

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. E035 OF 2024**

**LOIS JOHN KILONZO:.....:PLAINTIFF/APPLICANT**

**VERSUS**

**MOSES KYALO NDINI:.....:DEFENDANT/RESPONDENT**

**RULING**

The application is dated 15<sup>th</sup> April 2024 and is brought under Order 22 Rule 29 of the Civil Procedure Rules; Sections 1A, 1B and 3A, 63(e) of the Civil Procedure Act; Article 159(2) (d) of the Constitution seeking the following orders;

1. THAT this application be certified urgent and service be dispensed with in the first instance.
2. THAT pending hearing and determination of this application, the Defendant/Respondent do serve us within 24 hours the alleged Appeal deemed to have been lodged and filed in the Court of Appeal in ELC CASE NUMBER 279/2010 as communicated to the Honourable Court on 27<sup>th</sup> February, 2024 before Honourable Lady Justice Christine Ochieng.
3. THAT pending the hearing and determination of this application the Defendant/Respondent be compelled to avail in court all the accounts of collected rent since 2012 and deposit the proceeds with Honourable Court

within seven (7) days and the inventory of all the tenants occupying the houses on Land Parcel MUPUTI/KIIMA-KIMWE/59.

4. THAT pending the hearing and determination of the main suit, the Honourable Court do issue a temporary injunction restraining the Defendant/Respondent from collecting rent and such rent be paid to the Honourable Court.
5. THAT pending the hearing and determination of the main suit, the Honourable Court be pleased to issue a temporary order requiring the Defendant/Respondent to vacate land parcel MUPUTI/KIIMA KIMWE/59 and from collecting any rent therefrom.
6. THAT Honourable Court do issue against the Defendant/Respondent an order of forceful eviction from land parcel title number MUPUTI/KIIMA KIMWE/59 the land adjudged to belong to LOIS JOHN KILONZO.
7. THAT O.C.P.D and the O.C.S Machakos Police Station do forcibly evict the Defendant/Respondent and all the occupants of the houses sitting on MUPUTI/KIIMA KIMWE/59 and put the land and the houses into ownership of LOIS JOHN KILONZO.
8. THAT the costs of this application be borne by the Plaintiff/Respondent.

It is based on the grounds that the Defendant/Respondent has failed and is not likely to give up possession of the suit land and the property therein unless forcibly evicted. The Defendant/Respondent without any color of right has

committed crime of forcible detainer on land parcel MUPUTI/KIIMA KIMWE/59 contrary to Section 91 of the Penal Code. The judgments passed on 16<sup>th</sup> July, 2018 and 31<sup>st</sup> May, 2022 upheld that land parcel MUPUTI/KIIMA KIMWE/59 is the property of LOIS JOHN KILONZO and the Plaintiff/Respondent is illegally occupying it. The judgments passed on 16<sup>th</sup> July, 2018 and 31<sup>st</sup> May 2022 did not grant any orders of eviction therefore the Plaintiff/Respondent has taken that advantage to hold onto and detain land parcel MUPUTI/KIIMA KIMWE/59 with all the developments therein and collecting rent as if he has any entitlement to the suit land. That the Defendant/Applicant has approached this Honourable Court to enforce her rights to property as provided under Article 40 of the Constitution of Kenya. The Plaintiff/Respondent has rented out the houses sitting on land parcel MUPUTI/KIIMA KIMWE/59 to persons whom he uses as personal security to bar the Plaintiff/Applicant from accessing her property.

The Respondent stated that the issue of rent collection relating to the said premises land parcel MUPUTI/KIIMA KIMWE/59 was canvassed and determined in High Court Civil Case No. 24 of 2013 Lois John Kilonzo vs Moses Kyalo where on the application dated 27<sup>th</sup> May 2013 the Court in a ruling delivered on 4<sup>th</sup> May 2015 ordered that a receiver be appointed to manage and collect rent premises in Muputi/ Kiima – Kimwe/59 and 1861 pending hearing and determination of the suit or until further orders. A copy of the ruling is

attached marked MKN-2. That he has also lodged an appeal in Machakos ELC No. 279 of 2010 in respect of a judgement delivered on 31<sup>st</sup> May 2023. That this instant application is res judicata.

This court has considered the application and the submissions therein. The Defendant's submission is that the suit herein is *res judicata* to Machakos ELC Suit No. 279 of 2023. 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.”*

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.”*

I have perused the pleadings of Machakos ELC Suit No. 279 of 2010 and find that the parties are the same and the subject matter is the same. In a judgement delivered by Justice C. Ochieng dated 31<sup>st</sup> March 2023 the court found that the Plaintiff had proved her case on the required standard. The Defendant who is the Respondent in the instant application filed an appeal. That suit was brought in by way of a plaint while the current one is an application. There is also a ruling in High Court Civil Case No. 24 of 2013 Lois John Kilonzo vs Moses Kyalo where on the application dated 27<sup>th</sup> May 2013 the Court in a ruling delivered on 4<sup>th</sup> May 2015 between the same parties and same subject matter. Litigation must come to an end and if the Plaintiff/Applicant seeks further orders the same cannot be granted through an application in a different suit. This application is an abuse of the court process. Having found so this court will not go into the merit and demerits of the application. I find this matter is res

judicata and not merited and is struck off with costs to the Defendant/Respondent.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 16<sup>TH</sup> DAY  
OF DECEMBER 2025.**

**N.A. MATHEKA**

**JUDGE**