



REPUBLIC OF KENYA



Mburu & 34 others v National Land Commission & 7 others (Land Case E091 of 2025) [2025] KEELC 8417 (KLR) (2 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8417 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
LAND CASE E091 OF 2025
JM ONYANGO, J
DECEMBER 2, 2025**

BETWEEN

**SAMUEL KAHUMU MBURU 1ST PLAINTIFF
SARAH WANGARI MUROKI 2ND PLAINTIFF
ANTHONY GICHURU KIRUBI 3RD PLAINTIFF
PERIS WANJIKU MUNGAI 4TH PLAINTIFF
LUCY NJERI GIKONYO & 30 OTHERS & 30 OTHERS 5TH PLAINTIFF**

AND

**THE NATIONAL LAND COMMISSION 1ST DEFENDANT
JOHN KAMAU NDERE 2ND DEFENDANT
THE LAND REGISTRAR KIAMBU COUNTY 3RD DEFENDANT
THE KENYA RAILWAYS CORPORATION 4TH DEFENDANT
THE KENYA FORESTRY RESEARCH INSTITUTE (KEFRI) .. 5TH DEFENDANT
THE SURVEY OF KENYA (SOK) 6TH DEFENDANT
THE ATTORNEY GENERAL 7TH DEFENDANT
SIGONA JUA KALI ASSOCIATION 8TH DEFENDANT**

RULING

1. The present application does not arise in a vacuum; it is the latest chapter in a dispute that has travelled a long and troubled course through the courts. The instant Notice of Motion application dated 1st September 2025 seeks the following Orders:



1. Spent...
 2. The Honourable Court be pleased to strike this suit out for want of jurisdiction as the question of ownership of SIGONA/934 the mother title of the Plaintiff's parcels of land has been determined by a competent court of equal jurisdiction and the decision confirmed by the Court of Appeal.
 3. That the issue of jurisdiction of the Honourable Court having been challenged it is imperative to decide the matter at the earliest opportunity in these proceedings.
 4. Costs of the application
2. The application is premised on the grounds set out on the face of the application and the supporting affidavit of John Kamau Ndere sworn on 2nd September 2025.
 3. The application was prompted by the Plaintiffs/Respondents' move for, inter alia injunctive orders, notwithstanding the earlier determination of the contest over the parcel of land known as SIGONA/934 (hereinafter 'the suit property') in Thika ELC Case No. 131 of 2017.
 4. The instant application wants the suit struck out for want of jurisdiction and maintains that the issues raised were previously adjudicated, rendering the current proceedings res judicata and an abuse of the court process.
 5. The Respondents resist the application with equal force. Through the detailed replying affidavit of one Samuel Kahumu Mburu sworn on 12th November 2025, they dispute the Applicant's position and maintain that the present suit has been properly instituted.
 6. The Respondents assert that the Court is seized of the requisite jurisdiction, that the issues raised have not been conclusively resolved elsewhere, and that the application to strike out the suit rests on a mischaracterisation of the dispute now before the Court.
 7. Pursuant to the Court's directions, both parties filed written submissions addressing the question of res judicata.

Issues

8. Having examined the application together with the supporting affidavit, the replying affidavit in opposition and considered the parties written submissions, the sole issue that emerges for determination is whether the suit herein is res judicata

Analysis and Determination

9. The doctrine of res judicata serves as a safeguard against the repeated litigation of matters that have already been heard and conclusively determined by a court of competent jurisdiction.
10. It rests on the principle that there must be finality to judicial decisions, and it bars a party from reopening issues that were, or could reasonably have been, placed before the earlier court.
11. The doctrine of res judicata is anchored in Section 7 of the *Civil Procedure Act*, which provides:

“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 can 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.”

12. This statutory command embodies a fundamental principle of justice that a matter once fully adjudicated should not be reopened through parallel or subsequent proceedings.
13. It directs the Court to examine the identity of the parties, the nature of the issues, and the competence of the earlier tribunal to determine whether the dispute now presented attempts to revisit questions already put to rest.
14. The Supreme Court of Kenya, in its judgment in *Kenya Commercial Bank Limited & Another v Muiri Coffee Estate Limited & 3 Others* [2016] KESC 6 (KLR), articulated the doctrine of res judicata as a cornerstone of substantive law, ensuring that once a court has resolved the legal rights of parties, those rights are conclusively determined and litigation is brought to an orderly close:

“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.

