



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ELCL MISC APPLICATION NO. E016 OF 2025

VIRGINIA MUCHANGI MUTHENGI.....

.....APPLICANT

=VERSUS=

ELISHA K.

NJAGI.....RESPONDENT

RULING

1. This miscellaneous application was initiated vide a notice of motion dated 7/8/2025. Through it, the applicant, **Virginia Muchangi Muthengi**, seeks the following verbatim reliefs:

1) ...(spent)

2) That the Honourable court be pleased to grant a temporary stay of proceedings before Honourable Deputy Registrar, Chuka Law Courts, in Chuka ELC Appeal No 10 of 2017 pending the hearing and determination of this applications.

3) That the Honourable court be pleased to call for the record in Magistrate Court Marimanti Case No 4 of 2010 (Elisha K. Njagi v Virginia Muchangi Muthengi) to satisfy itself with the propriety of the said proceedings and thereafter quash the said proceedings together with any consequential orders and or proceedings in Chuka ELC Appeal No 10 of 2017.

4) That the costs of this application be provided for.

2. Through the motion, the applicant contended that the respondent sued her in **Marimanti PMC Civil Case No 4 of 2010** alleging trespass and seeking a permanent injunction and an eviction order relating to land parcel number **Tharaka/Chiakariga "A"/1824** (formerly parcel number **1824 Chiakariga "A" Adjudication Section**). She stated that the respondent alleged to have purchased the suit land from her late husband in 1997 as an excision out of parcel number **1490 Chiakariga "A" Adjudication Section**. She added that the respondent lacked the *locus standi* to institute the said suit (**Marimanti PMC Civil Case No 4 of 2010**) against her, contending that "various courts lacked the requisite jurisdiction to handle the original and the subsequent suits borne out of **Marimanti MCC No 4 of 2010**, which suits are liable to being struck out with costs being borne by the respondent herein."

3. The applicant further stated that her rights to equal protection of the law and the right to fair hearing were

infringed by the court in allowing the suit against her to proceed “devoid of jurisdiction and locus.” She contended that this court had authority to call for the subordinate court’s record to ascertain “its legality, correctness and or propriety to forestall any injustice, enforce rights and or make declarations.” She added that she ran the risk of being sentenced to jail for a second time over proceedings that were initiated without locus and/or jurisdiction unless this court intervened.

4. The miscellaneous application attracted a preliminary objection dated 24/9/2025, through which the respondent urged this court to strike out the suit with costs on the following verbatim grounds:

1) The suit is incompetent and improperly instituted and is no suit as known in law

2) That the whole suit is an abuse of the court process.

3) That all the issues raised herein were raised and dealt with in Marimanti PMCC No 4 of 2010 and Chuka ELC Appeal No 10 of 2017, and the matter is therefore res judicata.

4) That the court lacks jurisdiction to hear and determine the matter.

5. The preliminary objection was canvassed through written submissions dated 30/9/2025, filed through the firm of **M/s Murango Mwenda & Co Advocates** and now falls for determination in this ruling. The applicant opposed the preliminary objection through written submissions dated 27/10/2025, filed by **M/s Waklaw Advocates**.

6. The court has considered the gist of the preliminary objection and the parties' respective submissions on the preliminary objection. The two key issues that fall for determination in the preliminary objection are: (i) Whether this miscellaneous application is *res judicata*; and (ii) Whether this court has jurisdiction to entertain this miscellaneous application in the circumstances of the case.
7. Is this suit *res judicata*? The applicant exhibited pleadings, proceedings and judgment relating to **Marimanti PMC Civil Case No 4 of 2010**. It is clear from the above exhibits that the said suit was the proper forum where the applicant was required to raise the issues that she is raising in this miscellaneous application, such as *locus standi* and jurisdiction of the trial court. Upon ventilating the above issues in the trial court, the applicant would have the right of appeal to this court. If the applicant failed to raise the issues, she is not permitted to challenge the judgment of the trial court through a miscellaneous application of the kind that is before this court.
8. The court in ***Henderson v Henderson (1843) 67 ER 313*** emphasized that the doctrine of *res judicata* applies not only to issues on which the court was actually required by parties to make pronouncements, but also to every issue which properly belonged to the subject of litigation (cause of action) in the previous suit and which the parties, exercising reasonable diligence, might have canvassed in the preceding suit. The court stated thus:

“Where a given matter becomes the subject of litigation in, and of adjudication by a court of

competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case and will not (except in special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have from negligence, inadvertence, or even accident omitted part of their case. The plea of res judicata applies except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce judgment but to every point which properly belonged to the subject of litigation, and which parties exercising reasonable diligence, might have brought forward at the time.”

9. Consequently, it is the finding of this court that this miscellaneous application is res judicata.
10. Does this court have jurisdiction to entertain this suit? This miscellaneous application challenges the proceedings and judgment in **Marimanti PMC Civil Case No 4 of 2010** and **Chuka ELC Appeal No 10 of 2017**. Dissatisfied with the proceedings and judgment in **Marimanti PMCC No 4 of 2010**, the applicant filed **Chuka ELC Appeal No 10 of 2017**. The Appeal was dismissed by this court (**PM Njoroge J**) on 16/3/2017 for want of prosecution. The applicant subsequently filed an application seeking an order setting

aside the dismissal order. The application was, similarly, dismissed by this court (**PM Njoroge J**) on 24/2/2021. The applicant thereafter filed and served a notice of appeal, intimating her intention to challenge the decision of this court in the Court of Appeal.

- 11.** Against the above background, the applicant wants this court to use the present miscellaneous application as the platform on which to relook at the issues that she raised in **Marimanti PMCCC No 4 of 2010** and in **Chuka ELC Appeal No 10 of 2017** and set aside the pronouncements made in the said suit and in the said appeal. Regrettably, this court does not have that kind of jurisdiction. That is the finding of this court on the second issue.
- 12.** For the above reasons, the preliminary objection dated 24/9/2025 is upheld and the suit herein is struck out.
- 13.** In tandem with the general principle in **Section 27** of the **Civil Procedure Act**, the applicant shall bear costs of the suit.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 9TH DAY OF DECEMBER, 2025.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Mr. Bett for the Applicant

Mr. Murango Mwenda for the Respondent

ORIGINAL