

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**  
**ELC CASE NO E022 OF 2025**

MARGARET MUTHONI WAITHAKA,  
PATRICK MWANGI IRUNGU & 26  
OTHERS.....PLAINTIFF

VERSUS

ALI LEKOLELA MONTET.....1<sup>ST</sup>  
DEFENDANT  
RIGOGO CHONJO FARMERS LTD.....2<sup>ND</sup>  
DEFENDANT

**RULING**

1. This ruling is in respect of two applications. The first is the Plaintiffs' Notice of Motion application dated 6<sup>th</sup> May, 2025 seeking the following orders:

- a) *Spent*
- b) *Spent*
- c) *THAT pending the hearing and determination of this suit, the Honourable court be pleased to issue a temporary injunction restraining the 1<sup>st</sup> defendant/respondent either by himself, his agent, assigns, servant and/or persons claiming under the 1<sup>st</sup> defendants/respondents from evicting and/or excluding the plaintiffs/applicants and/or in any way interfering with the Plaintiffs/applicants' peaceful possession of all portion of land known as PLOT 640 to 688 all situated on PLOT NO 2 SOLAI SETTLEMENT SCHEME.*
- d) *THAT costs of this application be provided for.*

2. The application is supported by the annexed affidavit of Patrick Mwangi Irungu sworn on 6<sup>th</sup> May, 2025, who deponed that he is one of the Plaintiffs and is authorized to swear the affidavit on behalf of his co-applicants vide authority to swear dated 24<sup>th</sup> February, 2025. He further deponed that the 2<sup>nd</sup> Defendant is the rightful owner of all that parcel of land known as PLOT NO 2 SOLAI SETTLEMENT SCHEME (suit land) and the 2<sup>nd</sup> Defendant allocated each of its shareholders portions of land measuring 0.5 acres from the suit land.
  
3. The Applicant also stated that he is a member of the 2<sup>nd</sup> Defendant and the rightful owner of Plot No 667 measuring 0.5 acres on the suit land having, purchased the same from one John George Mwangi Njoroge, who was a shareholder of the 2<sup>nd</sup> Defendant. Additionally, he stated that they have been peacefully awaiting to be issued with title deeds when the 1<sup>st</sup> Defendant without any justifiable, and or lawful cause claimed ownership over their portions of land and threatened them with eviction. Patrick Mwangi Irungu deponed that their efforts to address the issue with the officials of the 2<sup>nd</sup> Defendant have been futile and the Defendants have colluded to defraud them of their rightful portions of land.
  
4. Ali Lokolela Montet, the 1<sup>st</sup> Defendant, filed a Replying Affidavit sworn on 9<sup>th</sup> July, 2025, where he deponed that he is the registered owner of the parcel of land known as LR No 10984/2, while the 2<sup>nd</sup> Defendant is the owner of the parcel of land known as LR No 10984/R. It was his deposition that in 1988, a dispute arose between him and the 2<sup>nd</sup>

Defendant where the 2<sup>nd</sup> Defendant encroached on his parcel of land and the District Commissioner intervened. He further stated that he moved court in Nakuru CMCC No 2001 of 2002 over the dispute which was dismissed.

5. The 1<sup>st</sup> Defendant further deponed that he lodged a claim with the Bahati Land Dispute Tribunal being Dispute No 39/2005 which found that the 2<sup>nd</sup> Defendant had encroached on his parcel of land, but the 2<sup>nd</sup> Defendant appealed the decision of the tribunal in the Land Dispute Appeals Committee LDAC Appeal No 33 of 2007 which overturned the decision of the Tribunal.
  
6. According to the 1<sup>st</sup> Defendant, he immediately lodged an appeal before the High Court in Nakuru Civil Appeal No 167 of 2008, which was allowed in a judgment delivered on 16<sup>th</sup> March, 2012. He also stated that he filed Nakuru ELC No 102 of 2013, against the 2<sup>nd</sup> Defendant seeking among other orders their eviction, where judgment was delivered in his favour. It was his deposition that the 2<sup>nd</sup> Defendant filed a stay of execution application dated 24<sup>th</sup> June, 2020, where the court granted the 2<sup>nd</sup> Defendant a conditional stay which was not complied with. He therefore averred that in an application dated 20<sup>th</sup> September, 2021, he obtained orders allowing him to use auctioneers to execute the decree of the court.

