

REPUBLIC OF KENYA
IN THE ENVIORNMENT AND LAND COURT AT NAIROBI

ELC L CASE NO. E076 2024

- 1. MACKENZIE ODERA**
- 2. MOHAMED ADAN SATAWA**
- 3. MICHAEL ODHIAMBO ONYAGO**
- 4. SHUKRI DIDA**
- 5. DUNCAN MOGAMBI MECHA**
- 6. HARRISON WERE TILLA**
- 7. BENSON EMUGET IMONYAT**
- 8. FRED OTIENO WAMBIA**
- 9. CAROLINE ACHIENG ONYANGO**
- 10. CLAYTON OMWANGA**
- 11. MOHAMED SHALE HASSAN**
- 12. GEORGE OUMA AOKO**
- 13. MOHAMED SHEIKH MOHAMUD**
- 14. SAMMY O. ODHIAMBO**
- 15. ELIJAH OLUOCH**
- 16. MAURICE OMONDI OMOLLOW**
- 17. ISSAC OCHIENG**
- 18. IBRAHIM ABDULLAHI ADAN**
- 19. KENNEDY OCHIENG NUNDI**
- 20. STEPHEN UMIJA**

ELC L CASE NO. E076 2024

Ruling

- 21. JACKLINE CHESANG**
- 22. OJWANG CHARLES OKINYO**
- 23. JUDITH MUTINDI**
- 24. OSCAR AWUORY**
- 25. CAROLINE KAYAGA**
- 26. VIVIENE CHARITY SIMWA**
- 27. ALLOYS SIGANDA ODHIAMBO**
- 28. JESSE MWAKIRIA**
- 29. MALACHI ONYANGO ORONDO**
- 30. JAMES OJIAMBO OLUMBE**
- 31. MOHAMMED ISSAC ADAN**

Suing as the officials of

**CHOKAA UPPER CHAMBER
DEVELOPMENT WELFARE GROUP**
PLAINTIFFS

VERSUS

UNITY SELF HELP GROUP 1ST

DEFENDANT

HURLINGHAM SQUATTERS DEVELOPMENT..2ND

DEFENDANT

NJIRU MIHANG'O FARMERS

HOUSING SCHEME 3RD

DEFENDANT

THE LAND REGISTRAR, NAIROBI 4TH

DEFENDANT

THE ATTORNEY GENERAL 5TH

DEFENDANT

**TERESIA WAIRIMU KIRIMA AND
ANNE WANGARE KIRIMA**

The Administrators of the Estate of the Late

GERISHON KAMAU KIRIMA (Deceased) 6TH

DEFENDANT

NAIROBI CITY COUNTY GOVERNMENT 7TH

DEFENDANT

RULING

1. In their Plaint which commenced this suit, the Plaintiffs' contend that they purchased plots from the 1st to 3rd Defendants and received their respective Certificates but they have since learnt of the judgment delivered in **Nairobi ELC No. 1257 of 2014 (OS)** in favour of the 6th Defendant,

which judgement determined that **LR 5908/8** and **LR 6825/2** belonged to the 6th Defendant. They contend that they were not a party to the said suit and that there could be a likelihood that their plots are not located within the 6th Defendant's property. They hence sought for various Orders in the Plaint.

2. In response, the 6th Defendant filed a Notice of Preliminary Objection dated the 15th October 2024 which is for determination. It contends that the suit is defective as issues raised on legal ownership of the properties known as **LR No. 6825/2** and **LR 5908/8** are res judicata and violate section 7 of the Civil Procedure Act, having been determined by Hon. Justice S. Okong'o in **Nairobi ELC 1257/2014** consolidated with **ELC 850/14, 509/14, 1496/13, 1318/13** and **252/11-John Otieno Obade and 299 others v Teresia Warimu Kirima and Anor**, in a judgement delivered on 23rd October 2023. Further, that the Plaintiffs are guilty of laches as they ought to have applied for joinder in the said consolidated

suit. They insist that this Court lacks jurisdiction to set aside or vary any portion of the said judgment which made a determination that all illegal occupants on the suit properties should vacate on or before 31st December 2023, failure to which the 6th Defendant would be at liberty to evict them. They reiterate that there is no reasonable cause of action against the 6th Defendant in light of the said judgment.

