



**Mwaura (Suing as the Vice Chairperson of Mang’u Block 19 Residents  
Community Based Organisation) v Ngoingwa Company Limited & 29 others;  
Land Registrar Thika & 5 others (Interested Parties) (Environment and Land  
Case E019 of 2023) [2025] KEELC 7572 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7572 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND CASE E019 OF 2023**

**JA MOGENI, J**

**NOVEMBER 5, 2025**

**BETWEEN**

**CHARLES MWAURA (SUING AS THE VICE CHAIRPERSON OF MANG’U  
BLOCK 19 RESIDENTS COMMUNITY BASED ORGANISATION). PLAINTIFF**

**AND**

**NGOINGWA COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**THERESIA WANJIRU GIRERA ..... 2<sup>ND</sup> DEFENDANT**  
**LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE PENINAH  
WANJIRU GATHENYA ..... 3<sup>RD</sup> DEFENDANT**  
**ALICE MAGIRI TUKES ..... 4<sup>TH</sup> DEFENDANT**  
**GITAHI MACHARIA ..... 5<sup>TH</sup> DEFENDANT**  
**LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE DAMARIS  
NJOKI ..... 6<sup>TH</sup> DEFENDANT**  
**LEGAL REPRESENTATIVES OF THE ESTATE OF THE LATE PETER  
TYRER ..... 7<sup>TH</sup> DEFENDANT**  
**DORCAS WANJIKU IKINU ..... 8<sup>TH</sup> DEFENDANT**  
**MANGU INVESTMENT LIMITED ..... 9<sup>TH</sup> DEFENDANT**  
**SAMUEL NDUNGU WAWERU ..... 10<sup>TH</sup> DEFENDANT**  
**ROZARIA WANJA GICHERU ..... 11<sup>TH</sup> DEFENDANT**  
**DAVID NJEHIA NGUGI ..... 12<sup>TH</sup> DEFENDANT**  
**JANE NYAMBURA KARACHI ..... 13<sup>TH</sup> DEFENDANT**



SAEED ABDO SALEH .....	14 <sup>TH</sup> DEFENDANT
PETER NGATIA .....	15 <sup>TH</sup> DEFENDANT
SUSAN WANJIRU WAIREGI .....	16 <sup>TH</sup> DEFENDANT
STEPHEN MWANGI MUUGI .....	17 <sup>TH</sup> DEFENDANT
JACOB NGOBIA MUIRURI .....	18 <sup>TH</sup> DEFENDANT
MARY WANJIKU GITAU .....	19 <sup>TH</sup> DEFENDANT
AMBROSE MWANGI GACHUI .....	20 <sup>TH</sup> DEFENDANT
DANSON MBURU NJOROGE .....	21 <sup>ST</sup> DEFENDANT
ELIZABETH NJERI WANJA .....	22 <sup>ND</sup> DEFENDANT
PAUL WANJOHI KIMEMIA .....	23 <sup>RD</sup> DEFENDANT
FRANCISCA WAMBUI MAINA .....	24 <sup>TH</sup> DEFENDANT
JAMES GITHAIGA GAKUMO .....	25 <sup>TH</sup> DEFENDANT
ELDORAD GARNENS LIMITED .....	26 <sup>TH</sup> DEFENDANT
JAMES MWIRIGI MUNCIKU .....	27 <sup>TH</sup> DEFENDANT
HENRY WAIRERI MWANGI .....	28 <sup>TH</sup> DEFENDANT
PAUL KORI MBOTE .....	29 <sup>TH</sup> DEFENDANT
PETER NJOROGE MWANGI .....	30 <sup>TH</sup> DEFENDANT

**AND**

LAND REGISTRAR THIKA .....	INTERESTED PARTY
COUNTY GOVERNMENT OF KIAMBU .....	INTERESTED PARTY
NATIONAL LAND COMMISSION .....	INTERESTED PARTY
HON ATTORNEY GENERAL .....	INTERESTED PARTY
ETHICS AND ANTI-CORRUPTION COMMISSION .....	INTERESTED PARTY
DIRECTOR OF SURVEYS .....	INTERESTED PARTY

**RULING**

1. There are two separate Notice of Preliminary Objections filed by the Defendants dated 05/06/2023 by the 1<sup>st</sup> to 8<sup>th</sup>, 12<sup>th</sup>, 19<sup>th</sup> to 23<sup>rd</sup> and 27<sup>th</sup> to 29<sup>th</sup> Defendants objecting to the instant suit stating that this Court is functus officio as regards the suit property THIKA MUNICIPALITY/BLOCK 20 where Judgment was entered in favour of the Petitioner in Thika ELC Petition 8 of 2019, Ngoingwa Company Limited vs National Land Commission and 2 Others. That the Court affirmed that the 1<sup>st</sup> Defendant was the registered owner of the suit property.
2. They further stated that this suit is Res Judicata and that it contravenes the provisions of Section 7 of The *Civil Procedure Act* Cap 21 since as referenced above the issues were raised in the case mentioned



