



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO E161 OF 2023

**JOHN PATTERSON OWINO, ELIJA NDOGA & AGNES OKEMWA(Suing in their representative capacity
As the Secretary, Chairman
And the Treasurer respectively of
TASSIA WELFARE
ASSOCIATION.....
PLAINTIFF**

VERSUS

**THE BOARD OF TRUSTEES
NATION SOCIAL SECURITY FUND.....1ST
DEFENDANT
NAIROBI CITY COUNTY.....2ND
DEFENDANT
WYCLIFFE MUKASA
ASHIBERO.....1ST INTERESTED
PARTY/APPLICANT
HUMPREY IMONJE MUHANJI.....2ND INTERESTED
PARTY/APPLICANT
DENIS ALIMA MAHELI.....3RD INTERESTED
PARTY/APPLICANT
HANAKI INVESTMENT LIMITED.....4TH INTERESTED
PARTY/APPLICANT
MOHAMMED HAMUD.....5TH INTERESTED
PARTY/APPLICANT
GLINS SCOLASTICA NYAMBURA.....6TH INTERESTED
PARTY/APPLICANT
GEORGE ONER.....7TH INTERESTED
PARTY/APPLICANT**

RULING

1. By a Notice of Motion dated 7th of March, 2025 brought under Order 40 Rule 1(a), Order 1 Rule 10(2) of the Civil Procedure Rules, Section 1A, 1B, 3A, and 63(e) of the Civil Procedure Code, Articles 40 and 50 of the Constitution of Kenya, the Applicants seek the following orders:-

- 1) Spent.**
- 2) THAT the Honourable Court be pleased to join the Interested Parties to these proceedings.**
- 3) Spent.**
- 4) THAT, pending the hearing and determination of this suit, this Honourable Court be pleased to issue an order restraining the Defendants and the 4th to 7th Interested Parties from burning the properties, evicting, demolishing the properties in any manner, or interfering with the quiet possession of the occupants of the parcels of land known as L.R. No. 97/6.**
- 5) THAT the Officer Commanding Station Embakasi Police Station and/or Officers under his command ensure compliance with this Honourable court's order.**
- 6) THAT the costs of this application be provided for.**

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

THE APPLICANTS' CASE

2. The deponent averred that the Applicants are members of the Plaintiff and have occupied the suit property since 2014, where they operate various businesses. He further averred that the Defendants, along with the 4th to 7th Interested Parties, violated the order of status quo issued on 15th July 2024 by threatening to evict them from the suit property.
3. On 5th March 2025, certain individuals visited the suit property and ignited a fire. He contends that the proposed eviction contravenes the status quo order. He further contended that they would suffer prejudice if the orders sought are not granted.

THE 2ND DEFENDANT'S CASE

4. The 2nd Defendant filed grounds of opposition dated 4th April 2025 in opposition to the application. The 2nd Defendant argued that the application is res judicata because the ruling of 15th July 2024 issued status quo orders pending the hearing and determination of this suit. It was further argued that the Applicants lack standing and that the application does not disclose a reasonable cause of action against the 2nd Defendant. It was also argued that the Applicants have not demonstrated any identifiable interest in the suit property or

any prejudice if they are not joined, nor has it been shown that the representation of the Plaintiffs is inadequate.

THE RESPONSE

5. In a supplementary affidavit dated 14th May 2025, the deponent asserted that the application is not res judicata because it seeks to join new parties.
6. The application was canvassed by way of written submissions.

THE APPLICANTS SUBMISSIONS

7. The Applicants filed their submissions on 15th May 2025
8. On their behalf, Counsel outlined the following issues for the court's determination:-
 - a) *Whether the application is barred by the doctrine of res judicata.*
 - b) *Whether the Applicants and the 4th to 7th Interested should be joined to the suit.*
 - c) *Whether a restraining order should be issued against the 4th to 7th interested parties.*
9. Counsel argued that the Applicants filed the application because the suit property is protected by the status quo order issued on 15th July 2024. Counsel maintained that filing a separate suit over the same land could lead to duplication, conflicting orders, judicial confusion, and would violate the overriding objection of the Act. Counsel further submitted that the proposed Interested Parties were not involved in the initial suit when the orders were granted. It was submitted

that the Applicant's case is based on new and separate facts that emerged after the original orders.

10. Regarding whether the Applicants should be joined in the proceedings, Counsel submitted that the Applicants have an interest in the suit property as they operate various businesses.
11. On the third issue, Counsel submitted that joinder of the Applicants and the 4th to 7th Interested Parties is intertwined because the 4th - 7th Interested Parties have violated their rights, and therefore they should be part of the proceedings.
12. It was submitted that the Applicants have satisfied the threshold for granting an injunction, as they have established a prima facie case, that they would suffer irreparable harm if the orders sought are not granted and that the balance of convenience tilts in their favour.

THE 2ND DEFENDANT'S SUBMISSIONS

13. The 2nd Defendant filed its submissions dated 14th April 2025
14. On its behalf, Counsel outlined the following issues for the court's determination:-
 - a) *Whether the application is barred by the doctrine of res judicata.*
 - b) *Whether the application contravenes Order 40 Rule 3 of the Civil Procedure Rules.*
 - c) *Whether the Applicants have locus standi to institute the application.*

d) Whether the application discloses any reasonable cause of action against the 2nd defendant.

15. On the first issue, Counsel submitted that the application is res judicata because the status quo orders issued on 15th July 2024, remain in effect. To support this argument, reliance was placed on the case of **Uhuru Highway Development Ltd vs Central Bank of Kenya & 2 others (1996) eKLR and Mungayi vs Ngunya & 3 others,**
16. Regarding the second issue, Counsel argued that the status quo orders issued were injunctive in nature and that any breach should be addressed through contempt proceedings, not by filing a new application.
17. Regarding the third issue, Counsel argued that the Applicants lack standing because there is no evidence they are part of the Tassia Welfare Association Management Committee, which is responsible for representing the Association in external dealings as outlined in Sections 6 and 7 of the Association's Constitution.
18. Regarding the fourth issue, it was submitted that the application should be struck out as it does not disclose a reasonable cause of action against the 2nd Defendant.
19. Regarding the joinder, Counsel contended that the order is unnecessary as the Plaintiffs already represent the collective interests of the Association members. It was further argued that the Applicants failed to demonstrate that their individual interests are distinct or that their participation is essential for

the resolution of the matter. To support this point, reference was made to the case of **Francis Kariuki Muruatetu & another v Republic & 5 others.**

THE ANALYSIS AND DETERMINATION

20. Having considered the application, the respective affidavits, and the rival submissions, the only issue that arises for determination is whether the application herein is res judicata.

21. 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.*”**

22. The **Black’s Law Dictionary, 9th Edition** at page 1425, 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.”

23. 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.”***

24. 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.***

25. The ruling of 15th July 2024 indicates that an order maintaining the status quo was issued, explicitly prohibiting subdivision, sale, and/or allocation of all parcels, including the suit property, to third parties pending the hearing and determination of this case. The Applicants acknowledged that they are members of the Plaintiff. The status quo remains in effect. Based on the foregoing, I find that the instant application is *res judicata* and an abuse of the court process.

26. The upshot of the foregoing is that the application dated 7th March 2025 is devoid of merit and is hereby dismissed with costs.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF OCTOBER, 2025.

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HON. T. MURIGI
JUDGE

IN THE PRESENCE OF: -

In the absence of the parties
Ahmed - Court Administrator

ORIGINAL