end to litigation and a party should not be vexed twice over the same cause.

34. Turning to this case, the Objector filed an application dated 4<sup>th</sup> September 2024 seeking the following orders:-

**a) Spent.**

**b) THAT the Applicant herein be enjoined in this suit as an interested Party and be allowed to file a counter claim**

**C) THAT Honourable court be pleased to grant orders for stay of execution of the orders delivered by Honourable Justice Mogeni delivered on 25/11/2021 and or any other orders of the Honourable court I respect to L.R No. NIRONO BLOCK 115/119 pending that hearing and determination of this application.**

**d) THAT pending the hearing and determination of this application this Honourable court be pleased to grant an interim injunction restraining the Respondents their servants, agents or any person claiming under them from evicting, removing, attaching, disposing of or in any other way alienating the Applicants person effects and or interfering**

***with the Applicant's Quiet enjoyment of a property known as L.R No. NAIROBI BLOCK 115/1192 pending the hearing and determination of this suit.***

***e) THAT the OCPD Kayole and OCS Mihango Police Station to ensure compliance of these orders.***

***g) THAT the costs of this application be provided for.***

35. The application was dismissed vide a ruling delivered on 5<sup>th</sup> March 2025.
36. The instant application is similar to the application dated 4<sup>th</sup> September 2024 as the parties and the prayers sought are similar. The application is res judicata and is therefore an abuse of the court process.
37. The upshot of the foregoing is that the application dated 13<sup>th</sup> June 2025 is devoid of merit and the same is hereby dismissed with no orders as to costs.

**JUDGMENT SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025.**

.....  
**HON. T. MURIGI**  
**JUDGE**

**IN THE PRESENCE OF: -**

Daud Farah for the Applicant

Ahmed - Court Assistant