



Muriuki v Wanjiru Properties Limited (Environment and Land Case E019 of 2025) [2025] KEELC 7334 (KLR) (28 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7334 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E019 OF 2025
LC KOMINGOI, J
OCTOBER 28, 2025**

BETWEEN

DUNCAN MURIUKI PLAINTIFF

AND

WANJIRU PROPERTIES LIMITED DEFENDANT

RULING

1. This Ruling is in respect of the Preliminary Objection dated 28th April 2025.
2. The Grounds of the Preliminary Objection are;
 - i. The Court lacks jurisdiction to entertain this suit as the same is res judicata and in violation of the provisions of Section 7 of the *Civil Procedure Act*.
 - ii. The claim by the Plaintiff for Title Number Kajiado/Kipeto/176 was heard and determined by a competent Court in Criminal Case Number E800 of 2022 Republic v David Somoire Shanka at the Ngong Law courts.
 - iii. The Plaintiff should have appealed against the decision in Criminal Case Number E800 of 2022 Republic v David Somoire Shanka and not file another suit.
 - iv. The Defendant having bought Title No. Kajiado/Kipeto/176 through David Somoire Shanka who has since been acquitted under S. 215 of the Criminal Procedure Code, the Plaintiff is barred from filing a similar claim of fraudulent acquisition of title number Kajiado/ Kipteto/ 176 unless the decision in Criminal Case Number E800 of 2022 Republic vs David Somoire Shanka is reversed.
3. The application was canvassed by way of written submissions.



Submissions of the Defendant

4. On whether the suit is res judicata, it was submitted that Section 7 of the *Civil Procedure Act* barred a Court from trying a suit which had already been determined by a Court of competent jurisdiction and with reference to John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR). It was submitted that the Plaintiff was the complainant in Criminal Case Number E800 of 2022 Republic vs David Somoire Shanka whose Judgment was passed on 24th January 2025 and that the documents filed in that case were the same as the documents filed with the Plaintiff in this suit. The suit was set down for hearing and witnesses testified and the judgement determined who the rightful owner of property Kajiado/Kipeto/176 which was the subject matter in this suit was.
5. This suit was therefore res judicata and the Plaintiff should have filed an appeal or a revision and not an entirely new suit on the same subject. Even if the previous suit was a criminal case, this did not bar application of the doctrine of res judicata. Reference was made to the case of Irungu & another v Attorney General & 2 others; High Court of Kenya & another (Interested Parties) [2022] KEHC 11257 (KLR). Counsel went on to submit that litigation must come to an end and it was unjust for the Plaintiff to drag the defendant in another suit after the criminal case took over five years and a determination rendered in the defendant's favour. Therefore, the suit should be dismissed with costs to the Defendant.

Submissions of the Plaintiff

6. Counsel submitted that the plaintiff was the registered owner of parcel Kajiado/Kipeto/176 which the defendant had fraudulently acquired. That one David Shanka orchestrated a fraudulent transfer to the defendant who invaded and attempted to fence off the property. They threatened the Plaintiff with violence which led to filing a report and the filing of Criminal Case No. E008 of 2022. It was submitted that while David Shanka was acquitted in that suit, the State had lodged an Appeal against that decision. It was contested that the preliminary objection raised questions that needed to be ascertained and should therefore not be sustained. Reference was made to Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969] EA 696.
7. Counsel also argued that questions of proprietary interests could only be addressed by the Environment and Land Court and not the Magistrate's Court as a criminal case. It was also their submissions that the criminal case addressed forgery under the Penal Code, while the civil suit seeks remedies for fraud, trespass, and title cancellation which the Criminal Court neither addressed or determined.
8. Counsel also argued that a criminal acquittal did not bar civil claims and that the Plaintiff's suit had evidence that had not been litigated on in the Criminal Case as affirmed by Kibos Sugar and Allied Industries Ltd v. Benson Ambuti Adegea [2020] eKLR.
9. As such, the Preliminary Objection was against the threshold set by Mukisa Biscuit and should be dismissed with costs.

Analysis and Determination

10. The Defendant has filed a Preliminary Objection to the Plaintiff's suit on the ground of res judicata, contending that the matter has already been adjudicated in Criminal Case No. E800 of 2022 at Ngong Law Courts.



11. I have considered the Grounds of Preliminary Objection, the rival submissions and the authorities cited. The issues for determination is whether the Preliminary Objection is merited.
12. The Plaintiff opposes the objection, arguing, inter alia, that the Preliminary Objection cannot be upheld because the Court will be required to delve into the facts of the case and a factual enquiry is inconsistent with the nature and purpose of a preliminary objection.
13. The doctrine of res judicata in Kenya is statutorily embodied in Section 7 of the [Civil Procedure Act](#) 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, 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.”

14. It is trite law that a Preliminary objection should be raised on a pure point of law and not facts. This was held in the case of *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors* [1969] EA 696 and supported by the Supreme Court in *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others* (Petition 17 of 2015) [2021] KESC 39 (KLR):

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion...”

15. The question of res judicata in the case at hand will require this Court to go beyond what is prima facie pleaded to determine whether the subject matter herein and the issues are similar to the issues raised in Criminal Case E800 of 2022 in order to come to the conclusion that the issues were dealt with. The moment the Court begins to delve into the arena of perusing evidence to make a determination, the issue moves from being a pure point of law to a factual matter defeating the principles of a preliminary objection.
16. In conclusion, I find no merit in the preliminary objection and the same is dismissed.

The costs shall abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28TH DAY OF OCTOBER 2025.

L. KOMINGOI

JUDGE.

In the Presence of:

Mr. Okemwa for the Plaintiff.

N/A for the Defendant.

Court Assistant – Peter.

