



**Kariobangi North Light Industries Jua Kali Association v Nairobi
City County Government & 2 others (Environment and Land Case
E219 of 2024) [2025] KEELC 8594 (KLR) (9 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8594 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E219 OF 2024**

**JG KEMEL, J
DECEMBER 9, 2025**

BETWEEN

**KARIOBANGI NORTH LIGHT INDUSTRIES JUA KALI
ASSOCIATION PLAINTIFF**

AND

NAIROBI CITY COUNTY GOVERNMENT 1ST DEFENDANT

KARIOBANGI SEWERAGE FARMERS 2ND DEFENDANT

**NAIROBI CITY WATER & SEWERAGE SERVICES COMPANY
LIMITED 3RD DEFENDANT**

RULING

1. What is before me is the Notice of motion dated 23/5/25 filed by the 2nd Defendant seeking orders of dismissal of the suit for being res judicata.
2. The application is based on the grounds annexed thereto and the supporting affidavit sworn by Isaak Abdi Adan on the same date.
3. He deposed that he is the chairman of the 2nd Defendant with the authority of the members to swear and sign the affidavit on their behalf.
4. That in 1999 the 2nd Defendant /applicant instituted a suit by was originating summons against the 1st Defendant seeking ownership of the suit land being LR No 8285/161 or Nbi/Block 175. (hereinafter called the suit land).
5. The Plaintiff appeared and disrupted their peaceful occupation on the grounds that they owned the land, leading to the filing of case HCCC No 1026 of 2003—George Waweru, Moses Kimani & Hassan Ibrahim on behalf of the 2nd Defendant versus Nairobi City Council & Another and Kariobangi



- North Light Industries Jua Kali Association. That this suit was stayed pending the outcome of HCCC No 1680 of 1999.
6. Thereafter, the Plaintiff sought to be enjoined in HCCC No 1680 of 1999, and by the ruling delivered on 22/3/2010, it became the 3rd Defendant in the said suit.
 7. That upon the demolition of their structures in 2020, they filed a suit in Pet 11/2020, in which the court granted orders in their favour, although the plaintiffs were not parties to the said petition.
 8. On the 20/6/24 the court in ELC 1680 of 1999 delivered judgement in their favour and categorically stated that the 2nd defendants members were entitled to be registered as the proprietors of the suit land being Nbi/Block/175
 9. All in all, he deposed that the rights of the parties in the suit land were determined in the aforementioned suits, and therefore, the matter is res judicata. He added that the 2nd Defendant herein is merely an offshoot of the main Kariobangi Sewerage Farms Limited.
 10. In opposition to the application, the Plaintiff filed grounds of opposition on the following grounds;
 - a. The application does not meet the threshold under Section 7 of the CPA.
 - b. This court be guided by the provisions of Articles 10(2) (b), 25 (c) 50(1) & 3 & 159 (2) (e) of the Constitution on equity, social justice, inclusiveness equality, sustainable development right to fair hearing
 - c. Sections 1A and 3A of the Civil Procedure Act invite this court to resolve this matter in a manner that is proportionate and affordable whilst involving its inherent powers and judicial discretion
 - d. Moreover, this court is guided by the maxims of equity. Equity will not suffer a wrong to be without a remedy; equity looks to the intent than the form; and equity imputed an intention to fulfil an obligation.
 11. William Kinyua Gathara, the Chairperson of the Plaintiff swore an affidavit on 1/10/25 and stated that the Plaintiff has never heard of the judgement [ELC 1680 of 1999] referred to by the applicant save upon service through the instant application. Moreover, none of its members/officials participated at the hearing and as such were locked out from articulating their issues before the court. He urged the court to be allowed fair hearing and determination of the issues on merit. That no prejudice will be occasioned on the applicant should the court entertain the suit on merit.
 12. W.S. Ogola, the County Solicitor, stated that the 1st Defendant supports the application for dismissal of the suit for the reason of res judicata.
 13. That in ELC 1680 of 1999 the 2nd Defendant claimed adverse possession of the suit land on account of possession since 1964. The Plaintiff was enjoined as the 3rd Defendant vide a ruling of 22/3/2010 and consequently had the opportunity to defend the suit however they grew cold feet and never appeared for the hearing of the said suit.
 14. He stated that the 2nd Defendant holds a letter of allotment for Plot R4 dated the 15/5/1996 issued by the defunct Nairobi City County. Its members were subsequently issued with allotment letters in 2016 and leases in 2019. That the claims of forgeries by the 2nd Defendant and made by the Plaintiff were determined in ELC 1680 of 1999 where the court confirmed that there were no forgeries.
 15. That in PET 11 of 2020 the court in its judgement delivered on 6/7/2023 confirmed that the 2nd Defendant followed due process in acquiring titles to the suit land thus are the legal and registered owners of the suit land.