3. The Notice of Preliminary Objection was canvassed by way of written submissions.

Submissions

4. The 6th Defendant submits that the Plaintiffs' application and the substantive suit offends section 7 of the Civil Procedure Act and are res judicata to the extent that the Court already made a determination with regards to ownership and possession of **LR No.6825/2** and **LR No.5908/8**, which forms the basis of the Plaintiff's suit. They submit that this Court's jurisdiction is ousted by the fact that a determination

on ownership with regards to **LR No.6825/2** and **LR 5908/8** was delivered by a Court of concurrent jurisdiction with this Court. Further, that this Court cannot sit on Appeal of its own decision or that of a Court of concurrent jurisdiction. They insist that the judgement in the consolidated suits was issued in rem against all illegal occupants on the suit property. Further, that the Plaintiffs need not have been direct parties to the consolidated suits for the Orders emanating therefrom to bind them. They further submit that the Plaintiffs are guilty of laches, having instituted this suit after judgement was delivered in the consolidated suits. Further, that on account of lack of due diligence and the failure to seek judgement in the said suits, they are estopped from asserting their rights as pertains to ownership and possession of **LR No. 6825/2** and **LR No. 5908/8** respectively.

5. To buttress their averments, they relied on the following decisions: **John Florence Maritime Services Limited &**

another v Cabinet Secretary for Transport and Infrastructure & 3 others [2015] eKLR; Daniel Otieno Orahia v Republic [2019] eKLR; Abubakar G Mohamed v Independent Electoral and Boundaries Commission [2017] eKLR; Japheth Nzila Muangi v Kenya Safari Lodges & Hotels Ltd [2008] eKLR; Mnyaya v County Government of Taita Taveta (Environment & Land Case E002 OF 2023) [2024]KEELC 5980 (KLR) and Benjoh Amalgamated Limited & another v Kenya Commercial Bank Limited [2014] eKLR.

6. On their part, the Plaintiffs submit that the Preliminary Objection raised herein is not on a pure point of law as it is premised on grounds that this suit is res judicata and further that the Plaintiffs do not have a cause of action. They contend that whether this Court requires to vary a judgement delivered in another suit requires probing of facts. They also submit that they seek declaratory orders on the location of their property vis a vis the 6th Defendant's

property thus the suit is not similar in any way with the former suit as there are different parties and different causes of action. On the contention that they are guilty of laches, they submit that the doctrine of laches does not apply as issues in the former suit are different from those they have raised.

7. To support their arguments, they relied on the following decisions: **Oraro v Mbaja [2005] eKLR 141, Henry Wanyama Khaemba v Standard Chartered Bank Limited & Another [2014] eKLR; George Kamau Kimani & 4 others v County Government of Transzoia & Another [2014] eKLR; Karia & another v the Attorney General and others [2005]1 E.1 83; Kamunye & Others v Pioneer General Assurance Society Ltd [1971] EA 263 and Muchwiwa v Komarock Ranching Society (Environment & Land Court case 488 of 2028 [2022] eKLR.**

8. The 1st to 3rd Defendants and the 4th, 5th and 7th Defendants did not submit on the Notice of Preliminary Objection.

Analysis and Determination

9. Upon consideration of the 6th Defendant's Notice of Preliminary Objection dated the 15th October, 2024, including the rivalling submissions, the only issue for determination is whether this suit including the instant Notice of Motion application dated 24th February 2024 are res judicata.

