

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELCLC NO. E014 OF 2025

KIANJOYA ENTERPRISES LIMITED.....

PLAINTIFF/RESPONDENT

VERSUS

JUDY NJERI THUO.....1ST

DEFENDANT/APPLICANT

SAMUEL MACHARIA KIMANI.....2ND

DEFENDANT

JOHN NGANGA GITHII.....3RD

RESPONDENT/APPLICANT

LAND REGISTRAR, NAIVASHA.....3RD

DEFENDANT

RULING

1. Coming up for determination is a Notice of Motion Application dated 19th September, 2025 brought under the provisions of Order 2 rule 15(1) (d), Order 51 of the Civil Procedure Rules, 2010, Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, and all other enabling provisions of the law wherein the 1st and 3rd Defendants/Applicants have sought that upon hearing the instant Application, the Honourable court be pleased to strike out the Plaintiff's suit herein for being an abuse of the process of the court and for costs to be borne by the Plaintiff/Respondent. August
2. The said Application is premised on the ground on its face and the Supporting Affidavit of equal date sworn by the 3rd Defendant/Applicant on behalf of both the 1st Defendant/ Applicant and the 2nd Defendant's estate where he deponed that the instant proceedings by the Plaintiff/ Respondent were an embodiment of abuse of the court process this being

the third time that the Plaintiff/Respondent has instituted legal proceedings against himself and the 1st and 2nd Defendants based on the same factual matrix, raising similar or closely related legal issues, calling on similar documentary evidence and indeed, claiming similar reliefs.

3. That whereas he had raised the said issue in his Replying Affidavit dated 14th April, 2025 and a Preliminary Objection, the court did not make a pronouncement on the issue in its ruling of 31st July, 2025 but had instead pronounced itself on the issue of Res-judicata which they had not pleaded. That it was a common fact that in the year 2019, the Plaintiff/Respondent filed Nakuru ELC No. 59 of 2019: Kianjoya Enterprises Limited vs Samuel Macharia Kimani & 4 others against him, the 1st and 2nd Defendants but failed to prosecute the said suit which was dismissed for want of prosecution pursuant to an application dated the 15th March 2022.
4. That an application dated the 21st March 2022 seeking to reinstate the suit was equally dismissed on 24th November, 2022 by lady justice L.A. Omollo who had upheld the dismissal of the suit. That rather than appealing the decision to the court of Appeal, the Plaintiff/Respondent filed Nakuru ELC No. E025 of 2023: Kianjoya Enterprises Limited and another vs Samuel Macharia Kimani & 4 others (Subsequently Naivasha ELC 006 of 2024) which suit was a replica of Nakuru ELC No. 59 of 2019 but with cosmetic changes.
5. That subsequently, the Plaintiff's Counsel on record and their Counsel, by consent, withdrew the suit with no orders as to costs wherein the notice of withdrawal was adopted by the court on 19th March, 2025.
6. Interestingly, the instant proceedings were then instituted on the same day after the withdrawal, hence a reasonable belief that the withdrawal of the previous suit had been done in bad faith with a view to mislead both the parties and the Honorable Court.
7. That the Applicants herein had expended significant resources and time in preparing Defences for Nakuru ELC No. 59 of 2019 and Nakuru ELC No.

E025 of 2023 (Subsequently Naivasha ELC 006 of 2024) which suits had been terminated with no orders as to costs.

8. That subsequently, the instant suit was an embodiment of abuse of the process of the honorable court for which the court ought to frown upon, the Plaintiff being guilty of inducing the wastage of time and resources. That the court ought to make a pronouncement of the issue before further steps were taken in prosecuting the Plaintiff's suit. That the Plaintiff's suit should be dismissed for being an abuse of the process of the Honorable court as prayed.
9. The Plaintiff/Respondent filed Grounds of Opposition dated 13th October, 2025 in response to the Application, on the following grounds:
 - i. The application is res judicata.
 - ii. The Plaintiff's suit is properly filed and has never been terminated with finality on merit.
 - iii. The Application herein is brought in bad faith, is meant to delay prosecution of the Plaintiff's main suit herein and therefore should be dismissed with costs.
10. The 4th Defendant did not participate in the 1st and 3rd Defendants Application herein wherein directions were taken for the disposal of the Application way of written submissions.

1st and 3rd Defendants/Applicants' Submissions.