7. Additionally, the 1<sup>st</sup> Defendant stated that the portion the Plaintiffs have sought orders on is part of his parcel of land and it is clear that the 2<sup>nd</sup> Defendant allocated some portions of his land to the Plaintiffs with a clear intent to dispossess him from his land and urged the court to dismiss the Application with costs.
8. Godfrey Magwi Kamau, the Director and Treasurer to the Board of Directors of the 2<sup>nd</sup> Defendant, filed a Replying Affidavit sworn on 4<sup>th</sup> July, 2025, and deponed that its members rightfully purchased land from Rewamu Farm Ltd vide an agreement dated 3<sup>rd</sup> June, 1983. He further stated that the company has been the lawful proprietor of the parcel of land known as Plot No 2 Solai Settlement Scheme and has settled 668 of its lawful members.
9. It was his deposition that the 1<sup>st</sup> Defendant is not a member of the 2<sup>nd</sup> Defendant and the 2<sup>nd</sup> Defendant has never lost possession of land and/or altered its boundaries. Further that the company is in the process of issuing title deeds to its lawful members.
10. The second application is the 1<sup>st</sup> Defendant's application dated 9<sup>th</sup> July, 2025, which seeks the following orders:
  - a) ***THAT the court be pleased to find that the Plaintiff's suit is res-judicata, scandalous, frivolous, or vexatious and dismiss it with costs.***
  - b) ***THAT the costs of this application be provided for.***

11. The application is supported by the annexed affidavit of Ali Lekolela Montet, the 1<sup>st</sup> Defendant, sworn on 9<sup>th</sup> July, 2025, who deponed that a competent court made a judgment and found that the 2<sup>nd</sup> Defendant had trespassed on his land and was ordered to vacate.
  
12. Patrick Mwangi Irungu filed a Replying Affidavit sworn on 15<sup>th</sup> September, 2025, and confirmed that he has the authority of his co-plaintiffs to swear the affidavit vide authority to swear dated 24<sup>th</sup> February, 2025. He deponed that the application is misconceived as the Plaintiff in the instant suit was never a party in previous suits as the suits were between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant and urged the court to dismiss the application with costs.

### **PLAINTIFFS' SUBMISSIONS**

13. Mr. Mwangi, counsel for the Plaintiff, filed submissions dated 17<sup>th</sup> September 2025, and identified the following issues for determination:
  - a) *Whether the application dated 6<sup>th</sup> May, 2025 has merit?*
  - b) *Whether this suit is re-judicata?*
  
14. On the first issue, counsel submitted that the Plaintiffs are the rightful owners of Plot 640 to 668 all situated on PLOT No 2 Solai Settlement Scheme as they have been in occupation of the subject portions of land and have settled on the same for over twelve years. Counsel submitted that they have established a *prima facie* case and relied on the cases of **Mrao Ltd vs First American Bank of Kenya Ltd & 2 others (2003)**

**KLR 125 and Geoffrey Maina Manjama vs Sam Mureithi T/A Uncle Sam [2014] eKLR.**

15. On whether the Plaintiff will suffer irreparable damage in the event an injunction is not granted, counsel submitted that the Plaintiffs will lose the suit properties unless an injunction is issued by the Court and the Respondents have not shown that they have the means to compensate the Plaintiffs for such a loss were they to be successful in the end. Counsel relied on the case of Niaz **Mohamed Jan Mohamed vs The Commissioner of Lands (1996) eKLR**, and submitted that the balance of convenience tilts in favor of the Plaintiffs who have been in possession of the suit parcels and their ownership has not been challenged.
  