...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.”

15. This principle is directly engaged in the present application, as the Respondents are asserting claims over the same property and rights that were conclusively determined in Thika ELC Case No. 131 of 2017, a decision which was effectively upheld in Civil Appeal No. 315 of 2019, raising the question of whether the current proceedings improperly seek to revisit matters already adjudicated.
16. The Applicants contend that the Plaintiff/Respondents have brought the present claims before this Honourable Court in respect of the same property and issues that were previously considered and determined by both this Court in Thika ELC Case No. 131 of 2017 and the Court of Appeal in Civil Appeal No. 315 of 2019.
17. The Plaintiff/Respondents contend that the application is fatally defective and should be dismissed with costs. They maintain that they were not party to the proceedings in Thika ELC Case No. 131 of 2017 and are simply trying to maintain the status quo over the suit property.
18. I have taken the time to examine the Judgment of this court in Thika ELC Case No. 131 of 2017 in which the 8th Defendant herein was the Plaintiff and the Interested Party herein was the 5th Defendant. The case involved the suit property herein where the court pronounced itself as follows:

“My conclusion is that parcel no 934 measuring 0.970 Hectares did not belong to the 5th defendant. It did not belong to the plaintiffs either. It was hence government land and any alienation of the same ought to have been through the laid down mechanisms available at that time...”



19. The Court of Appeal similarly addressed the dispute over the suit property in which the Interested Party herein, Jane Wangechi Kimani, was the 1st Appellant in Civil Appeal No. 315 of 2019 as follows:

“The Judge found, and we agree, that registration of the suit property to the 1st appellant was illegal, un-procedural and it was through corrupt schemes.”

20. In dismissing the appeal the Court of Appeal went on to state:

“The appellants submit that the Judge was wrong to make findings in the case when the suit property had been sub-divided into other parcels of land and transferred to other parties. The short answer to that question is the holding by the Supreme Court in Dina Management Limited (supra) and other cases to the effect that root of title must support the claim by the registered owner of land on the propriety of such ownership when the same is challenged. The root of the title to the suit property was challenged, it in fact could not be traced at all and was shrouded in mystery, as we have shown. The resultant titles that emanated from the suit property had no root, they had no standing, they stood on quicksand, and they must go with the winds.”

21. I have carefully examined the suit filed by the Plaintiffs/ Respondents together with the supporting affidavit of Samuel Kahumu Mburu sworn on. 12th November 2025 opposing the instant application.

22. The Plaintiffs/Respondents contend that they were not informed of the proceedings in Thika ELC Case No. 131 of 2017 and should consequently be given an opportunity to ventilate their issues over the suit property.

23. What emerges is that the Plaintiffs/Respondents’ asserted claim to the suit property is inextricably linked to the Interested Party. The earlier determinations in Thika ELC Case No. 131 of 2017 and Civil Appeal No. 315 of 2019 directly affect the legal foundation of these claims.

24. The current claims seek to revisit matters that have already been judicially determined.

25. In these circumstances, permitting the present suit to continue would risk undermining the finality of the earlier judgment, invite a multiplicity of proceedings, and impose unnecessary costs on the parties, contrary to the purpose and public policy underpinning the doctrine of res judicata.

26. Accordingly, having examined the matter in its full historical and legal context, I am satisfied that the present proceedings are squarely barred by the doctrine of res judicata. The issues, the parties, and the property at the heart of this dispute have already been judicially determined, and no lawful claim can now be resurrected in defiance of that prior adjudication.

27. The upshot of the foregoing is the application dated 1st September 2025 is allowed and the suit is hereby struck out with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED, AT THIKA THIS 2ND DAY OF DECEMBER 2025

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J. M. ONYANGO

JUDGE

In the presence of:



1. Mr. E. N. Mugu for the 2nd and 8th Respondents
2. Ms Kemunto for the 1st Respondent
3. Mr Mugu for Mr. Mbiti for the Plaintiff
4. Ms Aisha for Mr. Motari for the 3rd and 7th Defendants
5. Mr Andati for the Interested Party

Court Assistant: Hinga

