In re Estate of the Late Kipkolum arap Mibei (Deceased) (Probate & Administration 286 of 1997) [2025] KEHC 19088 (KLR) (19 December 2025) (Ruling)

Neutral citation: [2025] KEHC 19088 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

PROBATE & ADMINISTRATION 286 OF 1997

E OMINDE, J

DECEMBER 19, 2025

IN THE MATTER OF THE ESTATE OF THE LATE KIPKOLUM ARAP MIBEI (DECEASED)

BETWEEN

KITUR ARAP MUZEE ..... 1ST APPLICANT

RAEL JEMELI SORGOR ..... 2ND APPLICANT

KIPLELEB BORE ..... 3RD APPLICANT

AND

WILLY KIPLAGAT KOLUM ..... PETITIONER

RULING

1. Before this Court for determination is the Petitioner's/Respondents Preliminary Objection dated 8/11/2024 in opposition to the Applicants' Summons for Revocation of Grant dated 11/10/2024 in which the Applicants seek the following orders:

    1. Spent.

    2. That this honorable Court be pleased to transfer the administration of the estate of the late KIPKOLUM ARAP MIBEI to Kapsabet High Court.

    3. That this honorable Court be pleased to revoke and or annul the grant it confirmed and issued to the petitioner herein.

    4. That this honourable Court be pleased to cancel all the transmissions, subdivisions and or registrations with regards to the parcel NANDI/PETTY CHEPTIL/6 which have resulted from any confirmation of grant of the estate of the late KIPKOLUM ARAP MIBEI.

    5. That costs for the application be provided for.

2. The Objection raises the following grounds;

    1. That this Court does not have jurisdiction to entertain the Summons dated 11/10/2024.

    2. That the Applicants claim herein is res judicata the same having been dealt with by superior Courts.

    3. That the Summons herein are similarly unlawful since the matters in contention are functus officio.

    4. That the Applicants herein are not the survivors nor beneficiaries of the estate of the deceased in term of 51 (2) (g) of the *Law of Succession Act* as read with rule 7 (1)(e) (i) and (iii) and the 2nd schedule but they are intermeddlers in terms of Section 45 (1) of the *Law of Succession Act*.

    5. That the proceedings herein are incompetent for being under 2 separate jurisdictions namely the Law Succession Act and the *Land Registration Act* whose jurisdictions is under the Environment and Land Court.

    6. That the claims herein of being entitled to the suit premises has been conclusively dealt with and not available in terms of Section 44 (2) (c) of the *Evidence Act*.

    7. That this honorable Court does not have the power to transfer this cause to the Kapsabet High Court for disposal.

    8. Any other with leave of Court

Submissions

3. The Preliminary Objection was canvassed vide written submissions. The Petitioner/Respondent filed his submissions dated 25/11/2024 while the Applicants filed submissions dated 27/01/2025.

The Petitioner's/Respondent's Submissions

4. On the doctrine of res-judicata, Counsel submitted that as stated in the Petitioner's Replying Affidavit this matter has been dealt with by the High Court and the Court of Appeal which Court ruled against the Applicants herein as shown by the Exhibits of the Applicants and the Petitioner/Respondent. Counsel added that res judicata applies to succession proceedings as was held in the matter of the estate of William Murage Irungu Nakuru HCSC NO.405 of 1996 with the elements thereof being contained on Section 7 of the *Civil procedure Act*.

5. Counsel submitted that the Petitioner/ Respondent is the child of the late Kipkolum Mibei whose estate is the subject matter of these proceedings and his proprietorship is directly and substantially derived from him. He cited the case of Republic vs Registrar of societies of Kenya and 2 others (2017) Ex parte Moses Kirima and 1 Others [2017] eKLR, in regard to the issue of the matter herein being res judicata and submitted that the proceedings herein are for the Revocation of the Grant of Letters of Administration which were issued to the Petitioner/Respondent who derived the same from the then proprietor of the estate of Kipkolum Mibei wherein the 1st Respondent lost in the Eldoret High Court Succession Cause NO 193 of 2005 and the Court of Appeal at Eldoret wherein he was the Appellant in the Eldoret Court of Appeal No. 282 of 2006.