10. The 6th Defendant contends that this suit is res judicata and violates Section 7 of the Civil Procedure Act, as issues raised herein were determined by Hon. Justice S Okong'o in **Nairobi ELC 1257/2014** as consolidated with **ELC 850/14, 509/14, 1496/13, 1318/13** and **252/11-John Otieno Obade and 299 others v Teresia Warimu Kirima and another**, in a judgement which was delivered on 23rd October 2023, in rem.

11. The Plaintiffs contend that their cause of action in the matter is different from the impugned consolidated suits and that the Preliminary objection does not raise a pure point of law. They argue that they seek declaratory orders on the location of their property vis a vis the 6th Defendant's property thus the suit is not similar in any way with the former suit as there are different parties and different causes of action. They insist that the doctrine of laches does not apply as issues in the former suit are different from those they have raised.

12. On 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 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.”

13. In **Mulla, Code of Civil Procedure, 18th Ed 2012** at page 293, it describes res judicata as follows:

‘The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a Judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision.’

14. On res judicata, the Supreme Court of Kenya in the case of **John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment)**, had this to say:

***'Hence, whenever the question of res judicata is raised, a court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a court of competent jurisdiction. This test is summarized in Bernard Mugo Ndegwa v James Nderitu Githae & 2 others, (2010) eKLR, under five distinct heads: (i) the matter in issue is identical in both suits; (ii) the parties in the suit are the same; (iii) sameness of the title/claim; (iv) concurrence of jurisdiction; and (v) finality of the previous decision.'* Emphasis Mine**

15. In the case of **Kenya Commercial Bank Limited v Muiri Cofee Estate Limited & another [2016] eKLR**, the Supreme Court stated that:

'The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.' Emphasis Mine.

16. The 6th Defendant has argued that the parties herein are bound by the impugned judgement of Hon. Judge Okong'o in the consolidated suits as it was a judgement issued in rem. In **Japheth Nzila Muangi vs. Kenya Safari Lodges & Hotels Ltd [2008] eKLR** it was held that:

"It is trite law that ordinarily a judgement binds only the parties to it. This is known as Judgement in personam. A judgement may also be conclusive not only against the parties to it but also against

all the world. This is known as a judgement in rem. This is a judgement which declares, defines or otherwise determines the status of a person or of a thing i.e. the jural relation of the person or thing to the world generally.” Emphasis Mine

17. The Plaintiffs in their Complaint dated the 24th February, 2024, sought the following Orders against the Defendants:

- a. A declaration that the Plaintiffs Members’ plots are within L.R No. 6825/2 and L.R No. 5908/8.**
- b. Permanent Order of injunction restraining the Defendants/Respondents whether by themselves or their representatives, servants, agents, and/or any other person authorized by them from forcefully evicting the Plaintiff’s members or interfering with the Plaintiff’s members quiet enjoyment from the plots they each presently occupy, within the properties known as L.R No. 6825/2 and L.R No. 5908/8.**
- c. The Government Surveyor, Nairobi County to undertake valuation onto the properties known as L.R No. 6825/2 and L.R No. 5908/8 to**

ascertain whether the Plaintiff's members plots are located in the said properties and the costs therein be borne by the 6th Defendant.

- d. The Government Valuer, Nairobi County to undertake valuation to ascertain the exact bare/empty land value of the Plaintiff's plots and the costs therein be borne by the 6th Defendant.
- e. The OCPD Nairobi County do ensure compliance with Court Orders provide security during the process and/ or maintenance of peace.
- f. That in the event the Plaintiff's members' plots are not located in the properties known as L.R No. 6825/2 and L.R No. 5908/8; and the same fall under Government land, then the Plaintiff's members to engage the Government on negotiation on acquisition of titles for their plots.
- g. That in the event the Plaintiff's members' plots are not located in the properties known as L.R No. 6825/2 and L.R No. 5908/8; then the Plaintiff's members to engage the 6th Defendant

in negotiations on purchase price based on Government Valuer's costs and there to be agreed payment plan.

h. Costs of this suit.

i. Any other relief that this Honourable Court may deem fit to grant.

