



Bariwot & 4 others v Jelimo (Environment and Land Case E031 of 2025) [2025] KEELC 7575 (KLR) (5 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7575 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E031 OF 2025**

CK NZILI, J

NOVEMBER 5, 2025

BETWEEN

**RUTH CHERUTO BARIWOT 1ST PLAINTIFF
MARY JEBET BARIWOT 2ND PLAINTIFF
REBECCA CHEPNGETICH BARIWOT 3RD PLAINTIFF
JOYCE CHEPCHIRCHIR TANGUT 4TH PLAINTIFF
ENOCK KIPKOECH KEMBOI 5TH PLAINTIFF**

AND

LILIAN JELIMO DEFENDANT

RULING

1. The court, by an application dated 27/8/2025, is asked to strike out the suit on account of res judicata, in view of Kitale ELC No. 78 of 2008 (Lilian Jelimo v Enock Kipkoech Kemboi & Joyce Chepchirchir Tangut), whose judgment was subsequently affirmed in the Court of Appeal Civil Appeal No. 61 of 2019 as per annexures marked LJ-(1) and (2).
2. The defendant deposes in her supporting affidavit sworn on 27/8/2025 that the 1st, 2nd and 3rd plaintiffs are children of Bariwot Tangui, who were represented in the earlier suit by the 4th and 5th plaintiffs, over the same subject matter as per annexure marked LJ-(3), who lost in the previous suit and were now seeking a second bite of the merry contrary to Section 7 of the *Civil Procedure Act*.
3. The applicant urges the court to find that the doctrine of res judicata applies and that it is in the interest of justice, equity, and judicial economy to strike out the suit.
4. The application is opposed on the grounds of opposition dated 21/10/2025, that the suit is not res judicata and that the courts held that the defendant was holding Kitale Municipality Block 1/



- Lessos/994, in trust for the family of Bariwot Tangut, which trust has to be effected and brought to an end, which this court is all about.
5. The respondents rely on written submissions dated 21/10/2025. They submit that the suit has been filed to terminate the trust and for the suit land to be subdivided among the beneficiaries of Wilson Tangut. Reliance is placed on Lilian Jelimo v Enock Kipkoech Kemboi & another Eldoret Civil Appeal No. 61 of 2019 and Nguruman Limited v Shompole Group Ranch & Another [2014] KECA 358 (KLR).
 6. The applicant relies on belated written submissions dated 24/10/2025. It is submitted that in Kitale ELC No. 78 of 2008, the 4th and 5th plaintiffs herein had sued the defendant seeking a declaration that she held the land in trust for their family, and or cancellation of the fraudulent subdivisions effected, and for the Land Registrar to rectify the register. It is submitted that the 4th and 5th plaintiff had a counterclaim, which was dismissed.
 7. The applicant submits that the alleged claim that the current suit seeks to terminate the trust and effect distribution, hence is a new cause, is misplaced, for the plaintiffs are attempting to repackage a matter already adjudicated, which is what *res judicata* aims to prevent; otherwise, execution proceedings are how a decree of a court is implemented.
 8. The applicant submits that the authority of *Nguruman Ltd v Shompole Group Ranch* (*supra*) is misplaced, as the issues herein are different, hence there is no need to conduct a full trial to determine the bar of *res judicata*.
 9. Further, the applicant submits that the decision was upheld in the Court of Appeal, Eldoret No. 61 of 2019. Therefore, it is submitted that despite those determinations, the plaintiffs have instituted a suit raising an identical issue of trust over the same property and only adding the 1st, 2nd, and 3rd plaintiffs who are siblings and co-beneficiaries under the same trust.
 10. The applicant submits that the cause of action remains identical regarding Kitale Municipality Block 1/Lessos/994 and its subdivisions, seeking the same reliefs by the same parties. The defendant submits that an attempt by the plaintiffs to differentiate the suits by alleging that they seek title cancellation and equitable sharing is misplaced; otherwise, it is contrary to the rule against splitting a cause of action.
 11. Reliance is placed on *John Florence Maritime Services Ltd & Another v CS for Transport & Infrastructure & Others* [2021] eKLR.
 12. The applicant submits that evidence on record confirms that the respondents were aware of the green card and the subdivision history of parcel No. 994 as early as 2014, since the defendant's list of documents served on 23/6/2024 included the green card for the parcels and that the defendant had also testified on 18/2/2015 regarding the parcels of land which the 4th plaintiff in cross-examination made admission.
 13. The applicant submits that the plaintiff had a full opportunity to raise the issues of subdivision, title cancellation, and the sharing mechanism during the hearing on 18/2/2025 and 4/10/2016.
 14. It is submitted that the deliberate omission to amend pleadings or include relevant prayers at that time estops the plaintiffs from relitigating the same issues now; otherwise, it will amount to litigation in installments. Reliance is placed on *Tongelech v Chamir & 2 others* (Civil Appeal 133 of 2019) [2023] KECA 733 (KLR) (16 June 2023) (Judgment).