11. The 1st and 3rd Defendants/Applicants vide their Submissions dated 10th November 2025 argued for the dismissal of the Plaintiff's/ Respondent suit, asserting that it was a clear abuse of the court process. The submissions are structured into three main arguments:
 - i. Whether the instant Application is Res Judicata.
 - ii. Whether the issues raised in the Plaint dated 19th March, 2025 have been determined with finality before.
 - iii. Whether the Plaintiff's Suit should be struck out for being an abuse of the Court Process?

12. On the first issue for determination, they submitted that the Application was not Res Judicata. They argued that while a previous ruling was delivered on 31st July 2025, that ruling addressed Res Judicata (a matter already judged), but failed to make a determination on the specific issue of Abuse of Court Process. That since the court did not pronounce itself on the "abuse" aspect, the Applicants were legally entitled to bring this motion now. They relied on the provisions of Section 7 of the Civil Procedure Act and on the decisions in **Kenya Commercial Bank Limited & another vs. Muiri Coffee Estate Limited & 3 others [2016] KESC 6 (KLR)** and **John Florence Maritime Services Limited & another Vs. Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR)**
13. On the second issue for determination, the Applicants challenged the Plaintiff's claim that because previous suits weren't "decided on merit" (full trial), they can keep filing new ones. They argued, citing the case of **Peter Ngome vs. Plantex Company Limited [1983] KECA 124 (KLR)** that had been upheld in **Njue Ngai Vs. Ephantus Njiru Ngai & another [2016] KECA 805 (KLR)** that a dismissal for "want of prosecution" actually operates as a judgment in favor of the Defendant and is final unless overturned on appeal. That instead of appealing the 2022 dismissal, the Plaintiff simply filed new, nearly identical suits (Suit 2 and the current Suit 3), which was legally improper.
14. Lastly, they submitted that the Plaintiff's suit was a "Paragon" of Abuse of Court Process. The core of their submission was that the Plaintiff was using the judicial system to harass the Defendants by filing a multiplicity of actions, this being the third suit on the same facts, evidence, and parties.
15. That the 3rd (current) suit was filed in bad faith on the same day when the 2nd suit had been withdrawn. They argued that this was a "cosmetic" move to bypass previous legal failures.

16. They further submitted that this 3rd suit was a wastage of resources wherein the Plaintiff was inducing a wastage of time and money, for which the court must use its inherent power to protect the integrity of the judicial process. They relied on the definition of abuse of the court process as found in the Black's Law Dictionary, 6th Edition and the Court of Appeal's decision in the case of **Muchanga Investments Limited Vs. Safaris Unlimited (Africa) Ltd & 2 Others Civil Appeal No. 25 of 2002 [2009] eKLR**. Further reliance was placed in the decided case of **Satya Bhama Gandhi Vs. Director of Public Prosecutions & 3 others [2018] KEHC 6100 (KLR)**
17. That the Respondent's cause of action had been determined upon dismissal of Nakuru ELC No. 59 of 2019 thus the instant proceedings had no other purpose other than to sanitize and circumvent the shortcomings of the prior proceedings hence they invited court to jealously protect its process and prevent its abuse. They placed reliance in the decided case of **E.T. Vs. Attorney General & another [2012] KEHC 5506 (KLR)** where the court had cited **Lord Diplock dictum in the case of Hunter Vs. Chief Constable of West Midlands Police & Others** to the Honourable Court to take judicial notice of the Respondent's conduct and admonish it.
18. In conclusion, the Applicants submitted that the current suit offends the principles of finality in litigation and judicial economy as was held in the decided case of **Stephen Somek Takweny & Anor vs David Mbutia Githare & 2 Others Nairobi (Milimani HCC No. 363 of 2009)** They requested the court to strike out the suit under Order 2 Rule 15(1)(d) and award them costs.

Plaintiff/ Respondent's Submission

19. The Plaintiff/Respondent on the other hand, vide its submissions dated 28th October, 2025 framed its issues for determination as follows; -
- i. Whether the application herein is res judicata.

