

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC NO. E036 OF 2025

NICHOLAS

KAHORA

NDUATI-----PLAINTIFF/RESPONDENT

VERSUS

LUCAS NGARARI NJOGU-----1ST

DEFENDANT/APPLICANT

SAMSON OTIENO WASEKA-----2ND

DEFENDANT/APPLICANT

JOSEPH WAWERU-----3RD

DEFENDANT/APPLICANT

(Suing as Trustees of Nyayo Market Self-Help Group)

RULING

- 1.** The court, by an application dated **12/8/2025**, is asked to:
 - (a) Strike out the suit as misconceived, misplaced, frivolous, vexatious, incompetent, and an abuse of the court process.**
 - (b) Declare the suit as *res judicata*.**
 - (c) The plaintiff be ordered to vacate stall No. 25 contained within L.R. No. 2116/27/111 and the OCS Kitale Police Station to assist in effecting the eviction.**

2. The grounds are set out on the face of the application and in a supporting affidavit of Lucas Ngarari Njogu, sworn on behalf of the applicants on **12/8/2025**.
3. The applicant deposes that he is a trustee of the Nyayo Market Self Help Group as per the bundles attached as **SOW** at pages **10** to **217**.
4. It is deposed that the suit is similar to **Eldoret BPRT No. E098 of 2024** between **Nicholas Kahora Nduati -vs- Lucas Ngurari & Others** as per pleadings marked in that suit running from pages **10** to **155** in the supporting affidavit, where in an application dated **14/9/2024**, similar relief as in the instant suit had been sought, leading to a ruling delivered on **12/6/2025** appearing on pages **156 - 160**, which has not been appeal against or reviewed.
5. The applicants depose that the issued stall **No. 25** contained in **L.R. No. 2116/27/11** was also before the Tribunal as per the title deed attached to paragraphs **161** to **166**.
6. The applicants depose that the order in **BPRT No. E098 of 2024** was a final order made by a

competent court, which the plaintiff has not disclosed, attached in paragraphs **167** to **209**.

- 7.** The applicants depose that the respondent is on a mission of forum shopping, considering the myriad of orders he had sought before BPRT appearing on pages **210** to **217**; however, this suit should be struck out.
- 8.** The application is opposed through a replying affidavit of Nicholas Kahora Nduati, sworn on **3/10/2025**. It is deposed that in **Kitale ELC No. 71 of 2018**, the court declared him as the 11th plaintiff, among other plaintiffs, as a lawful tenant of the defendants herein in business premises standing on **L.R. No. 2116/27/11** and enjoined the defendants from interfering with, save for terminating the tenancy in line with the law. The respondent refers to the judgment in pages **120-121** of the affidavit of the 1st defendant.
- 9.** The respondent deposes that before filing the former environment and land case, the defendants had rejected the rent due, alleging that they were trespasser as opposed to tenants and that it was only after the judgment on **14/6/2023**, the rent was

accepted with effect from **July 2023** as per minutes of an annual general meeting of **15/7/2023**, and rent payments and upto date attached as **NKN-(1), NKN-2(a) and (b) and NKN-(3)**.

- 10.** The respondent deposes that on **4/3/2024**, he paid rent for **March - May 2023**, but the deposit slip was declined by the defendants, alleging that one Khadijah Omar, a subtenant, had paid one year's rent of **Kshs. 120,000/=** to them, as per the bank slip and the lease agreement marked **NKN-(4) and (5)**.
- 11.** The plaintiff deposes that he had not sublet the shop to the alleged sublet; otherwise, she had only temporarily occupied it while he was sick until he secured to resume payment, which he did.
- 12.** The respondent deposes that if that were the case, he could have been served with a termination notice and the case referred to BPRT.
- 13.** The respondent deposes that the defendants did not follow the law in purporting to terminate his tenancy and that the BPRT, by an order dated **8/10/2024**, in **Tribunal Case No. E098 of 2024** ordered the OCS Kitale Police Station to put him in the shop, which was done as per annexure marked **NKN-(6)**.

- 14.** The respondent deposes that the issue of eviction from the shop was not before the Tribunal, nor was the issue of whether there was a lawful termination of the tenancy decided by the Tribunal; otherwise, the initial order in **Kitale ELC No. 71 of 2018** is still valid, in force, and was never appealed against.
- 15.** The respondent denies that this suit is *res judicata*, the ruling of the **BPRT** attached as **NKN-(7)**.
- 16.** The applicants filed written submissions dated 9/10/2025. On *res judicata*, they rely on **Section 7** of the Civil Procedure Act, **Independent Electoral & Boundaries Commission -vs- Maina Kiai & 5 Others [2017] KECA 477 (KLR), John Florence Maritime Services Limited & another -vs- Cabinet Secretary for Transport and Infrastructure & 3 others [2024] KEHC 6648 (KLR)**, and submit that the suit or issue was directly and substantially in issue in the former suit. That former suit was between the same parties or parties under whom they or any of them claim, those parties were litigating under the same title, and the issue was heard and determined in the former suit.t

