



**Nderu (Suing as administrator of the Estate of Gacheru Kanungu - Deceased) v Babu
(Environment and Land Case 270 of 2019) [2025] KEELC 7588 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7588 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 270 OF 2019
TW MURIGI, J
OCTOBER 31, 2025**

BETWEEN

**AGNES WANJA NDERU (SUING AS ADMINISTRATOR OF THE ESTATE OF
GACHERU KANUNGU - DECEASED) PLAINTIFF**

AND

KIARIE BABU DEFENDANT

RULING

1. By a Notice of Motion dated 14th of March, 2025, brought under Section 1A, 2A, 3B, and 3A of the Civil Procedure Code, Rule 5(2) (b) of the Court of Appeal Rules, Articles 50 and 159 of *the Constitution* of Kenya, the Applicant seeks the following orders:-
 1. Spent.
 2. There be a stay of execution of the Judgment and decree given on 24th May 2023 in ELC Case NO 270 of 2019 pending delivery of the ruling of the Applicant's Court Of Appeal Civil Application No. E702 Of 2024.
 3. A conservatory order be issued preserving the status quo to remain the same pending the delivery of the ruling of the Applicant's Court Of Appeal Civil Application No. E702 OF 2024.

The application is premised on the grounds appearing on its face together with the supporting affidavit of Kiarie Babu, sworn on even date.

The Applicants' Case

2. A summary of the grounds and the averments is that the Applicant appealed the judgment issued on 24th May, 2023, to the Court of Appeal. The Applicant stated that he applied for a stay of execution but was unsuccessful. He also mentioned that his application for a stay of execution is still pending before



the Court of Appeal. The Applicant is apprehensive that he will be evicted from the suit property if a stay of execution is not granted.

The Respondent's Case

3. The Respondent filed a replying affidavit dated 6TH August 2025 in opposition to the application. She asserted that the application is res judicata and an abuse of the court process as the court had previously determined the issue of stay in its ruling issued on 14th November 2023 and 16th December 2024.
4. She further stated that, following the Applicant's application dated 14th November 2023, the court granted a conditional stay of execution for 30 days, on the condition that the Applicant provides security of Kshs 250,000 within that period. If not, the stay would automatically lapse.
5. She further stated that after the Applicant failed to comply with the condition to furnish security and consequently the conditional stay of execution lapsed and the eviction notice of ninety days expired.
6. Following the Applicant's failure to comply with the conditions for stay, she was granted an eviction order on 16th December 2024.
7. The application was canvassed by way of written submissions. Both parties filed their submissions, which I have duly considered

The Analysis And Determination

8. Having considered the application, affidavits, and the rival submissions, the only issue that arises for determination is whether the application herein is res judicata.
9. The doctrine of Res judicata is embodied in Section 7 of the *Civil Procedure Act*, which provides 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 the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.
10. The Black's Law Dictionary, 9th Edition defines the doctrine of res judicata 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.”
11. The elements which must be present to succeed on a defence of res judicata were enunciated in 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;

 - (a) The suit or issue was directly and substantially in issue in the former suit.
 - (b) That former suit was between the same parties or parties under whom they or any of them claim.



- (c) Those parties were litigating under the same title.
 - (d) The issue was heard and finally determined in the former suit.
 - (e) 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.”
12. Similarly, the Court of Appeal expressed the elements which must be demonstrated when the doctrine of res judicata has been invoked in *Uhuru Highway Development Ltd v Central Bank of Kenya* [1999] eKLR as follows: -
- “(a) the former judgment or order must be final;
 - (b) the judgment or order must be on merits.
 - (c) it must have been 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.”
13. The Applicant acknowledged that he had never succeeded in obtaining a stay. He asserted that he had filed two applications in the Court of Appeal seeking a stay of execution, which are still pending for determination. He maintained that his appeal would become nugatory if a stay of execution is not granted.
14. The Respondent argued that the Applicant was granted a conditional stay but failed to meet the specified conditions; as a result, the stay order lapsed.
15. It is not in dispute that the Applicant was granted a conditional stay but failed to comply with the conditions. Consequently, the stay lapsed.
16. The Applicant, having acknowledged that he has a pending application in the Court of Appeal seeking similar orders as those in the present application, I find that the application is an abuse of the court process.
17. In the end, I find that the application is devoid of merit and the same is hereby dismissed with costs.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 31ST DAY OF OCTOBER, 2025.

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HON. T. MURIGI
JUDGE

In The Presence Of: -

Ms Nakoye holding brief for Ms Njuguna for the Respondent.

Ahmed – Court Administrator