18. From a reading of the aforementioned prayers in the Plaint, which I have reproduced, it is very clear that the fulcrum of the dispute herein actually revolves around ownership and location of Plaintiffs' plots within L.R No. 6825/2 and L.R No. 5908/8, further, it seems to me that the Plaintiffs on one hand, are not sure of the location of their plots and on the other hand, seek to negotiate with the 6th Defendant on the prices of their plots, situated within the aforementioned parcels of land. It has emerged that Justice S. Okongo in his judgement delivered on 23rd October, 2023 in the following suits: **Obade & 299 others & 10 others v Kirima & 60 others (Environment and Land Case Civil Suit 1257 of 2014 & 252 of 2011 & Environment & Land Case 509 &**

850 of 2014 & 1496 & 1318 of 2013 (Consolidated)
[2023] KEELC 20868 (KLR) (23 October 2023)
(Judgment), substantively dealt with the dispute touching on ownership of L.R No. 6825/2 and L.R No. 5908/8 which are the suit lands herein and delivered a judgement. Further, this Court takes judicial notice of the fact that in the said judgement, the Judge directed that any persons in actual occupation of the suit properties herein, were ordered to vacate and handover the said property to the estate of Gerishon Kirima. Further, at Orders 294 (g-h) of the said judgement, the Court directed the estate of Gerishon Kirima to complete sale to persons claiming portions of L.R No. 5908/8 on the basis of purchase from the late Gerishom Kirima.

19. Based on the facts before Court, while relying on the decisions cited as well as the legal provisions quoted, and applying them to the circumstances at hand, I find that the fulcrum of the dispute herein was similar to the one in the

following suits: **Obade & 299 others & 10 others v Kirima & 60 others (Environment and Land Case Civil Suit 1257 of 2014 & 252 of 2011 & Environment & Land Case 509 & 850 of 2014 & 1496 & 1318 of 2013 (Consolidated)) [2023] KEELC 20868 (KLR) (23 October 2023) (Judgment)**. The Plaintiffs have disputed that they were not parties to the said suits, but I however note that the judgement was delivered in rem, hence binds them.

20. Further, I find that since an ELC Court heard the determined the dispute over ownership of L.R No. 6825/2 and L.R No. 5908/8, I opine that I cannot sit on Appeal on the said judgement as the Plaintiffs seek me to do. It is my considered view that if the Plaintiffs herein were aggrieved by the said judgement, they ought to have sought for joinder in the aforementioned consolidated suits instead of filing a fresh suit. Even from a reading of the prayers sought in the Plaint, it is clear they are trying to relitigate over the two titles

whose ownership has already been determined. I further find that the Plaintiffs are guilty of laches, having instituted this suit after judgement was delivered in the consolidated suits and failure to seek judgement in the said suits, they are estopped from asserting their rights as pertains ownership and possession of LR No. 6825/2 and LR No. 5908/8 respectively.

21. It is my trite that Litigation must come to an end and the Plaintiffs should not be allowed to bring forth another suit on the same title, whose validity had been dealt with.
22. It is against the foregoing that I find that the instant suit is indeed res judicata and concur with Kuloba J (as he then was) that filing of a fresh suit on matters already determined, is indeed a cosmetic facelift to give the new suit a different face.
23. In the circumstances, I find the instant Notice of Preliminary merited and will allow it.

24. I proceed to strike out this suit with costs to the 6th Defendant.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
11TH DAY OF NOVEMBER, 2025**

CHRISTINE OCHIENG
JUDGE

In the presence of:

Ms Chepngetich holding brief for Sigoma for Plaintiffs

Rao holding brief for Dr. Ojiambo SC for 6th Defendant

Karisa for 7th Defendant

Court Assistant: Joan