- in paragraph 1. That therefore it is a Judgment in rem in accordance to Section 44 of the Evidence Act Cap 80.
3. They contend that the entire suit to the extent that it relates to THIKA MUNICIPALITY/BLOCK 20 and any parcels of land emanating therefrom is an abuse of the Court process and should be struck out.
  4. They thus contend that there must be finality and conclusiveness to litigation.
  5. The second Notice of Preliminary Objection is dated 20/07/2023 brought by the 9<sup>th</sup>, 10<sup>th</sup> and 29<sup>th</sup> Defendants who are raising objection to the jurisdiction of the Court on the grounds that:
    1. The Plaintiff has previously filed a complaint before the National Land Commission; under the file reference HLI/537/2018; MANG’U BLOCK 19 RESIDENTS CBO VS Rozaria Wanja Gicheru and Others; which complaint was fully heard by the Historical Land Injustice Committee constituted under the said Commission under the relevant provisions of the National Land Commission Act No. 5 of 2012. That following which the said body made a determination over the complaint which determination was published under Kenya Gazette VI CXXI- No.27 dated 1<sup>st</sup> March, 2019 page 879.
    2. That it is for the above reason that the matter herein is res judicata and this Honorable Court lacks jurisdiction to entertain the complaint now filed again before this Court over the same issues and the same subject matter.
  6. The parties agreed to dispose the two Preliminary Objections by way of written submissions. The gist of the Plaintiff’s submission was that that the two Preliminary Objections were not competent.
  7. In the Plaintiff/Respondent’s submissions dated 26/03/2024 the plaintiff contends that a Preliminary Objection is supposed to raise a pure point of law but that the current Preliminary Objections filed have raised the essential claims which are matters of great controversy, as their factual foundations are the subject of dispute. The facts are disputed and therefore the contentions can only be determined through a Notice of Motion application where the opposing factual positions can be interrogated by this Honourable Court.
  8. The Plaintiff further submitted that they were not a party to the Petition filed by the Defendants in the suit referenced above but that at the hearing at the National Land Commission they had a representative in attendance.
  9. On the part of the 1<sup>st</sup> to 8<sup>th</sup>, 12<sup>th</sup>, 19<sup>th</sup> to 23<sup>rd</sup> and 27<sup>th</sup> to 29<sup>th</sup> Defendants they filed their submissions dated 21/03/2024 and the gist of the submission is that the issue in the present suit was directly and substantially in issue in Petition No. 8 of 2019 and that the issue was heard and determined with finality and there was no Appeal preferred.
  10. The Defendants acknowledge in submission that the Plaintiff in this present suit was not a party to the Petition but they hasten to add that it is not necessary that the Plaintiff herein had to be in the previous Petition for the matter to be declared res judicata. As long as it is demonstrated that the Judgement rendered in the Petition was a Judgement in rem, thus the matter is res judicata.
  11. In discussing the doctrine of functus officio the Defendants submitted that they cannot fail to recognize that the former is related in terms of their rationale with the doctrine of res judicata.
  12. It is their submission that this Court is functus officio as far as the argument as to whether Thika Municipality/ Block 20 contains public utility plots, having delivered its Judgment on the same issues



presently before it on 15/04/2021. That there has been no application for Review filed before the Court and therefore the Court cannot be called upon to reopen and relook at the issues.

13. According to the Defendants, upon delivery of a Judgment by the Court, the Court is barred from hearing the suit afresh save for the exemptions stated in the *Civil Procedure Act*. The Judge is mandated by the doctrine of *functus officio* to entertain a matter once and it cannot be reviewed or varied by the same maker.
14. It is the Defendants' contention that just as *res judicata* is premised on finality of litigation so is *functus officio*. The successful party ought to reap the fruits of such success and the unsuccessful party ought to let go. This also means that the authority of the Court has not been undermined but upheld. Therefore, the Honourable Court lacks jurisdiction to entertain this matter since it offends the doctrine of *res judicata* and *functus officio* and is null and void ab initio.
15. The 9<sup>th</sup>, 10<sup>th</sup> and 29<sup>th</sup> Defendants filed their submissions dated 18/03/2024. The gist of their submission was that the Court should respect other bodies set up for resolution of disputes such as the National Land Commission.
16. They aver that a complaint was filed before the National Land Commission, under File Reference HLI/537/2018; MANGU BLOCK 19 RESIDENTS CBO vs Rozaria Wanja Gicheru and Others; which complaint was fully heard by the Historical Land Injustice Committee constituted under National Land Commission and it made a determination and it was published in Kenya Gazette Vol. CXXI- No. 27 dated 1<sup>st</sup> March 2019.
17. They submitted that the mere fact that a Court has jurisdiction to deal with a matter is not a ground for a litigant to undermine duly constituted legal mechanisms for dispute resolution more so under legislation and irregularly institute proceedings before the Court like has happened in the matter before the Court.
18. They stated that the Plaintiff having not challenged the decision of the National Land Commission to whose jurisdiction it had submitted as by the law provided, it is not open to the Plaintiff to behave in a manner like forum shopping to seek orders which the Plaintiff failed to obtain in the process first initiated. The conduct is an abuse of the process of Court and they urge this Court to find that it lacks jurisdiction to entertain the claim now before the Court and strike it out with orders for costs for the 9<sup>th</sup>, 10<sup>th</sup>, and 29<sup>th</sup> Defendants.
19. The parties relied on a myriad of judicial decisions on the two principles which I have considered in my Ruling.