- ii. Whether the plaintiff's suit is an abuse of court process.
 - iii. Whether the applicant should bear the costs of the application.
20. On the first issue for determination as to whether the application herein is res judicata, it placed reliance on the provisions of Section 7 of the Civil Procedure Act to submit that the Applicants were attempting to re-litigate an issue already decided by the court.
21. That in April 2025, the Applicants filed a Preliminary Objection seeking to strike out the suit for being an "abuse of court process wherein vide a ruling of 1st August (sic) 2025, the court dismissed that Preliminary Objection. That under Section 7 of the Civil Procedure Act, because the court had already addressed and dismissed the "abuse of process" claim with finality, the Defendants were barred from raising it again in this new application.
22. While relying on the decision in **Tana and Athi Rivers Development Authority vs Jeremiah Kimigho Mwakio & 3 others [2025] KECA 674 (KLR)** the Respondent submitted that no "abuse of Court process" exists, it then addressed the history of the three suits, arguing that filing a fresh suit was a lawful right when previous cases ended without a trial. It emphasized that the previous two suits were never heard on their merits because whereas one was dismissed for "want of prosecution," the other was "withdrawn."
23. They cited the court's own words from the August (sic) ruling that "The dismissal for want of prosecution does not conclude the matter but generally leaves the Plaintiff at liberty to file a fresh suit."
24. Relying on the decision in **Satya Bhama Gandhi v DPP** (supra) the Respondent argues that an "abuse" only occurs if a party tries to file a new case after a full trial and final judgment. That since no trial had ever occurred, the Respondent was lawfully pursuing their day in court.
25. The Respondent sought that the court dismisses the application and awards them costs for reason that the issues in the application were

already decided in August (sic), and there had been no legal basis to file the current application, secondly that the application was a strategy to frustrate it and stall the main case.

26. Citing the case in **Jasbir Singh Rai & 3 others vs Tarlochan Singh Rai & 4 others [2014] eKLR** the Respondent requested the court to exercise its discretion to award costs so as discourage the filing of repetitive, unmerited applications.

Determination.

27. I have considered the Notice of Motion Application dated 19th September, 2025, the Grounds of Opposition to the same, the submissions for and against the same, the authorities cited and the applicable law.

28. The Applicants bring the said application arguing that the current suit is a repetitive and vexatious use of the legal system. They reiterate that the 1st Suit of 2019 was dismissed for "want of prosecution" wherein an application to reinstate it was also dismissed in 2022. That the 2nd suit filed in 2023/2024 was a "replica" of the first suit and which suit was withdrawn by consent on 19th March 2025 wherein the current 3rd suit was filed on the exact same day that the 2nd suit was withdrawn. That the Plaintiff/Respondent was thus moving the court in bad faith, causing a significant waste of time and legal resources, and avoiding the finality of previous court decisions which was an abuse of the court process a matter which the court had failed to address in its ruling of 31st July 2025 but instead pronounced itself on Res judicata, an issue which they had not pleaded. That they now sought for the court to strike out the suit and award them costs for being an abuse of the court process.

29. The Plaintiff/Respondent's response in opposition of the application, through Grounds of Opposition, was that the application herein was Res Judicata as it had already been determined. It asserted that the suit was properly filed because the previous cases were never decided on their

"merits" but were only terminated on procedural grounds. It further argued that the Applicants/Defendants' application was filed in bad faith specifically to delay the main case.

30. From the above summation, I find the issue that arises for my determination as being;
- i. Whether the Plaintiff/Respondent's suit is an abuse of the court process.
 - ii. Whether the application is Res judicata.

31. On the first issue for determination, what amounts to an abuse of the court process was clearly elaborated in the persuasive case of **Satya Bhamu Gandhi v Director of Public Prosecutions & 3 others [2018] KEHC 6100 (KLR)** where the court had observed as follows at paragraphs 21, 22 and 23.

"Clearly, this Judicial Review Application, is founded on issues that have been dealt with in the above Petition. To me this suit constitutes abuse of Court process. It is trite law that the Court has an inherent jurisdiction to protect itself from abuse or to see that its process is not abused. The black law dictionary defines abuse as "Everything which is contrary to good order established by usage that is a complete departure from reasonable use "An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules for its use".

The concept of abuse of court/judicial process is imprecise. It involves circumstances and situation of infinite variety and conditions. It is recognized that the abuse of process may lie in either proper or improper use of the judicial process in litigation. However, the employment of judicial process is only regarded generally as an abuse when a party

improperly uses the issue of the judicial process to the irritation and annoyance of his opponents.

The situation that may give rise to an abuse of court process are indeed in exhaustive, it involves situations where the process of court has not been or resorted to fairly, properly, honestly to the detriment of the other party. However, abuse of court process in addition to the above arises in the following situations: -

(a) Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.

(b) Instituting different actions between the same parties simultaneously in different court even though on different grounds.

(c) Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and respondent notice.

(d) Where an application for adjournment is sought by a party to an action to bring another application to court for leave to raise issue of fact already decided by court below.

(e) Where there no iota of law supporting a court process or where it is premised on recklessness. The abuse in this instance lies in the inconvenience and inequalities involved in the aims and purposes of the action.

(f) Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.

