



**Kenya National Organization for Victims of Ethnic Clashes (KNOVEC) v
Ministry of Lands and Physical Planning & another (Environment and Land
Petition 23 of 2021) [2025] KEELC 18377 (KLR) (17 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18377 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND PETITION 23 OF 2021
NA MATHEKA, J
DECEMBER 17, 2025**

BETWEEN

**KENYA NATIONAL ORGANIZATION FOR VICTIMS OF ETHNIC CLASHES
(KNOVEC) APPELLANT**

AND

MINISTRY OF LANDS AND PHYSICAL PLANNING 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The Respondents raised the following Preliminary Objection dated 17th March 2025 to be heard prior to the hearing of this suit on the following grounds;
 1. That the suit is res-judicata by virtue of Machakos ELC. 155 of 2016 East African Portland Cement Co. Ltd vs. Sammy Mwangangi & 272 Others.
 2. That the suit is filed contrary to Section 7 of the *Civil Procedure Act*.
 3. That the suit is bad in law, vexatious and an abuse of the court process.
2. The Petitioner submitted that the earlier proceedings in Machakos ELC. 155 of 2016 East African Portland Cement Co. Ltd vs. Sammy Mwangangi & 272 Others revolved around private claims of title and possession by East African Portland Cement Co. Ltd against individuals, while the present petition arises from alleged violations of Constitutional guarantees under Articles 40(3) and 47 of *the Constitution* including the rights to property under compulsory acquisitions and fair compensation thereafter. That this is an after thought as the matter has been partly heard and the same was adjourned to allow the Petitioner to amend their Petition. The same has been amended and the issue for



determination is substantially different from the issue in *Machakos ELC. 155 of 2016 East African Portland Cement Co. Ltd vs. Sammy Mwangangi & 272 Others*.

3. I have considered the preliminary objection. The same seeks to have this suit struck off as it is res judicata. The issue for determination is whether the Respondents' preliminary objection has satisfied the threshold or not. The leading decision on Preliminary Objections is the case of *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd. (1969) EA 696*, where the Court held as follows:

a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

4. Similarly, the Supreme Court in *Independent Electoral & Boundaries Commission vs Jane Cheperenger & 2 Others (2015) eKLR* made the following observation as relates to Preliminary Objections:

... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits.”

5. The Defendant's submission is that the suit herein is res judicata to *Machakos ELC Suit No. 155 of 2016 (East African Portland Cement Co. Ltd vs. Sammy Mwangangi & 272 Others)*. Section 7 of the *Civil Procedure Act* 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 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. Expounding further on the essence of the doctrine this Court in *John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others (2015) eKLR* pronounced itself as follows;

The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably.”



7. I have perused the pleadings of Machakos ELC Suit No. 155 of 2016 (East African Portland Cement Co. Ltd vs. Sammy Mwangangi & 272 Others) and find that the parties are the same and the subject matter is the same. On the 19th December 2022, the Justice C. Ochieng dismissed a preliminary objection by the Respondents that the matter was sub judice as the same was premature.
8. In the file, six files were consolidated and in ELC No. 155 of 2016, East African Portland Cement Ltd, the Plaintiff filed a Plaint dated the 2nd November, 2015 where it sought for the following orders;
 - a. A declaration that the Plaintiff is entitled to exclusive and unhindered right of possession and occupation of the parcels of land known as LR No. 12948/17 (I.R 39448/1), LR No. 10425 (I.R 17839), LR No. 8784 (1.R 75467), LR No. 7815/1, and LR No. 8786. ('Suit properties')
 - b. A declaration that the Defendants whether by themselves or their servants or agents and/ or otherwise howsoever are illegally in occupation of the suit property and are accordingly trespassers on the same.
 - c. A declaration that the Defendants whether by themselves or their servants or agents and/ or otherwise howsoever are not entitled to remain on the suit property.
 - d. A permanent injunction restraining the Defendants whether by themselves or their servants or agents and/ or otherwise howsoever from remaining on, continuing occupation of the suit property;
 - e. In the Alternative, an eviction order to issue for forceful eviction of the Defendants from the Subject parcels of land known as LR No. 12948/17 and I.R 39448/1, LR No. 10425 and I.R 17839, LR No. 8784 and 1.R 75467, LR No. 7815/1, and LR No. 8786 ('the suit properties') directed at the Officer Commanding Police Station Athi River to assist in peaceful execution.
 - f. General damages for trespass;
 - g. Mesne profits (at current market rates) for the continued stay of trespassers on the suit profit from the date of their entry to the date of their eviction.
 - h. Costs of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant.
9. The Interested Party Kenya National Organization for Victims of Ethnic Classes (KNOVEC) who is the Petitioner in this case, filed a Defence and Counter-claim dated the 20th April, 2018 where it denied the averments in the Plaint, admitted operating under Settle Villagers Scheme. It claimed to be the registered owner of LR No. 10425 vide Letter of Allotment No. 3974 /XXVI of 24th February, 1997 and paid over Kshs. 42,000,000 in standard premium including other charges. It disputed that LR No. 10425 belongs to the Plaintiff. It contended that 51st to 273rd Defendants are bogus, non-existent, fictitious and mere creation of someone's fertile imagination. In the counterclaim, it sought the following Orders as against the Plaintiff;
 - a. The Plaintiff's suit herein be dismissed with costs in entirety as against the Interested Party herein.
 - b. There be a declaration made herein that the Interested Party and Plaintiff in the Counterclaim is the legal and rightful owner of parcel of land No. 10425.
 - c. An Order be made dismissing the Counterclaim filed herein by Defendants No. 51 to 273 including Mto Mawe the organization that represents them with costs.



