



**Mpeshe v Green Valley Enterprises Limited & another; Mpeshe
& 2 others (Interested Parties) (Environment and Land Case
601 of 2013) [2025] KEELC 8621 (KLR) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8621 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 601 OF 2013
AA OMOLLO, J
DECEMBER 4, 2025**

BETWEEN

DAVID TUMPLINE MPESHE APPLICANT

AND

GREEN VALLEY ENTERPRISES LIMITED 1ST RESPONDENT

JOGANDRIES AUCTIONEERS 2ND RESPONDENT

AND

NAISAINOI MPESHE & 2 OTHERS & 2 OTHERS INTERESTED PARTY

RULING

1. The Plaintiff has filed a preliminary objection dated 27th August 2025 against the originating summons dated 9th July 2025 and filed by the 5th Defendant. The grounds pleaded in the P.O. are thus:
 - a. The said application is an abuse of the Court process.
 - b. The said application is res judicata the suit having been heard and determined on merit by Honourable Lord Justice S. Okong'o J. through a Judgement delivered on 24th June 2021.
The application should therefore be dismissed in limine.
 - c. The application is incompetent and incurably defective, having been brought in by way of Originating Summons
2. In support of the P.O., the 1st and 2nd Respondents through their submissions cited the case of Jackson Inziani Khayumbi v Patrick Amakobe [2016] eKLR, where the court at paragraph 13 observed that "Originating summons is a manner allowed for instituting suits."



3. They also rely on the provisions of Order 37 rule 15 of the Civil Procedure Rules which state that
“the originating summons when filed, shall be filed and entered in the register of suits, but after the serial number, the letters “OS” shall be placed to distinguish it from complaints filed in ordinary suits.”
4. In answering the question of res judicata, the 1st and 2nd Respondents submit that the originating summons centres on the location of the suit property, an issue that Justices S. Okong’o and A. Omollo conclusively addressed in earlier proceedings. The issue of ownership of the suit property was also determined, and the Applicant cannot now seek restoration of the property or compensation for it.
5. The originating summons now filed is therefore res judicata since it raises issues that have been fully adjudicated and settled. They urged the court to uphold the objection.
6. The 5th Defendant/Applicant filed submissions dated 17th November, 2025 in opposition to the preliminary objection. He submits inter alia that the p.o states the application is res judicata which is not a pure point of law as the court will be required to critically analyse the issues that were in the previous case vis a vi the issues in this application and the judgment rendered.
7. The 5th Defendant cited the case in *Mwachenga versus Omondi and 3 others (Environmental and Land Originating Summons 005 of 2023) [2025] KEELC 3260 (KLR) (3 April 2025) (Ruling)* where Naikuni J. held thus
“The Defendant has contended that the suit is Res Judicata, whereas the Plaintiffs/ Respondents have disputed the said facts and stated that the issues raised in the former suits were different from what is before this court for determination. For the Court to be able to ascertain whether or not the matter is Res Judicata, it will have to ascertain the facts as pleaded by the Defendant/Applicant and those as raised by the Plaintiffs/ Respondent by also probing the judgements. In doing so, the Court will be probing evidence.”
8. He contends that res judicata can not be raised as a pure point of law but as a defence to the application.
9. On the question whether the application is incurably defective for being brought by way of originating summons, the 5th Defendant stated otherwise by relying on the provisions of section 34(1) of the *Civil Procedure Act*. It states thus;
“All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”

Analysis and Determination:

10. Vide the P.O., the Plaintiff argues that the application is inadmissible because the issues raised are res judicata. Additionally, the Plaintiff claims that the application is fundamentally defective as it was brought by way of an O.S.
11. On his part, the 5th Defendant argued that the p.o has no merit because the court cannot determine whether the application is res judicata without examining the facts. Moreover, since the subject matter of the application arises from the execution of the judgment, it is properly before the court under the provisions of section 34 of the CPA.



12. I have perused the application and the orders sought particularly under paragraphs 4-10 are substantive and can stand on its own in a suit. For instance, under paragraphs 4, 6, 8 and 9, he prays;
- a. That a declaration issue that the execution and eviction process carried out by the Respondents leading to demolition of the Applicant's house on L.R. Kajiado/Ololoitikoshi/130003 was illegal, null and void.
 - b. That a declaration be issued that the entire execution process went contrary to the provisions of section 152 G of the *Land Act* and Order 22 of the Civil Procedure Rules
 - c. That an order be issued directing the 1st and 2nd Respondents to restore the Applicant's house to its original state it was in prior to the demolition.
 - d. That an order of compensation assessed by court be made in favour of the Applicant for unlawful and illegal execution.
13. In light of the above, the issue of the unlawfulness of the execution and/or eviction is a matter that arose after the judgement. It is misconceived for the Plaintiff to argue that the matters had already been addressed in the judgement, and therefore, res judicata applies.
14. However, the question whether the Applicant's house that was demolished was situated on the suit plot Kajiado/Ololoitikoshi/2020 or on L.R. Kajiado/Ololoitikoshi/130003 is not consistent with the judgment. Section 34 relates to questions concerning the execution, discharge, or satisfaction of the decree, which I hold does not imply execution on a wrong parcel of land as the same does not satisfy the decree.
15. The 5th Defendant asserts that his land 130003 borders the Plaintiff's land number 2020. In this application, he is not contesting the ownership of 2020. Therefore, if execution was performed on the wrong parcel of land, the Plaintiff trespassed onto his property, which in my view creates a new cause of action that cannot be pursued under section 34 of the *Civil Procedure Act*.
16. Additionally, the nature of the prayers sought necessitates taking evidence to determine whether the execution was entirely on L.R No 2020 or the Applicant's new land. If the Applicant is successful, the court would issue a judgement or decree in his favour, as a party is permitted to initiate a suit by way of O.S.
17. The question then is whether the subsequent decree that would issue to the 5th Defendant is in execution of or discharge of the original decree. My answer is no. Therefore, for the reasons stated hereinabove, I find that the application as filed is incompetent and incurably defective. It is ordered struck out with costs to the Plaintiffs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF DECEMBER, 2025

A. OMOLLO

JUDGE