(g) Where an appellant files an application at the trial court in respect of a matter which is already subject of an

earlier application by the respondent at the Court of Appeal.

(h) Where two actions are commenced, the second asking for a relief which may have been obtained in the first. An abuse may also involve some bias, malice or desire to misuse or pervert the course of justice or judicial process to the irritation or annoyance of an opponent."

32. Associating myself with the above decision, it can be discerned from the above holding, that an "Abuse of Court Process" is a flexible term. Res judicata is also a form of an abuse of the court process as per the illustration No. (a) of the said decision. The Applicants bone of contention is that the court did not make a finding in its ruling of 31st July 2025 to whether or not the Plaintiff's suits consisted of an abuse of the Court process. For ease of reference at paragraph 53 of the impugned Ruling, the court had held as follows;

"A look at the decisions in the previous suits herein, it is clear that apart from similarity of some of the parties as well as the subject suit properties with the current matter, doubtless to state that the matters were not heard and a determination made on merit on the issues therein raised. The dismissal for want of prosecution does not conclude the matter but generally leaves the Plaintiff at liberty to file a fresh suit on the same cause of action."

33. The holding of the court has already validated the Plaintiff's right to refile a fresh suit after a dismissal for want of prosecution and which act cannot, by definition, be an "abuse" unless there is evidence of malice or collateral purpose.

34. Abuse of process often involves "litigation layering"—trying to get a second bite at the apple after losing a trial. In its ruling however, the court noted that the Plaintiff's suit had not been heard and determined on merit

for which the the Plaintiff was still trying to have their evidence heard for the first time.

35. The Applicants argue that filing the current suit on the same day the previous one was withdrawn proves bad faith, I disagree with this piece of submission and find that the Respondent's action was merely an efficient and effective transition from Naivasha ELCLC No.E006 of 2024 to the current suit.
36. While the Court notes the frustration of the Defendants in defending three separate actions, the threshold for striking out a suit under Order 2 Rule 15 is extremely high for which a suit can only be struck out in the "plainest of cases."
37. The provision of Order 2 Rule 15(1) (a) of the Civil Procedure Rules states that at any stage of the proceedings the court may order to be struck out or amend any pleading on the ground that it discloses no reasonable cause of action or defence in law. The said provision of the law provides:

"1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

a) it discloses no reasonable cause of action or defence in law; or

b) it is scandalous, frivolous or vexatious; or

c) it may prejudice, embarrass or delay the fair trial of the action; or

d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be."

38. The main objective of Order 2 Rule 15(1) (a) of the Civil Procedure Rules is to prevent the court's time and resources from being wasted on cases that are doomed to fail from the start because they lack a legal foundation. If a Plaintiff's claim, even if all facts pleaded are taken as true, does not give rise to a right recognized by law, it discloses no reasonable cause of action and should not proceed to trial.
39. By striking out legally unsustainable claims or defences at an early stage, the rule promotes the overriding objective of the Civil Procedure Act: the just, expeditious, proportionate, and affordable resolution of civil disputes. It saves time for judges, court staff, and the litigants themselves, who would otherwise incur unnecessary costs in preparing for a full trial.
40. It also serves to protect Defendants from having to defend themselves against "sham" or frivolous claims that are purely aimed at harassment or delay and implicitly encourages legal practitioners to draft pleadings with clarity and legal grounding thereby compelling them to ensure that the facts they present logically and legally support the remedy they are seeking, aligning the claim with a recognized head of law.
41. The previous suits were never heard on merit. There is no judgment from a competent court determining the ownership of the suit properties. To strike out this suit now would be to permanently lock the doors of justice against the Plaintiff without a trial, which would violate Article 50(1) of the Constitution of Kenya.
42. I find that the court having previously dismissed the Preliminary Objection raised by the Applicants herein and having granted the Plaintiff/Respondents herein leave to file this suit, the same cannot be characterized as an abuse of process in the eyes of the law. The Applicants' current application is essentially an unmasked appeal of the ruling of 31st July 2025 for which if they are unhappy with the same, the proper remedy is to Appeal to the Court of Appeal, and not to file a new

Notice of Motion raising the same grounds. The current application I find is hit by the doctrine of *res judicata* pursuant to the provisions of Section 7 of the Civil Procedure Act which covers not only what was decided but what was "directly and substantially in issue.

43. The Notice of Motion dated 19th September, 2025 is hereby dismissed with costs.

Dated and delivered via Microsoft Teams at Naivasha this 18th day of December 2025.



M.C. OUNDO
ENVIRONMENT & LAND COURT- JUDGE