



**Mudigo v Agui & another (Environment and Land Miscellaneous Application
E016 of 2025) [2025] KEELC 7468 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7468 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E016 OF 2025
GMA ONGONDO, J
OCTOBER 28, 2025**

BETWEEN

BARNABAS MBIWA MUDIGO APPLICANT

AND

DENNIS KIPTANUI AGUI 1ST RESPONDENT

ANTHONY KIMAGUT AGUI 2ND RESPONDENT

RULING

1. By a Notice of motion application dated 29th April 2025, the applicant, Barnabas Mbiwa Mudigo through Apollo Ambutsi and Company Advocates, is seeking the following orders;
 - a. That this Honourable Court be pleased to direct the officer commanding station (OCS), Kobujoi Police Station to effect the eviction order dated 26th November 2020.
 - b. That, costs of this application be provided for.
2. The application is grounded upon the applicant's eleven affidavits of eleven paragraphs sworn on even date, the accompanying copy of the judgment delivered on 5th May 2020 and a copy of the decree issued on 26th November 2020 in Eldoret ELCC No. 259 of 2013 (BMMI) as well as six grounds which include;
 - a. That the Honourable Court granted an eviction order dated 26th November 2020.
 - b. That the said order demanded the Respondents to vacate the suit land within 90 days.
 - c. That the Respondents have been aware of the decree given herein.
 - d. That, despite being aware of the decree and judgment of this Honourable Court, the Respondents have intentionally refused to vacate the suit land therefore forcing the Applicants to seek the intervention of this Honourable Court.



3. The Respondents through Cheruiyot Melly and Company Advocates opposed the application by way of a Replying affidavit of fifteen paragraphs sworn on 21st July 2025. It is deposed in part that the application is res judicata, frivolous, vexatious and an abuse of the court process. That the application is not for review of the court's earlier determination of the instant dispute.
4. In the further affidavit sworn on 27th August 2025, the applicant averred inter alia, that judgment was delivered in the matter on 14th May 2020 and it has not been set aside. That whereas the application dated 7th June 2024 sought review of orders, the instant application seeks enforcement of the judgment and decree.
5. The application was heard by way of written submissions. However, the applicant's counsel did not file submissions to reinforce the application as disclosed in the e-filing platform herein.
6. By the submissions dated 1st September 2025, learned counsel for the respondents referred to the ruling stated that the instant matter is res judicata as the same had been determined by way of the judgment in ELCC No. 20 of 2022 (Formerly Eldoret ELC Case No. 259 of 2012) and the ruling of 7th April 2025 therein, among others. That thus, the application is res judicata. Reliance was made on section 7 of the Civil Procedure Act Chapter 21 Laws of Kenya, the case of Mburu Kinyua-vs-Gachini Tuli (1978) KLR 69 at 81 and Independent Electoral and Boundaries Commission-vs-Maina Kiai & 5 others (2017) eKLR, among authoritative pronouncements.
7. In that regard, has the applicant established that he is entitled to the orders sought in the application?
8. The last paragraph of the judgment referred to in paragraph 2 hereinabove, reads;

“Ultimately, I do grant judgment for the Plaintiff in terms that the Defendants do vacate the suit parcel of land within 90 days from the date of judgment or be evicted from the same upon the expiry of the said period of time.”
9. Notably, the property in dispute herein is Plot No. 667 Koibarak 'A' as revealed in decree issued pursuant to the judgment (BMMI).
10. The Respondent termed the instant application Res judicata. I bear in mind the said principle anchored on section 7 of the Civil Procedure Act Chapter 21 Laws of Kenya which provides;

“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....and has been heard and finally decided by such Court’
11. The applicant is entitled to fruits of the judgment. However, execution of the substantive order of eviction cannot be issued through the present miscellaneous application; see Nairobi West Hospital Ltd-vs-Joseph Karina & another (2018) eKLR and section 34 of the Civil Procedure Act Chapter 21 Laws of Kenya.
12. It is thus, the considered view of this court that the application is misconceived and inept.
13. A fortiori, the application dated 29th April 2025, be and is hereby struck out with costs to the respondent taking into account the proviso to section 27 (1) of the Civil Procedure Act Chapter 21 Laws of Kenya and the Court of Appeal decision in the case of Rai-vs-Rai (2014) eKLR.
14. It is so ordered

DATED AND DELIVERED AT KAPSABET THIS DAY OF 28TH OCTOBER 2025



HON G M A ONGONDO

JUDGE

In the presence of;

1. Ms Mukamo instructed by Mr Ambutsi learned counsel for the Applicant
2. Mr Serem learned counsel for the Respondent
3. Walter, Court Assistant