16. He asserted that based on the two decided suits the rights of the parties were heard and determined and the current suit is intended to reopen a suit long determined by a competent court. The court was urged to dismiss the suit for being res judicata in light of the doctrine of finality of litigation.
17. The 3rd Defendant did not oppose the application.
18. On 17/9/2025 parties elected to canvass the application by way of written submissions. By the time the court retired to write the ruling, one of the other parties had complied with the court's directions with respect to the filing of written submissions. I have read and considered the submissions.
19. Having considered the application, the rival submissions and the written submissions on record, the key issue for determination is whether the suit is res judicata.
20. The Black's Law Dictionary 10th Edition defines "res judicata" as "An issue that has been definitely settled by judicial decision...the three essentials are (1) an earlier decision on the issue, (2) a final Judgment on the merits and (3) the involvement of same parties, or parties in privity with the original parties..."
21. Section 7 *Civil Procedure Act* provides for the doctrine of res judicata 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 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.”
22. The *Civil Procedure Act* outlines explanations with respect to the application of the res judicata rule. Explanations 1-6 are in the following terms:

Explanation. — (1) The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation. — (2) For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. — (3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation. — (4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation. — (5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. — (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating. [emphasis mine]
23. Recently, the Supreme Court added its voice on the subject in the case of John Florence Maritime Services Ltd & Another – vs- Cabinet Secretary for Transport & Infrastructure & 3 others (2021) eKLR, where the court affirmed the issue of res judicata in reference to constitutional Petitioners and stated that;

“We reaffirm our position as in the Muiiri Coffee case that the doctrine of res judicata is based on the principle of finality which is a matter of public policy. The principle of finality



is one of the pillars upon which our judicial system is founded and the doctrine of res judicata 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. If we were to find that the doctrine does not apply to constitutional litigation, the doctrine may very well lose much of its legitimacy and validity. We say this in light of the fact that constitutional tenets permeate all litigation starting with the application of Article 159 of the *Constitution* in both civil and criminal litigation, and its application now embedded in all procedural statutes. Further Article 50 on right to fair hearing and Article 48 on access to justice are fundamental rights which every litigant is entitled to. Such a holding may very well lead to parties, that whenever they need to circumscribe the doctrine of res judicata, they only need to invoke some constitutional provision or other.”

24. The compounding effect of case law cited above is that 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.
25. In the case of re Estate of Riungu Nkuuri (Deceased) [2021] eKLR the court stated as follows:
- “The test for determining the Application of the doctrine of res-judicata in any given case is spelt out under Section 7 of the *Civil Procedure Act*. In Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR, the Court of Appeal while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked. That is:
- (a) The suit or issue was directly and substantially in issue in the former suit.
 - (b) That former suit was between the same parties or parties under whom they or any of them claim.
 - (c) Those parties were litigating under the same title.
 - (d) The issue was heard and finally determined in the former suit.
 - (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”
26. In essence, therefore, the doctrine expressly states that for a matter to be res judicata, the matters in issue must be similar to those which were previously in dispute between the same parties and the same having been determined on merits by a Court of competent jurisdiction. The 3rd Defendant agrees with this proposition.
27. Bearing in mind the above principles, I will now embark on determining the application.
28. The 2nd Defendant claims that the current suit is res judicata due to two previous cases, ELC 1680 of 1999 and Pet 11 of 2020. The Plaintiff has not denied these cases, merely stating that they were unaware of the judgments and only became aware of them upon service of the application. I have reviewed the cases, especially ELC 1680 of 1999, and it is clear that, following an application by the Plaintiff, the court enjoined the Plaintiff into the suit via the Ruling of 22/3/2010. The claim of ignorance of the judgment is therefore unfounded, apart from the fact that the Plaintiff was a party in ELC 1680 of 2010.



