



REPUBLIC OF KENYA



KENYA LAW
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**Musau v Shire (Environment and Land Case Civil Suit E017 of 2024)
[2025] KEELC 8096 (KLR) (18 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8096 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE CIVIL SUIT E017 OF 2024**

AY KOROSS, J

NOVEMBER 18, 2025

BETWEEN

ANNE NKATHA MUSAU PLAINTIFF

AND

MAHAT SHIRE DEFENDANT

RULING

1. This is a ruling concerning a notice of motion filed by the defendant dated 26 02 2025, made under the provisions of Sections 1A, 1B and 3A of the *akn ke act 1924 3 Civil Procedure Act*, Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules, 2010, along with all applicable legal provisions and the inherent powers of the court. The defendant seeks the following reliefs from this court: -
 - a. Spent.
 - b. Spent.
 - c. Pending the hearing and determination of the instant suit, the plaintiff, whether by herself, her servants, agents, employees and or anyone acting on her authority, be restrained from constructing, selling, transferring, charging, developing or dealing with the parcels of land title numbers land reference number 12715 656.
 - d. The Officer commanding station, Mlolongo Police Station, do ensure compliance.
 - e. The Court do issue further orders as it deems fit.
 - f. Costs of this motion be provided for.
2. The motion is based on the grounds stated on its face and the supporting affidavit sworn by the defendant on the same date. In a nutshell, the grounds in support of the motion are that; (a) the defendant is the director of Blue Lime Company Limited the registered owner of all that property



known as Land Reference No. 12715 656 (“suit property”) which has already been subdivided to 37 plots and of which the plaintiff similarly claims ownership thereof; (b)the plaintiff has begun construction of permanent structures on the suit property and unless she is restrained, the defendant is apprehensive that she will continue with the construction and change the subject matter of the suit before the dispute is determined; (c) there was no delay in the filing of the instant motion.

3. Although the plaintiff contends it opposes the motion through the replying affidavit deposed on 26 03 2025 filed by Ms. Aziz & Associates Advocates, this law firm is not on record for the plaintiff as a notice of change of advocates has never been filed. Significantly, this law firm purportedly sought to file such a change on 16 06 2025, which has not been paid for, long after it had filed the replying affidavit on 1 04 2025. In the circumstances, the replying affidavit is hereby struck out.

Hence, having been directed by the court, the law firm of M s. Shabaan Associates LLP, for the defendant, filed written submissions dated 2 05 2025, in which counsel raised two issues for determination: whether the defendant is in contempt of the ruling of 22 01 2025 and whether the defendant has met the threshold for granting interlocutory injunctions.

4. Accordingly, the court has thoroughly examined the motion, its grounds, affidavit, and the defendant’s submissions, which are supported by relevant laws and case precedents. Therefore, the two issues for determination that this court considers arise for resolution and will be dealt with separately are: (a) whether the motion is res judicata and (b) whether the defendant has met the legal threshold to justify granting injunctive relief.

- a. Whether the motion is res judicata

5. Regarding the first issue, which concerns the legal principle of res judicata, the relevant legal framework is outlined in our Section 7 of the *akn ke act 1924 3 Civil Procedure Act*, as follows:

“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.”

6. In illuminating on this doctrine, the learned authors of Mulla, Code of Civil Procedure, 18th Ed. 2012, page 293 explained the purpose of the doctrine and its exceptions in the following words: -

“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.”

7. In addressing this principle in the decision *Kenya Commercial Bank Limited & another v Muiri Cofee Estate Limited & 3 others* [2016] KESC 6 (KLR), the Supreme Court of Kenya explicated as follows: -

“52. Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights.”



8. Having considered the record, Hon Lady Justice Nyukuri, upon hearing the parties on the merits following a notice of motion by the plaintiff dated 18 03 2024 seeking injunctive reliefs, which was challenged by the defendant's replying affidavit of 25 03 2024, rendered a ruling on 22 01 2025 and granted the following disposal orders:
- a. An order of temporary injunction is hereby issued restraining the defendant respondent either by himself, his relatives, servants, employees, agents, assignees or anybody claiming under his name, from entering, accessing, trespassing, encroaching and or in any way whatsoever interfering with the plaintiff's quiet possession, use and possession of all that parcel of land known as LR Number 12715 656 I. R Number 47967 situate in the District of Machakos N.W of Athi River location within Machakos County, pending hearing and determination of this suit.
 - b. The officer in charge of Syokimau Police Station is directed to provide security to the plaintiff during the enforcement of the court order.
 - c. The costs of the application shall be borne by the defendant.
9. Following this, the instant motion is res judicata. The doctrine of res judicata not only applies to suits but also applies equally to applications. Examining the record, in both motions, the parties were seeking injunctive reliefs, and they are the same litigants under the same title. Further, the previous motion was conclusively decided by a competent court with the necessary jurisdiction. In other words, the motion raised similar issues that had already been considered and determined in the previous court ruling.
10. It appears that the defendant has cleverly devised the motion, and his actions are tantamount to seeking both a review and an appeal against the orders issued on 22 01 2025, which this court will not entertain. Therefore, this court finds the motion to be res judicata and an abuse of court process, warranting its striking out. Thus, a determination of the second issue is deemed unnecessary, and ultimately, this court hereby issues the following final disposal orders:
- a. The notice of motion dated 26 02 2025 is hereby struck out with costs being in the cause.
 - b. The law firm of Ms. Aziz & Associates Advocates is at liberty to regularise its representation.
 - c. Unless with leave of the court, applications shall not be entertained in this matter.
 - d. A mention date shall be given for purposes of pre-trial directions.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 18TH DAY OF NOVEMBER, 2025.

HON. A. Y. KOROSS

JUDGE

11.2025

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In the presence of;

Ms. Kanja Court Assistant.

Mr. Oriwa for the respondents.



Miss. Wangui holding brief for Mr. Masake for the applicant.