16. On the second issue, counsel submitted that the suit is not *res judicata* as the Plaintiffs in this instant suit were never parties in the previous suits between the 1<sup>st</sup> Defendant and 2<sup>nd</sup> Defendant. Counsel submitted that the issues raised in the previous suits are not directly and substantially in issue in this instant suit as the issues raised for determination in this suit relate to ownership of parcel plot Nos, 640 to 668 all situated on plot 2. Solai Settlement Scheme.
  
17. Additionally counsel submitted that the issues that were determined in the previous suit relate to a boundary dispute between the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein, and relied on Section 7 of the Civil Procedure Act and the cases of Bernard **Mugo Ndegwa vs James Githae & 2 others**

**[2010] eKLR and Jane Akomo vs Light & Life Broadcasting Station [2018] eKLR** and urged the court to allow the Application dated 6<sup>th</sup> May, 2025, and dismiss the application dated 9<sup>th</sup> July, 2025, with costs.

### **1<sup>ST</sup> DEFENDANT'S SUBMISSIONS**

18. Ms. Wangare, counsel for the 1<sup>st</sup> Defendant filed submissions dated 16<sup>th</sup> September, 2025, and submitted that by their own admission, the Plaintiffs have admitted that they are members of Rigogo Chonjo Farmers Limited, the 2<sup>nd</sup> Defendant, and have produced ballot cards and other documents issued to them by the 2<sup>nd</sup> Defendant. Counsel submitted that tribunals and courts of competent jurisdiction have litigated the issues regarding the two properties LR No 10984/2 and LR No 10984/R extensively.
  
19. Counsel further submitted that the subject matter of the suit herein is the same as in former disputes and the Plaintiffs cannot now introduce subdivisions of LR No 10984/R (described as Solai Plot No 2 Solai Settlement Scheme) to create an impression that the properties are different and relied on Section 7 of the Civil Procedure Act and the cases of **Satya Bhama Gandhi vs Director of Public Prosecutions & 3 others [2018] eKLR, John Florence Maritime Services Limited & another vs Cabinet Secretary for Transport and Infrastructure & 3 others [2016] eKLR, The Independent Electoral and Boundaries Commission vs Maina Kiai & 5 others, Nairobi CA Civil Appeal No 105 of 2017 [2017] eKLR, E.T vs Attorney General & another [2012] eKLR and Owners of the Motor Vessel "Lillian S" vs Caltex Oil**

**(Kenya) Ltd [1989] eKLR.** Counsel urged the court to find that the suit is *res judicata* and dismiss the same with costs.

20. It was counsel's submission that the Plaintiffs have not demonstrated a *prima facie* case as courts of competent jurisdiction have already found that it is the 2<sup>nd</sup> Defendant together with its agents and or members who have trespassed into the 1<sup>st</sup> Defendant's parcel of land, and urged the court to allow the application dated 9<sup>th</sup> July, 2025.

### **ANALYSIS AND DETERMINATION**

21. The issues for determination are:

- a) Whether the Plaintiff/Applicants have met the threshold for grant of a temporary injunction.***
- b) Whether this suit is re-judicata?***

22. Mr. Kairu, counsel for the 2<sup>nd</sup> Defendant did not file any submissions but associated himself with the Plaintiff's submissions. The court notes that in ELC Case No 102 of 2013 which was decided in favor of the 1<sup>st</sup> Defendant, where he sought the following orders in the Plaint dated 30<sup>th</sup> January, 2013:

- a) Eviction from LR No 10984/2.***
- b) Mesne profit***
- c) Perpetual injunction restraining the Defendant, its agents and or servants from trespassing, remaining, interfering***

*and or dealing with LR 10984/2 in any manner whatsoever.*

**d) Cost of this suit.**

23. The 1<sup>st</sup> Defendant stated that by virtue of the Plaintiffs being members of the 2<sup>nd</sup> Defendant, the suit is *res judicata*. The Plaintiffs in this case are in respect of Plot Nos. 640 to 668 all situated on PLOT NO. 2 SOLAI SETTLEMENT SCHEME. It is the 1<sup>st</sup> Defendant's case that the subject matter of the suit herein is the same as in former disputes and the Plaintiffs cannot introduce subdivisions of LR No 10984/R (described as Solai Plot No 2 Solai Settlement Scheme) to create an impression that the properties are different.
24. The 2<sup>nd</sup> Defendant herein who is the Defendant in ELC No. 102 of 2013 raised the issue of *res judicata* on the ground that there were proceedings from the Bahati Land Disputes Tribunal up to the High Court, whereby the court held as follows:

***“I have looked at the ruling delivered on 2<sup>nd</sup> March 2004 in Nakuru CMCC No. 2001 of 2002. The case was dismissed on the ground that the court lacked jurisdiction since the matter was a boundary dispute. Eviction was neither raised nor determined in the ruling. I have also perused the decision of the Bahati Land Dispute Tribunal No. 39 of 2005 dated 2<sup>nd</sup> march 2007. The Tribunal held that the Defendant had encroached on the Plaintiff's land. Once again, eviction was neither considered nor ordered. The decision was later***

***reinstated by a judgment dated 16<sup>th</sup> March 2012 in Nakuru High Court Civil Appeal No 167 of 2008. As I have previously held, the claim herein is one of eviction and not a boundary dispute. I therefore hold that res judicata does not apply herein”***

25. The Plaintiffs’ claim is against the defendants and more specifically the 2<sup>nd</sup> Defendant whom they claim to be the rightful owner of the suit land and that they are its members who are entitled to 0.5 acres each having been allocated from Plot No. 2 SOLAI SETTLEMENT SCHEME. The Plaintiffs have also sought an order of a permanent injunction restraining the Defendants from trespassing or interfering with the suit land.
26. The 1<sup>st</sup> Defendant in his submissions informed the court that there are two properties being LR No 10984/2 and LR No 10984/R. The orders regarding LR No 10984/2 were issued in ELC Case No 102 of 2013, which is in the execution process.
27. It is prudent that the court hears this dispute to determine the ownership rights of the Plaintiffs, without going back and forth with no permanent solution in sight. If this is not done, many other issues and litigants will spring up to lay claim. This dispute has a long history since 2002, having been litigated in the Bahati Land Disputes Tribunal, the CM’s Court, the High Court and the ELC Court and the current suit.
28. There should be an end to litigation at some point, that where the doctrine of *res judicata* applies to take care of litigants who mutate to

bring suits that have been previously heard and determined by competent courts, in respect of the same parties and the same subject matter. I find that this is a unique dispute, even though it would appear as a one that would fit the description of *res judicata*, the Plaintiffs were not parties to the previous suits, and the subject matter has since mutated. See the case of **John Florence Maritime Services Ltd v Transport and Infrastructure & 3 others (Civil Appeal 42 of 2014) [2015] KECA 472 (KLR) (31 July 2015) (Judgment)** on *res judicata*.

29. On the issue whether the Plaintiff/Applicants are entitled to an order of a temporary injunction, Order 40 Rule 1 of the Civil Procedure Rules 2010 provides as follows:

*Where in any suit it is proved by affidavit or otherwise—*

- a. that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or*
- b. that the Defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the Plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the Defendant in the suit the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.*

30. The purpose of a temporary injunction is to preserve the substratum of the subject matter, to avoid any harm pending the hearing and determination of the suit. The Plaintiffs are apprehensive that they may lose the suit properties unless an injunction is issued. The 2<sup>nd</sup> Defendant has also deponed in their replying affidavit that they are in the process of issuing titles to the rightful shareholders of the plots.
31. The proposed issuance of titles without solving the ownership dispute issues would be prejudicial to the Plaintiffs and the 1<sup>st</sup> defendant who claim to be the rightful owners of the suit land. The only way to protect all the parties in the dispute is to preserve the suit land pending the hearing and determination of the suit.
32. I have considered the two applications and order that the *status quo* be maintained pending the hearing and determination of this suit. The application dated 9<sup>th</sup> July 2025 is hereby dismissed with costs in the cause. This matter to be fixed for hearing within 30 days as it is related to ELC 102 of 2013, which is in the execution stage.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 19<sup>TH</sup> DAY OF NOVEMBER 2025.**

**M. A. ODENY  
JUDGE**