- d. An Order be made dismissing any claim over Land Parcel No. 10425 or suit by Kenanie Settlers Self Help Group whether sued or suing through its officials.
 - e. An Order be made dismissing any suit or counterclaim filed herein by the organizations known as Kyeni Kya Katani SGH, Dama Mavoko Welfare Society, Mtojua Welfare Association, Kihito Ruai Sacco, the groups known as Mavoko Informal Settlement Community and Athi River Informal Settlement Community led by Francis Kirima M'Ikunyua or whatever other names they go by, Syokimau Bright Homes, the Plaintiff in Consolidated suit 1190 of 2015 and groups led by Naftaly Kariuki Petitioner in Consolidated Petition No. 40 of 2016 and Sammy Kathilu the Plaintiff in Consolidated Suit 1108 of 2015, or any other entity or organization that has laid a claim on LR 10425.
 - f. An order of eviction be given and issued against all the Defendants named herein in this suit or other persons unmade who are in the suit land without the consent or permission of the Plaintiff/ Interested Party removing them from land parcel 10425 and putting the Plaintiff/ Interested Party's members into quiet possession in the same land and the same be enforced by the Commandant Machakos County.
 - g. An order of permanent injunction do issue restraining the 1st Defendant in the Counterclaim, its servants and/or agents and anybody acting by them or through them from entering or remaining into Land Parcel number 10425 and from excavating, digging, mining, constructing, planting explosives and from carrying stones, soil or other materials out from the said land or in any other manner interfering with the ownership and possession by the Plaintiff/ Interested Party of the said Land Parcel Number No. 10425.
 - h. In the alternative but without prejudice to the foregoing the Second Defendant be ordered to adequately compensate the Plaintiff/ Interested Party for loss of its land and further pay General Damages for the inconvenience, anxiety and agony its members have suffered during the invasion of their land.
 - i. Costs of the suit in the Counter-claim.
 - j. Any further or better relief this Honourable Court may deem fit and just to grant.
10. In a judgement delivered by Justice C. Ochieng dated 29th October 2024 the court found that the plaintiff had proved their case on the required standard and granted them exclusive possession. The court gave the following orders;
- a. A declaration be and is hereby issued that the Plaintiff is entitled to exclusive and unhindered right of possession and occupation of the parcels of land known as LR No. 12948/17 (I.R 39448/1), LR No. 10425 (I.R 17839), LR No. 8784 (I.R 75467), LR No. 7815/1, and LR No. 8786. ('Suit properties')
 - b. A declaration be and is hereby issued that the Defendants whether by themselves or their servants or agents and/or otherwise howsoever are illegally in occupation of the suit properties and are accordingly trespassers on the same.
 - c. A declaration be and is hereby issued that the Defendants whether by themselves or their servants or agents and/ or otherwise howsoever are not entitled to remain on the suit properties.



- d. A permanent injunction be and is hereby issued restraining the Defendants whether by themselves or their servants or agents and/ or otherwise howsoever from remaining on, continuing occupation of the suit properties;
 - e. The Defendants including Interested Parties do grant vacant possession of the suit properties being LR No. 12948/17 and I.R 39448/1, LR No. 10425 and I.R 17839, LR No. 8784 and 1.R 75467, LR No. 7815/1, and LR No. 8786 ('the suit properties') to the Plaintiff, within ninety (90) days from the date hereof, failure of which eviction order do issue and the Officer Commanding Police Station Athi River directed to assist in peaceful execution.
 - f. General damages for trespass and Mesne Profits are awarded to the Plaintiff at Kshs. 5,000,000 to be jointly and severally borne by the Defendants and Interested Parties.
 - g. Costs of this suit together with interest on (f) above is granted to the Plaintiff, to be jointly borne by the Defendants and Interested Parties from the date of this Judgement.
11. That suit was brought in by way of a plaint while the current one is Constitutional Petition. Litigation must come to an end and if the interested party was dissatisfied with the decision in Machakos ELC. 155 of 2016 East African Portland Cement Co. Ltd vs. Sammy Mwangangi & 272 Others, they should file an appeal. This is not a constitutional matter but one of ownership of land which was rightfully disposed off by way of a civil suit. I find this Petition is res judicata and not merited and is struck off the suit with costs to the Respondents.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 17TH DAY OF DECEMBER 2025.

N.A. MATHEKA

JUDGE

