



REPUBLIC OF KENYA



Lake Victoria Fish Two Thousand Ltd v Kassim & 3 others (Environment and Land Case 052 of 2025) [2025] KEELC 8692 (KLR) (11 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8692 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE 052 OF 2025**

**E ASATI, J
DECEMBER 11, 2025**

BETWEEN

LAKE VICTORIA FISH TWO THOUSAND LTD PLAINTIFF

AND

SHABBAN OPIYO KASSIM 1ST DEFENDANT

COUNTY SURVEYOR – KISUMU 2ND DEFENDANT

LAND REGISTRAR – KISUMU 3RD DEFENDANT

THE HON. ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. This ruling relates to the undated Notice of Motion application brought on behalf of the proposed Interested Parties herein vide which they sought for orders that:
 - a. the court be pleased to admit the Interested Party, Abdallahah Were Kassim as a party to the suit.
 - b. the application and the Supporting Affidavit be deemed as the substantive response and/or Replying Affidavit to the application dated 1st August, 2025.
 - c. the court be pleased to strike out the plaint and the application dated 1st August 2025.
 - d. Costs of the application be provided for.
2. Prayer (a) of the application was allowed by consent entered into by the parties on 21st October, 2025 that the proposed Interested Parties were joined in the suit as the 5th, 6th and 7th Defendants. This left only the prayer for striking out of plaint and the application dated 1st August, 2025 as the substantive prayer for determination.



3. The grounds upon which the prayer for striking out of the plaint and application is based are that the issues in controversy were conclusively adjudicated in Case No.25 of 2016 and that the present suit amounts to forum shopping and renders the suit res judicata within the meaning of section 7 of the *Civil Procedure Act*. Further that the Plaintiff has failed to exhaust available legal remedies such as applying to set aside or review the orders of 14th July, 2021 issued in Miscellaneous Application No.197 of 2018. That the Plaintiff has instead pre-maturely invoked the court's jurisdiction contrary to the doctrine of exhaustion.
4. The application was supported by the averments in the Supporting Affidavit of Abdallah Were Kassim and the annexures thereto.
5. The application was opposed vide the Replying Affidavit sworn by Edward Oduor Obiero on the 2nd October, 2025. The Plaintiff contends that the present suit is not res judicata as neither the late Kassim Were Abdallah nor any of his agents or his administrators herein have ever had any court proceedings against them with the Plaintiff/Respondent in regard to the suit property.
6. That the Plaintiff who was not a party in Miscellaneous Application No.197 of 2018 could not possibly apply for review of the purported order dated 14th July, 2021 and that the validity of the said order remains doubtful.

The application was heard by way of oral submissions.

7. It was submitted on behalf of the Applicant that there was a former suit decided by a court of competent jurisdiction who made a final judgement namely case No. E064 OF 2016 whereby the subject matter, the issues and parties are the same with the present case.
8. That this court cannot sit on appeal on a matter decided by court of competent jurisdiction.
9. On behalf of the Plaintiff, it was submitted that in an application based on res judicata evidence has to be led on the similarity of the issues. That no pleadings have been attached to the application.
10. Counsel submitted that the parties in the suit are different. That the Plaintiff in the present case was only registered in the year 2019.
11. I have considered the application and the grounds of opposition. A plea of res judicata if successful terminates an action. As provided for in section 7 of the *Civil Procedure Act* the doctrine prohibits the court from handling a matter that has already been handled and decided on by a court of competent jurisdiction. Section 7 of the *Civil Procedure Act* provides that-

“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.”

12. For the court to be able to determine the existence of the elements of res judicata, sufficient material must be placed before court and more so, the pleadings, proceedings and determination of the former action (suit) for the court to be able to compare with the present action so as to decide that the cause of action, issues and parties in both suits are the same and that there was a determination by court of competent jurisdiction.



13. Courts should endeavour to sustain suits rather than terminate them summarily and striking out of pleadings and actions being such a drastic action should only be resorted to where the pleadings/action are so hopeless and incurable by any amendment.
14. I find that the failure of the applicant to exhibit the pleadings, proceedings and determination of previous action, if any, amounts to failure on the part of the applicant to prove that the action herein is res judicata.

The undated application is hereby dismissed.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU AND DELIVERED VIRTUALLY THIS 11TH DAY OF DECEMBER, 2025.

**E. ASATI,
JUDGE.**

In the presence of:

Maureen: Court Assistant.

Omondi h/b for Qeu for the Plaintiff.

N/A for the Defendants.

Minayo h/b for Owade for the 1st to 3rd Interested Parties.