6. Counsel also relied on several other cases in regard to the issue of res-judicata. In summary, Counsel thus urged that res judicata is a fundamental Principle of Law grounded on public policy that Litigation at some point must come to an end. Counsel submitted that in the circumstances of this case therefore the original estate of the late Kipkalum Mibei is the same one in which the Applicant/

Respondent has inherited no longer exist as the same has dissipated with the Petitioner/ Respondent being registered as the proprietor of Nandi/ Petty Cheptil/ 6 and issued with the title deed thereof and so far the same has not been impeached in terms of Section 26(1)(b) of the *Land Registration Act*. Counsel urged that to this extend therefore the prayers of the Applicants for Revocation of Annulment of the grant have been effectively nullified by the process of the Law.

7. On the issue of the Court being functus officio, Counsel submitted that the Summons herein are similar to those in which the Applicants pursued in the Eldoret High Court Succession Cause NO 193 of 2005 and in the Court of Appeal at Eldoret Civil Appeal No 282 of 2006 and in similar situation this principle applies to the Summons herein of the Applicants dated the 11/10/2024. Counsel urged that in essence therefore it will mean that the contest has been brought to an end by 2 Judgments of Superior Courts namely the High Court and the Court of Appeal and has become functus officio. He relied on the case Menginya Salim Murgani Vs Kenya Revenue Authority [2014] eKLR and several other cases in regard to the issue of this Court becoming functus officio.

8. Counsel further submitted that this Court does not have jurisdiction to entertain the Applicants Summons dated the 11/10/ 2024 since the same has been dissipated by the two principles of law namely: res judicata and functus officio which brought to finality the questions in contention. According to Counsel, the objective of the Applicants was to inherit parcel of land known as Nandi/ Petty Cheptil/6 with the titles having being registered in their names being nullified by the High Court in the High Court Miscellaneous No. 193 of 2005 which judgment became conclusive in terms Section 44 (2)(c) of the *Evidence Act*. Counsel added the 1st Respondent challenged the said decision to the Court of Appeal which rendered its judgment dismissing the Appeal on the 19/10/2006. Counsel therefore submitted that the Summons currently in consideration are incompetent and an abuse of the process of the Court and the same be and is hereby struck out by the Court and that as acquired elsewhere in the Replying Affidavit the aim of the Applicants is to litigate over the subject matter of this proceeding without jurisdiction.

9. In regard to the transfer of the matter to Kapsabet High Court, Counsel submitted that these Summons having been instituted in this Court without jurisdiction in view of the above named submissions such a transfer will be a nullity in law. He cited the case of Abraham Mwangi Wamwingwi Vs Simon Mbiriri Wanjiku and another [2012] eKLR and the case of Macfoy vs United Africa Company Limited (1961) 3 ALL ER,1169.

10. Counsel argued that Section 5 of the *Land Registration Act* is specific that no entity apart from the Environment and Land Court has the jurisdiction to deal with the matters land like the Succession Court and vice versa by the *Law of Succession Act* and therefore the apparent hybrid jurisdiction envisaged do not come in because it will be a nullity and irregularity which is against the Policy of Law. He relied on case the of Josphine Wambui vs. Margaret Wanjiru Kamai and another 2013 eKLR.