29. I have perused the judgment of the Court in PET 11 of 2020, in which the 2nd Defendant was the petitioner claiming ownership of the same suit land. The current Plaintiff was not involved in this case. The court pronounced its decision on 6/7/2023 as follows;

53. The Petitioner [Kariobangi Sewerage Farmers Self Group] has provided evidence that the suit land is registered in her name. The petitioner has provided evidence that the land was legally allocated to them by the Nairobi County Council ... They averred several documents An agreement of lease executed on 10/2/2002... over the plot No R4 Kariobangi North Kamorock Road....

56. I am satisfied that the Petitioner and its membership have satisfied this court that it followed due process in acquiring their titles.

58. In light of my findings that the Respondents' actions of forcefully evicting the members of the Petitioners were in breach of the law...

55.Prayer 5 and 6 seek for liberty of the individual members of the petitioner to bring a suit for ascertainment of special general and exemplary damages.”

30. In ELC 1680 of 1999, the Plaintiff herein sought and was granted leave for joinder as the 3rd Defendant, whereupon it filed its defence, claiming that it was entitled to the suit land. It also filed a counterclaim in the following terms;

- a. An order of injunction do issue restraining the plaintiffs group and its members [the current 2nd Defendant], their agents, employees and or servants from trespassing into constructing on encroaching, remaining on or in any way whatsoever interfering with all the parcel of land known as L R No 8285/161 situate at Kariobangi off Kamorock Road
- b. An order directing the Plaintiffs group and its members to give the 3rd Defendant [the plaintiff herein] vacant possession of all that parcel of land known as LR No 8285/161 situate at Kariobangi, off Komorock Road. Nairobi.
- c. Damages for loss of user and mesne profits
- d. That the officer in charge Kariobangi North Police station do supervise and ensure compliance with the court orders issued hereinabove
- e. Costs of the suit and interest.

31. In ELC 1680 of 1999 the court entered judgment in favour of the 2nd Defendant [herein] as follows;

“ 50. I find that the Plaintiff has proved his case as against the defendants on a balance of probabilities.

51. accordingly the judgement is entered for the plaintiff against the defendant as follows;

- a. that the plaintiff members are entitled to be registered as the proprietors of land known as Nairobi/Block 175 within ninety (90) days from the date of this judgment/
- b. That costs of this suit be borne by the defendants.



32. From the above decisions, I find that the judgment in ELC 1680 of 1999 aligns with the court's decision in Pet 11 of 2020. In both cases, the primary issue determined was the ownership of the suit land between the parties. In fact, the Plaintiff, who was a party therein, even filed a counterclaim seeking a declaration of ownership of the suit land.
33. In the current suit the Plaintiff claims ownership of the suit land and has sought the following orders;
- a. Declaration that the legal interest in the suit property vests in the plaintiff as per the allocations;
 - b. Payment of damages for trespass to date
 - c. A permanent injunction restraining the defendants, their agents and servants from entering, remaining in, or continuing in occupation of, or otherwise dealing with, or in any way interfering with the plaintiffs' access to, use of, and quiet possession of the suit property.
 - d. An order directing the defendants whether by themselves or by their agents, servants, or otherwise, however, to forthwith remove and demolish all the dwelling structures erected on part of the property, failing which the plaintiff remove the same at the defendants costs and expense.
34. Evidently, the cause of action in all ELC 1680 of 1999 and this suit is similar; in both cases, the Plaintiff was asserting ownership of the suit land.
35. The court also notes that in ELC 1680 of 1999 and PET 11 of 2020, the court ruled in favour of the 2nd Defendant, and as a result, the parties' rights have been settled. This court cannot sit on appeal against a decision of a concurrent court, nor does the law permit reopening of the suit, the same having been heard and determined. Litigation must come to an end.
36. It must not be forgotten that the subject matter in both suits is the same. Both parties claimed ownership of the land in question. In the previous suit, the Plaintiff abandoned the defence of the 2nd Defendant's suit as well as its own counterclaim for reasons best known to them. The parties therefore were litigating under the same claim/subject matter.
37. Lastly, the court that determined the previous suit was a court of competent jurisdiction.
38. In the end, I find that the suit is resjudicata. it is dismissed with costs in favour of the 1st and 2nd Defendant.
39. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF DECEMBER 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered in the presence of;

1. N/A for the Plaintiff
2. Zaidun Abdi HB for Mr Khalifa
3. Ms Wanjiku Wamae
4. N/A for the 3rd Defendant
5. Ms Yvette - CA

