

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELCLC E149 OF 2025

MARGARET WANJIRA NDEHI (Suing on behalf of SUPER MICRO VENTURE SELF HELP GROUP) PLAINTIFF/RESPONDENT

VERSUS

PETER NJOGU KIMUHU 1ST DEFENDANT/ APPLICANT

**JAMEX EXPRESS KENYA 2ND DEFENDANT/
RESPONDENT**

LAND REGISTRAR RUIRU 3RD DEFENDANT/ RESPONDENT

RULING

1. The Court is invited to consider a preliminary objection dated 16th September 2025 in tandem with a Notice of Motion application of even date through which the Applicant contends that the present suit stands barred by the doctrine of *res judicata*.
2. The Applicant beseeches this Court to grant the following Orders:
 1. *Spent...*
 2. *THAT the application dated 27th May 2025 and the suit herein be dismissed for being Res judicata*
 3. *THAT the entire suit against the 1st Defendant/ Applicant herein is a gross and blatant abuse of the court process and the same should be struck out with costs to the 1st Defendant/ Applicant*
 4. *THAT this application be heard first on the ground that the 1st Defendant/ Applicant is challenging the Plaintiff/*

Respondent Application dated 27th May 2025 and the entire suit.

5. *THAT Costs of the Application herein together with that of the main suit be borne by the Plaintiff/Applicant.*
3. The Applicant contends that the Plaintiff/ Respondent has filed similar suits in the Senior Principal Magistrates Court in MCCOMMSU E024 of 2023 and ELCLC E049 of 2024 wherein the parties are the same and litigating under the same title.
4. Essentially, according to the Applicant, the dispute now before the Court has been conclusively heard and determined, and the doctrine of *res judicata* therefore commands that the suit be brought to an immediate close.
5. The application is premised on the grounds on the face of it and the supporting affidavit of Peter Njogu Kimuhu sworn on even date.
6. The Plaintiff/Respondent resists that conclusion through the replying affidavit of Margaret Wanjiku Ndehi sworn on 16th October 2025 and maintains that the issues placed before the Court are neither spent nor barred.
7. It is within this contested ground that the Court must determine whether the objection is properly taken and whether the suit may stand.

Issues for Determination

8. Having examined the application together with the replying affidavit in opposition, the filed submissions and the relevant authorities, the

sole issue that emerges for determination is whether the instant suit is *res judicata*.

Analysis and Determination

9. The doctrine of *res judicata* finds its statutory foundation in Section 7, Civil Procedure Act which declares 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.”

10. In essence, this provision enshrines *res judicata* as a bar on relitigation once a competent court has delivered a final decision on the merits.
11. Learned counsel for the Applicant submits that once the suit was withdrawn under Order 25 Rule 1, the Plaintiff could not institute any fresh suit in respect of the same subject matter and the same parties. To buttress their contention, counsel placed reliance in ***Charles Kiptarbei v Paul Waweru Mbugua & another [2021]***.
12. Kenyan jurisprudence has consistently reinforced the principle of *res judicata*. In ***Kenya Commercial Bank Limited v Muiri Cofee Estate Limited & another [2016] eKLR*** the court held:

“The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons

claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine 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.”

13. The judgment meticulously articulated the essential ingredients for *res judicata*: identical parties, substantially the same matter, the same title, a competent forum, and a final determination. Only when these elements converge does *res judicata* operate, transforming a prior judgment from a mere record into an impervious shield of legal certainty.
14. The Supreme Court in **Kenya Commercial Bank Limited (supra)** went on to state:

“Hence, whenever the question of res judicata is raised, a Court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The Court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a Court of competent jurisdiction.”

15. Applying these principles, the Court observes that although the previous proceedings engaged the same parties and addressed

claims substantially akin to those now before this Court, they were never determined on the merits.

16. The proceedings concluded on procedural and non-substantive grounds, leaving the core issues unresolved and thus no conclusive judgment was delivered on the rights and obligations of the parties. The essential ingredients of *res judicata* are therefore absent.
17. In these circumstances, the prior proceedings cannot operate as a bar, and the Court is duty-bound to examine and adjudicate the claims on their substantive merits.
18. The upshot of the foregoing in the preliminary objection dated 16th September 2025 together with the application of even date fails.
19. Accordingly, the preliminary objection and application are hereby dismissed.
20. The costs shall be in the cause.

Dated, Signed and Delivered, at Thika this 9th day of December 2025

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J. M. ONYANGO
JUDGE

In the presence of:

1. Miss Kadenge for the Plaintiff
2. Miss Muturi for the 1st Defendant
3. Mr. Elisaba for Mr. Angaya for the 2nd Defendant

4. Mr. Maganga for Mr. Macharia for the 3rd Defendant

Court Assistant: Hinga

ORIGINAL