15. The applicant submits that the respondents had failed in an attempt to re-open the judgment to include title No. 994 and which application was dismissed on 21/2/2025, hence the issue of title No. 994 is constructively res judicata.
16. Striking out a suit is a drastic step which should only be exercised in exceptional cases, as held in *D.T. Dobie & Company (Kenya) Limited v Joseph Mbaria Muchina & another* [1980] KECA 3 (KLR). The applicant seeks to strike out the suit for offending Section 7 of the *Civil Procedure Act*. The elements of res judicata were set out in *Independent Electoral and Boundaries Commission v Maina Kiai & Others* [2017] eKLR. The tests are:
 - (a) If the suit or issue was directly and subsequently in issue in the former suit.
 - (b) The former suit was between the same parties or parties under whom they or any of their 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 suit was competent to try the subsequent suit or the suit in which the issue arose.
17. In *Attorney General v E.T.* [2012] eKLR, the court said that they should be vigilant to guard against litigants evading the doctrine of res judicata by introducing new causes of action to seek the same remedy before the court, or by merely adding other parties in a subsequent suit, or giving a suit a cosmetic facelift on every occasion they come to court.
18. In *Henderson v Henderson* [1843-61] ALLER 378, the court said that where a matter becomes subject to litigation, a litigant should bring forward their whole case; otherwise, only in exceptional circumstances can the subject matter be reopened.
19. In *John Florence Maritime Services Ltd & Another v CS Transport & Infrastructure* (supra), the court said res judicata is based on public policy doctrine, to ensure finality in litigation, economic use of court's limited resources, and timely termination of cases, to promote confidence and predictability, as essential elements for the respect of justice and the rule of law.
20. In *John Ochanda v Telkom Kenya* [2014] eKLR, the court said that the doctrine of functus officio bars a court from a merit-based re-engagement once a final judgment has been entered and a decree issued.
21. In *Independent Electoral and Boundaries Commission v Jane Cheperenger & Others* [2015] KESC 2 [KLR] (15th December 2015) (Ruling), the court warned that it is distinctly improper for a party to resort to a preliminary objection as a sword for winning a case, otherwise destined to be resolved judicially and on merit.
22. The defendant takes the view that the plaintiffs who were represented by the 4th and 5th plaintiffs in the former suits are seeking a second bite of the cherry on already completed issues between the same parties over the same subject matter that was determined to finality, by a court of competent jurisdiction.
23. The respondents submit that the suit is to effect and terminate a trust. Res judicata, as held in *Kenya Commercial Bank Ltd v Muiiri Coffee Estate Ltd & Others* (2016), to the effect that once legal rights of parties have been judiciously determined, such edict stands as a conclusive statement as to those rights.
24. In *Mburu v Maina Civil Appeal 143 of 2019* [2025] KECA 181 [KLR] (6th February 2025) (Judgment), the court said that the land subject matter was family land, as it had borne the elements on



Isaack M’Inanga Kiebia v Theuri M’Lintari & Another [2018] eKLR, which are overriding interests as per Section 28 of the [Land Registration Act](#).

25. The primary pleadings in this suit are the plaint dated 9/7/2024. The plaintiffs seek to have the registration of the defendant, over Title No. Kitale Municipality Block 1/Lessos/994 as held in trust for them as children of the late Bariwot Tangut to be terminated, and the defendant be ordered to transfer to each of the plaintiffs their respective portions.
26. The defendant relies on a statement of defence dated 6/8/2025. She denied the registration of Title No. Kitale Municipality Block 1/Lessos/994 as subject to the alleged trust.
27. The defendant pleads res judicata in view of Kitale ELC No. 78 of 2018 and Eldoret Court of Appeal Civil Appeal No. 61 of 2019, whereby, pursuant to the judgment based on trust, she surrendered possession of Kitale Municipality Block 1/Lessos/39 to the plaintiffs, hence retaining the suit land, otherwise the plaintiffs were seeking a second bite of the cherry, after their application to amend the judgment in Kitale ELC No. 78 of 2008 was rejected.
28. The defendant avers that though the 1st, 2nd, and 3rd plaintiffs were not parties in the earlier suit, their interests as children of the deceased were fully represented and catered by the 4th and 5th plaintiffs, who litigated as beneficiaries of the same estate, under the same title and interest, and that they did not raise such interest as beneficiaries in the said suits, and that to raise the issues now would undermine the doctrine of finality.
29. The defendant terms the suit as contrary to her constitutional right under Articles 10, 27, 40, 48, 50, and 159(2) of [the Constitution](#) of Kenya. The defendant avers that the suit was also subjecting her to financial, emotional, and psychological prejudice, undermining legal certainty against judicial finality and policy, amounting to wastage of time and resources, a violation of her rights, and risking the court having conflicting judgments.
30. In a reply to the defence dated 19/9/2025, the plaintiffs deny that the matter has been finalized, since the defendant had refused to share the land among all the beneficiaries or to implement the court decision.
31. The 1st – 3rd plaintiffs deny that the suit is res judicata, otherwise, the defendant was trying to shield herself after refusing to relinquish the land as ordered in the former suits. The plaintiffs take the view that they were not parties to the earlier suit, and that their overriding rights or interests were not determined or registered in the earlier suits for the doctrine of res judicata to be invoked.
32. The defendant, on the other hand, says that the 1st - 3rd plaintiffs were represented by the 4th and 5th plaintiffs, who obtained title No. Kitale Municipality Block 1/Lessos/39.
33. Looking at the totality of the issues raised as to whether the 1st - 3rd plaintiffs’ claim was covered in the former suit or whether their interests were ably represented by the 4th and 5th plaintiffs in the former suit or decree, these are issues requiring vica voce evidence at the hearing.
34. As held in Henry Wanyama Khaemba v Standard Chartered Bank Ltd & Another [2014] eKLR, issues of res judicata, duplicity of suits, and suits having been spent require probing of evidence. In this suit, there is a need to look at the pleadings in the former suits and the decrees thereto.
35. Res judicata cannot be determined as a preliminary issue when there exists a mixed question of facts and law. See Sathyanath & Another v Sarojamani [2022] INSC 529 (India) (6th May 2022) and Nguruman Ltd v Shompole Group Ranch (supra).
36. The upshot is that the application dated 27/8/2025 is dismissed with costs.



37. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT
KITALE ON THIS 5TH DAY OF NOVEMBER 2025.**

In the presence of:

Court Assistant – Dennis

Munialo for the plaintiffs present

Kamau for defendant absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