### **Analysis and Determination.**

20. This Court has considered the Application, the law and the submissions by the parties. Only two issues commend for determination. One is whether the Court is *functus Officio* on the application. Two is whether the application is *res judicata*.
21. The doctrine of *functus officio* dictates that once a Court has rendered its final decision, it ceases to have jurisdiction over the matter, save for specific exceptions such as Review or correction of clerical or arithmetical errors.
22. In the case in reference being Thika ELC Petition 8 of 2019, Ngoingwa Company Limited vs National Land Commission and 2 Others where the Court rendered a decision and the Plaintiff was not a party to the suit. Further the issues that the Plaintiff seeks to litigate were not in issue in the above-referenced



case meaning that this Court cannot be functus officio since the Plaintiffs/Respondents' issues have not been litigated and a decision made on the said matters before this Court.

23. The law on Preliminary Objections is now settled by then, Court of Appeal for East Africa, in *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd.* (1969) EA 696, where Law J.A. and Newbold P. (both with whom Duffus V-P agreed), respectively at 700 and 701, held as follows:-

“So far as I am aware, a Preliminary Objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection on the jurisdiction of the Court, or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.” Newbold, P.: “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 has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop.”

24. The Supreme Court also pronounced itself on the use of Preliminary Objection as follows in the case of *Independent Electoral & Boundaries Commission –vs- Jane Cheperenger & 2 Others* [2015] eKLR:-

“The occasion to hear this matter accords us an opportunity to make certain observations regarding the recourse by litigants to Preliminary Objections. The true Preliminary Objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the Preliminary Objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”

25. Since a Preliminary Objection may only be raised on a pure point of law, the Supreme Court in *Aviation & Allied Workers Union Kenya v. Kenya Airways Ltd & 3 Others*, Application No. 50 of 2014, [2015] eKLR, had this to say:

“Thus, a Preliminary Objection may only be raised on a ‘pure question of law’. To discern such a point of law, the Court has to be satisfied that there is no proper contest as to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.” 13. On this basis, the questions that emerge are what point of law the Defendants have raised in their Preliminary Objection and are they settled? The point of law being raised is that the suit is res judicata to ELC 589 OF 2011. The law on Res judicata is provided for by Section 7 of the *Civil Procedure Act* 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.”

26. This Court cannot prima facie from the Defendants' Preliminary Objection come to a conclusion that the Plaintiffs' suit is res judicata. The Court needs to consider factual evidence to determine if



the requirements for res judicata have been met. Once Court needs to refer to facts and evidence to establish a Preliminary Objection it ceases to be on a point of law.

27. I find that the Preliminary Objections dated 05/06/2023 and 20/07/2023 filed by the 1<sup>st</sup> to 8<sup>th</sup>, 12<sup>th</sup>, 19<sup>th</sup> to 23<sup>rd</sup> and 27<sup>th</sup> to 29<sup>th</sup> Defendants and 9<sup>th</sup>, 10<sup>th</sup> and 29<sup>th</sup> Defendants respectively have no merit and I disallow them. Cost shall be in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2025.**

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**MOGENI J**

**JUDGE**

In the presence of:-

Mr. Lorot for the Plaintiff

Mr. Wamai for the 1<sup>st</sup> – 8<sup>th</sup> Defendants

Ms. Chege for 9<sup>th</sup> and 10<sup>th</sup> Defendants

Mr. Wamai for 12<sup>th</sup> Defendant

13<sup>th</sup> – 15<sup>th</sup> Defendants – Absent

Mr. Muriuki holding brief for Ms. Thungu for 16<sup>th</sup> and 17<sup>th</sup> Defendants

Ms. Nyamu for 18<sup>th</sup> Defendant

Mr. Wamai for 19<sup>th</sup> – 23<sup>rd</sup> Defendants

24<sup>th</sup> – 26<sup>th</sup> Defendants – Absent

Mr. Wamai for 27<sup>th</sup> – 28<sup>th</sup> Defendants

Ms. Chege for 29<sup>th</sup> Defendants

30<sup>th</sup> Defendant – Absent

1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Interested Parties – Absent

Mr. Kisaka for 5<sup>th</sup> Interested Party

Mr. Melita – Court Assistant

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**MOGENI J**

**JUDGE**