11. Counsel observed that the question of transfer of suits from one Court to another is a matter that has been dealt with by the Courts. In this matter, Counsel urged that the Court does not have jurisdiction to transfer this matter to Kapsabet Court because the same matter had been conclusively dealt with in the Eldoret High Court Miscellaneous Succession Cause NO 193 of 2005 and the Eldoret Court of Appeal Civil Appeal No 282 of 2006 thereby attracting the Principles of res judicata and functus officio as read Section 44 (2) (c) of the *Evidence Act* which also nullified the undated title deed dated 29/09/2021 in the name of Samwel Kibiwot Sawe and registered as entry No. 4 of the Land Register of the Nandi/ Cheptil/6 and we refer to exhibits KAM 07 of 11/10/2024 and that of the Respondent WKK1 of the 8/10/2024 and that next to the Replying Affidavit the estate in question was that of Kipkalum Mibei which was being dealt with resulting in the Petitioner/Respondent being registered as the Proprietor of Nandi/ Petty Cheptil/ 6 on the 11/03/2021 and issued with a Title Deed and the

Applicants claim being a Land matter from the exhibits and the Certificate of Urgency the Court to which a Lawful claim is lodged in the Environment and Land Court.

12. Counsel maintained that this is a Court is a Court of equal status with Kapsabet High Court as this Court and such reference to it will amount to appeal against the judgments of the High Court and the Court of Appeal named herein before. The Courts have dealt with the issue of transfer of suits from one Court to another and under Section 18 of the *Civil Procedure Act*.

13. Counsel further submitted that it is settled that parties cannot even by their consents confer jurisdiction on Court where no such jurisdiction exists. Counsel argued that this is so fundamental that where a Court lacks jurisdiction, parties cannot even seek refuge under the O2 Principle of the overriding objective under the *Civil Procedure Act*, the *Appellate Jurisdiction Act* of even Article 159 of *the Constitution* to remedy the same. He relied on the case of Joseph Muthee Kamau and another vs David Mwangi Gichure and another where the Court observed that when a suit has been filed in a Court without jurisdiction, it is a nullity.

14. Counsel thus urged that prayer No. 2 of the Summons for Revocation or Annulment of Grant by the Applicants dated 11/10/2024 is misconceived and an abuse of the process of the Court and we do pray that this Court do strike the same out.

15. In regard to the issue on laches, Counsel submitted that the original Grant in respect of the premises herein was granted on the 19/03/1999 and that the Applicants herein purported to file these Summons for revocation on the 11/10/2024 a period of more than 12 years. Counsel argued that the same has been caught up by laches. He relied on the case of Evans Nginya and another vs Esther Muthoni and 2 others (2016) eKLR, where it was held by the Court without venturing into merits or lack or thereof of the Applicants Summons for revocation of annulment of Grant.

16. Counsel further argued that while he agrees that under Section 76 of the *Law of Succession Act* any interested party to have a grant revoked or annulled at any time, such application must be made within reasonable time. Counsel noted that the Certificate of Confirmation of grant was not exhibited in this application but if the same was confirmed in 1981 as both parties appear to agree then, a delay of 12 years before the application for revocation or annulment of grant is by any standards unreasonable.

17. Counsel pointed out that however it is apparent in this matter that apart from the effluxion of time and the death of some of the administrators the estate has been distributed and if the arguments by the counsels for the Respondents is anything to go by the administration of the estate was completed 12 years before the current application was filed: the transfer of the estate to the beneficiaries of the deceased means that the subject matter of the cause has dissipated. Counsel urged that although the learned counsel for the Applicants submitted that the Applicants first went to the Lands Dispute Tribunal and thereafter to the Appeals Committee before coming back to this Court hence the delay there is no legal basis for the rather long and winding route they opted to take at any rate. It is not provided for anywhere in the *Law of Succession Act*.

18. Counsel submitted that the Applicants have not demonstrated that they held a lawful claim against the Petitioner/Respondent Nandi/Petty Cheptil/6 by the production or exhibition of a decree or order of a Court with jurisdiction which would constitute a liability against the estate of the deceased and consequently their claim is based on speculation and fraud as they all know valued documents as creditors or otherwise to the estate of the deceased.

19. Counsel maintained that in any case the jurisdiction to determine a question such as that lies in the Environment and Land Court by virtue 162 (2) of *the Constitution* and not the succession Court as it were. He cited the case of In re Estate of Pradeep Behal (Deceased) [2019] KEHC 7648 (KLR).