- 17.** The applicants submit that this court was competent to hear and determine **Kitale ELC Case No. 71 of 2018** and that **Eldoret Business Premises Rent Tribunal Case No. E098 of 2024** was properly determined by the tribunal. They thus submit that they have established res judicata, as the cause of action in the previous suits was for an injunction on the use of the business premises, stall No. **25** on the suit land
- 18.** On the merits of the application, the applicants submit that the application is a modification of the orders and the respondents should pursue other avenues, such as review, appeal, and or contempt proceedings, and it should be dismissed.
- 19.** The respondents, on their part, rely on submissions dated **13/10/2025**. They rely on **Kenyariri & Associates Advocates -vs- Salama Beach Hotel Limited & 3 Others [2015] KEHC 6219 (KLR)** and **Kenya Commercial Bank Limited & another -vs- Muiri Cofee Estate Limited & 3 others [2016] KESC 6 (KLR)** and submit that the judgment in **ELC No.71 of 2018** was not considered by the tribunal, and that the

applicants were trespassers and not tenants, since the lease agreement with Hadija Omar terminated the tenancy with the applicants, contrary to the law. The respondents further submit that the tribunal failed to consider the legality of the said lease and its effect on the respondents' subsisting tenancy. Again, the respondents submit that the issues in the present suit were not substantially considered by the tribunal and therefore, the suit is not *res judicata*

- 20.** Striking out a suit has been termed as a draconian step only to be exercised in exceptional circumstances, particularly where the suit is weak or incompetent to be beyond redemption that no amendments will breathe any life to revive it. See **DT Dobie -vs- Machina [1982] eKLR.**
- 21.** The applicants seek to strike out the suit on account of *res judicata*. **Section 7** of the Civil Procedure Act provides that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly or 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 on merits or fully by such court.

- 22.** The parameters to consider were set out in **Independent Electoral and Boundaries Commission -vs- Maina Kiai & Others [2017] eKLR**. In this suit, the burden is on the applicant to establish that in the Business Premises and Rent Tribunal case, and the issues in the instant suit were similar, over the same title, by the same parties, and were heard and determined on merit to finality by a court of competent jurisdiction.
- 23.** *Res judicata* is a doctrine of public policy aimed at ensuring that there is a finality to litigation where the outcome is a benefit to one party and a liability to the other. See **John Florence Maritime -vs- Cabinet Secretary for Transport & Infrastructure & Others [2021] eKLR**.
- 24.** The court held that the elements to consider are: **(a)** whether there is a former subject or order that was rendered by a competent court over the subject matter and the parties; **(b)** there must be between

the first and the second action identical parties, subject matter, and cause of action.

25. In this suit, the court has to look at the pleadings in the former suit and the instant one. The analysis of the pleadings and the rulings or orders in the former suit might show that the legal rights of the parties have been judicially previously determined, such that the edict starts as a conclusive statement as to those rights. See **Kenya Commercial Bank Ltd -vs- Muiri Coffee Estates Ltd & Another [2016] eKLR.**
26. The applicant must show that the respondent had a bite of the cherry and now is returning to the court to claim further reliefs not claimed in the earlier action, or is relitigating the same issues afresh, with a view to reaching a different outcome after losing the same action in the former suit. See **Silas M. Otuke -vs- Attorney General & Others [2014] eKLR.**
27. Parties, as held in **Omondi -vs- National Bank of Kenya Ltd & Others [2001] EA 177,** cannot avoid the doctrine of *res judicata* by merely adding other parties or causes of action in a subsequent suit.

- 28.** The former suit is said to have been before the Business Premises and Rent Tribunal. The jurisdiction of the Tribunal is spelt out under **Sections 4(2), 7, 11, 12** of the Landlord and Tenants (Shops, Hotels and Catering Establishment) Act, Cap **301**.
- 29.** A court's jurisdiction, as held in **S.K. Macharia & Another -vs- Kenya Commercial Bank & Others [2012] eKLR**, flows from either the Constitution or a Statute. The jurisdiction of this court is spelt out by **Section 13** Environment and Land Court Act and **Article 162(b)** of the Constitution.
- 30.** The jurisdiction of the Business Premises and Rent Tribunal was discussed in **Republic -vs- Business Premises and Rent Tribunal & Another Ex parte; Albert Kigera Karume [2015] eKLR**. Actions for damages for trespass do not fall within the Business Premises and Rent Tribunal. See **Njiru -vs- Njiru Civil Appeal E049 of 2024 [2025] KEHC 6614**.
- 31.** This court has original and appellate jurisdiction to hear and determine matters on land use, occupation, leases, contracts, choses in action, and enforceable interests granted by certain instruments. It also

exercises supervisory powers over the Business Premises and Rent Tribunal. It is not indicated by the applicant if there is a pending Business Premises and Rent Tribunal matter.

- 32.** Looking at the pleadings herein, I think the issue of *res judicata* as raised requires producing evidence. Matters regarding landlord and tenant relationships generally relate to the use and occupation of land. See **Ideal Location Ltd -vs- Nakumatt Holdings Ltd & Another [2018] eKLR.**
- 33.** What the plaintiff claims is a breach of the lease agreement and a claim for vacant possession. He is no longer in occupation of the suit premises. The court has not been supplied with any decree or order where the issues raised herein were heard and determined to finality by a competent court.
- 34.** The upshot is that I find the application dated **12/8/2025** lacking merit. It is dismissed with costs.
- 35.** Orders accordingly.

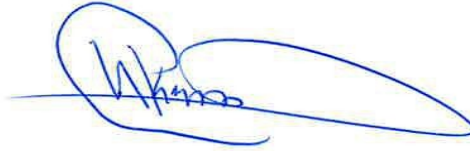
Ruling dated, signed, and delivered via Microsoft Teams/Open Court at Kitale on this 12th day of November 2025.

In the presence of:

Court Assistant - Dennis

Miss Bett for defendant/applicant present

Mr. Kiarie for plaintiff/respondent present

A handwritten signature in blue ink, appearing to read 'C.K. Nzili', is written over a horizontal line.

**HON. C.K. NZILI
JUDGE, ELC KITALE.**

ORIGINAL