20. On the issue of fraud, Counsel submitted the Applicants herein have claimed that the Petitioner/ Respondent is holding the title thereto by way of fraud. Counsel urged that it is the principle of law that such a claim must be specifically pleaded and proved which is not the case in this matter. He relied on the holding of the Court of Appeal in Malindi Civil Appeal No. 41 of 2021, Bruce Joseph Bockle Vs Coquero Ltd and submitted that the allegation does not comply with standard pleadings on claims of fraud and pray that the same be rejected by the Court.

21. Counsel urged the legal burden in this regard is not just a notion behind which any party can hide. It a vital requirement of the law and that on the other hand, the evidential burden is a shifting one and is a requisite response to an already discharged initial burden. Counsel submitted that the summons herein on grounds in support thereof alleges at paragraph F that the grant was obtained fraudulently by the making of a false statement or by the concealment from the Court of material facts. In addition, Counsel submitted that following on the definition of fraud herein the Applicants have not discharged their burden of prove to prove that the Petitioner/ Respondent obtained the grant of letters of administration by way of fraud for want of particulars as required by law.

22. In the end, Counsel submitted that the summons for annulment of the grant herein is a disguise by the Applicants to claim what belongs to the Environment and Land Court going by the particulars of the Certificate of Urgency dated 11/10/2024 and the inclusion as exhibit of the Memorandum of Appeal marked DII which is pending before the Environment and Land Court by way of Appeal. Counsel urged that this Court being a Succession Court does not have the Jurisdiction to any or all the issues in the said pleadings.

The Applicants' Submissions

23. Counsel for the Applicants submitted began by citing the case of Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd. (1969) EA 696, with regard to the definition of a preliminary objection. Counsel submitted the grant sought to be revoked emanates from the Estate of Kipkolum Arap Mibei (Deceased) which was fraudulently inherited by Mary Jeptarus Mibei (Deceased) and subsequently by Willy Kiplagat Kolum who is the Respondent herein on account of Misrepresentation of a material fact being that there was another Succession Cause No. 286 of 1997 Eldoret, in which the Court had issued a grant of letters of Administration intestate to Mary Jeptarus (Deceased) as at the time of applying for annulment of grant issued in Kapsabet Succession Cause No. 31 of 1980 vide Eldoret High Court Misc. No. 193 of 2005.

24. Regarding the doctrine of res judicata, Counsel cited Section 7 of the *Civil Procedure Act* and the case of Independent Electoral &Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR, on the elements to satisfied for the said doctrine to be invoked. He also cited the case of Nguruman Ltd vs Jan Bande Nielsen & another [2017] eKLR in that regard.

25. Counsel submitted that he is alive to the fact that that Courts must always be vigilant to guard against litigants bent on evading the doctrine of res judicata by raising new matters with a view to approach the Court seeking the same remedy before the same Court. Counsel pointed out that test is whether the party in subsequent suit is attempting to bring before the Court in another way and inform of a new cause of action which has been determined by a Court with competent jurisdiction.

26. Counsel maintained that the inherent power of this Court Under Section 47 of the *Law of Succession Act* in conjunction with the letter and spirit of Article 159 and Article 50 of *the Constitution* of Kenya ought to be factored in Applications of this nature which is also dependent on Court's discretionary powers to revoke grants suo moto in order for the ends of justice to be met.

27. Counsel argued that the trial Court dealt with the Estate of the Deceased herein but the issues raised in the present summons for revocation are against the fraudulent actions done by Mary Jeptarus Mibei who Inherited the Deceased entire Estate by concealing to Court of the Existence of this matter, whose proceedings relates to a Deceased person to whom the same cannot apply considering that he passed on in the year 1978.

28. In regard to the issue that the Court is functus officio, Counsel cited the Black's Law Dictionary, Ninth Edition, definition of functus officio. Counsel submitted that the rule of functus officio has exception citing Section 99 of the Civil Procedure Code.

29. Counsel contended that the ruling of the Court in Eldoret Misc. Succession No. 193 of 2005 dated 19/10/2006, rendered itself on the legality of the grant issued to the Petitioners in Succession Cause No. 31 of 1980 as per the annexture marked "KAM-O"sworn by Kitur Arap Musee wherein, it annulled the same for not falling under the purview of the *Law of Succession Act*. However, Counsel contended that the Petitioner, in Eldoret High Court Succession Cause No. 286 of 1997 fraudulently used the grants obtained therein over the same Estate to acquire title to LR No. Nandi/Petty Cheptil/6 and registered the same as the proprietor to the detriment of the Applicants herein who have been in occupation of the Estate for a long period of time about 45 years now

30. Counsel thus maintained that this Honourable Court has not fully discharged its mandate as alleged by the Respondent herein since the orders issued by the Superior Courts was an Appeal against dissatisfaction of the Respondent which was ultimately dismissed for want of merits.

31. On the issue of locus, Counsel relied on the case of Zebak Limited vs. Nadem Enterprises (2016) eKLR and submitted that the Applicants herein purchased some portions out the deceased's estate which has been confirmed by the annexed Certificate of Title held by the 2nd Applicant and the decision of the CMC at Kapsabet in ELC No. E002 of 2021, where it was persuaded that the Applicants are bona fide purchasers of the estate as per the annexure marked as KAM-08 which speaks more their interests.

32. Counsel urged that the Applicants have the requisite locus to institute and prosecute the instant Summons for Revocation. Counsel thus argued that the preliminary objection as presented does not satisfy the threshold for the grant of an order for striking out of this suit. Counsel observed that the Courts have held that a preliminary objection deals purely with points of law and where facts are not disputed. Counsel added that where a Court has to look outside the case for evidence to establish the facts presented, then this falls under a case where a full hearing has to be conducted to disprove certain facts, unless parties enter in to a consent compromising the case.

33. Counsel cited the case of DT Dobie & Company (Kenya) Ltd vs. Joseph Mbaria Muchina& another (Civil Appeal No 37 of 1978)and submitted that further to the said dictum, striking out of a case is a draconian measure which should be exercised in very clear cut cases where whether evidence is tendered the result or outcome would be the same. Counsel added that this does not mean that parties can go ahead and abuse Court processes with the hope that the Court will turn a blind eye to such glaring abuse. He also relied on the holding in the case of Lemitel Ole Koros & another v Attorney General & 3 others [2016] eKLR.

Determination

34. I have read the Notice of Preliminary Objection by the Applicant herein. The primary issue for determination is whether the Notice of Preliminary Objection dated 8/11/2024 has merit.

35. The Supreme Court in Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others cited the leading decision on Preliminary Objections, Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd. (1969) EA 696, where the Court held as follows:

> " a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion".

36. The Supreme Court in Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] eKLR made the following observation as relates to Preliminary Objections:

> " ... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits."

37. Ojwang, J (as he then was) expressed himself as follows in Oraro vs. Mbaja [2005] 1 KLR 141: -

> " A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract-giving rise to the suit to refer the dispute to arbitration.... A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all facts pleaded by the opposite side are correct. It cannot be raised if any fact is to be ascertained or if what is sought is the exercise of judicial discretion....The principle is abundantly clear. A "preliminary objection" correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion, which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the Court should allow to proceed. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary point...Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from information, which stands to be tested by normal rules of evidence. ...."

38. Regarding the doctrine of res judicata. The substantive law on res judicata is found in Section 7 of the *Civil Procedure Act* Cap 21 which provides that:

> " No Court shall try any suit or issue in which the matter directly and substantially in issue is 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"

39. Black's law Dictionary 10th Edition defines "res judicata" as "An issue that has been definitely settled by judicial decision.

40. The three essentials are:

(1) an earlier decision on the issue,

(2) a final judgment on the merits and

(3) the involvement of same parties, or parties in privity with the original parties....."

41. The Court of Appeal in the case of Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR (Supra) stated regarding res judicata that :

> " Res judicata is a matter properly to be addressed in limine as it does possess jurisdictional consequence because it constitutes a statutory peremptory preclusion of a certain category of suits. That much is clear from Section 7 of the *Civil Procedure Act*, 2010;
>
> "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 the 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."
>
> Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms;
>
> (a) The suit or issue was directly and substantially in issue in the former suit.
>
> (b) That former suit was between the same parties or parties under whom they or any of them claim.
>
> (c) Those parties were litigating under the same title.
>
> (d) The issue was heard and finally determined in the former suit.
>
> (e) The Court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised."

42. To succeed in his preliminary objection on the ground of res judicata, the Petitioner needed to establish before Court that first, the issues subject matter in the instant application are the same as those in the previous matter and secondly, the similarity in parties.

43. The Black's Law Dictionary, Tenth (10th) Edition describes functus officio as: -

> [having performed his or her office]" (of an officer or official body) without further authority or legal competence because the duties and functions of the original commission have been fully accomplished.

44. On whether the Court is functus officio, the Court of Appeal in the case of Telkom Kenya limited v John Ochanda (suing on his own behalf and on behalf of 996 former employees of Telkom Kenya limited) [2014] eKLR held as follows:

> " Functus officio is an enduring principle of law that prevents the re-opening of a matter before a Court that rendered the final decision thereon...
>
> The general rule that final decision of a Court cannot be re-opened derives from the decision of the English Court of Appeal in re-St Nazarire Co, (1879), 12 Ch. D 88. The basis for it was that the power to rehear was transferred by the Judicature Acts of the appellate division. The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions..."

45. In addition, the Supreme Court in Raila Odinga & 2 Others v Independent Electoral & Boundaries Commission & 3 Others [2013] eKLR (Supra) as well offered the following insights:

> The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality. According to this doctrine, a person who is vested with adjudicative or decision making powers may, as a general rule, exercise those powers only once in relation to the same matter...The [principle] is that once such a decision has been given, it is (subject to any right of appeal to superior body or functionary) final and conclusive. Such a decision cannot be reviewed or varied by the decision maker."

46. At paragraph 19 in the Raila Case(Supra) the Court further stated:

> This principle has been aptly summarized further in Jersey Evening Post Limited v. A1 Thani [2002] JLR 542 at 550:
>
> > " A Court is functus when it has performed all its duties in a particular case. The doctrine does not prevent the Court from correcting clerical errors nor does it prevent a judicial change of mind even when a decision has been communicated to the parties. Proceedings are only fully concluded, and the Court functus, when its judgment or order has been perfected. The purpose of the doctrine is to provide finality. Once proceedings are finally concluded, the Court cannot review or alter its decision; any challenge to its ruling on adjudication must be taken to a higher Court if that right is available"

47. Functus officio is an enduring principle of law that prevents the re-opening of a matter before a Court that rendered the final decision thereon. The doctrine is not to be understood to bar any engagement by a Court with a case that it has already decided or pronounced itself on. What it does bar is a merit-based decisional re-engagement with the case once final judgment has been entered and a decree thereon issued.

48. The above said, it is my finding that all the grounds set out in the Notice of Preliminary Objection by the Petitioner/Respondent are not pure points of law for reasons that in order for the Court to determine the same, it will have to delve into the facts that are material to the case and cannot reach a valid decision by relying solely on the point of law raised and as such these grounds do not meet the threshold set out in the Mukisa Biscuit case. In this regard, the Applicants' Summons for Revocation of Grant dated 11/10/2024 shall proceed to hearing on its merits and the same shall be canvassed by way of written submissions. The Applicant is to file and serve their submissions within 21 days from

today's date and the Respondent is to file and serve their submissions within 14 days of service. The matter is to be mentioned on 19th February 2025 to fix a date for Ruling.

READ DATED AND SIGNED AT ELDORET ON 19TH DECEMBER 2025

E. OMINDE

JUDGE