



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
MILIMANI LAW COURTS
ELC NO E221 OF 2025

JOSEPH NJUGUNA MACHARIA & 54 OTHERS..... PLAINTIFFS/APPLICANTS

VERSUS

KENYA POWER & LIGHTING

COMPANY.....1ST DEFENDANT/RESPONDENT

NAIROBI CITY

COUNTY GOVERNMENT.....2ND DEFENDANT/RESPONDENT

RULING

1. This comes up for Ruling on an application dated 5th May 2025 in which the 55 Plaintiffs/ Applicants pray for an injunctive order against the 1st Defendant/ Respondent Kenya Power and Lighting Company restraining it from evicting, harassing and or interfering with the Plaintiffs/ Applicants possession of the properties known as Plot Numbers 1-90 within Komarock Housing Estate located off Kangundo road in Nairobi City.
2. The application is supported by the affidavit of Stephen Njuguna Macharia who on behalf of the other applicants avers that all 55 applicants either acquired their plots from the 2nd Respondent or acquired the same as purchasers for value.

3. It is the case of the Applicants that they duly complied with the conditions in the letters of offer, developed the properties and have been leaving in open and uninterrupted possession since 1992.
4. It is further their case that the applicants engaged the 1st Respondent for electricity supply. That in order to meet their needs the 1st Respondent installed a transformer within the estate and signed individual supply contracts with the Applicants who have been paying electricity bills as they fall due. On the 10th April 2025, the 1st Respondent without any warning or explanation removed the transformer plunging the area into darkness.
5. That upon making inquiries the Applicants were referred to a newspaper advertisement published on 13th March 2025 in the daily nation newspaper titled Notice to Vacate Land addressed to all unlawful occupiers Komarock Nairobi City.
6. The Applicants takes issue with this notice on the following grounds;
 - a. The addresses of the Notice have been specified as “1 THE GENERAL PUBLIC” and 2. ALL UNLAWFUL OCCUPIERS KOMAROCK NAIROBI CITY” a description that is vague and too general.
 - b. The Notice has ignored and/or failed to specify the so-called “illegal occupiers”.
 - c. The Notice makes reference to land parcel LR 113044/R, which parcel of land is non-existent and/or is unknown, and its boundaries have not been specified and/or demonstrated.

- d. The Plaintiffs were not parties to and did not participate in the said Milimani ELCC No. 1453 of 2007.
 - e. The Notice has sidelined the Defendants in Milimani ELCC No. 1453 of 2007 and has instead been addressed to persons other than the Defendants in the case.
7. The 1st Respondent has filed grounds of opposition in which they primarily raise the following issues; that the issues herein were determined in 1493 of 2007 hence the Applicants should comply with the lawful execution of a Judgement arising therefrom; that the Applicants have not provided a certificate of registration to prove existence of a legal entity known as Komarock Housing Estate ; lastly that the Applicants have not established any beneficial, legal or registerable interest over LR 11344/ R Nairobi.
 8. The court directed that the matter be canvassed by way of written submissions. The only submissions on the portal as at the date of writing this Ruling is the submissions by the Applicants counsel. Counsel restated the Applicants case as summarized above and urged the court to grant an injunction so as to ensure that the Applicants are not evicted from their properties as is eminent.
 9. The sole issue for determination is whether the court should grant the injunctive relief sought by the Applicants. Before I delve into merits of the Applicants application I will consider the jurisdictional issues raised by the 1st Respondent namely whether the matter is Res Judicata and whether the Applicants are properly before court.

10. I will address the issue of the Applicants capacity first. It is self-evident from the Plaint that each of the Plaintiffs has filed the case in their individual capacity. Authority has only been granted to Joseph Njuguna Macharia to depone the supporting affidavit on behalf of the other Plaintiffs.
11. This approach is in line with **Order 1, rule 1** of the Civil Procedure Rules which provides...” *All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.*”
12. **Order 1, rule 13** further provides;
- “Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding. The authority shall be in writing signed by the party giving it and shall be filed in the case”.*
13. The 55 Plaintiffs have each sued in their own names as they have a similar claim arising from the various plots situate in the estate known as Komarock Housing Estate. They have properly and in the interest of efficiency authorized one person to file the supporting affidavit. They are properly before the court.
14. Regarding the issue of Res Judicata, Section 7 of the Civil Procedure Act provides *“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”

15. As such in determining the issue of Res Judicata the court is called upon to determine the following issues;

- a. Whether the issue was directly and substantially in issue in the former suit
- b. Whether suit was between the same parties or parties claiming under them.
- c. The parties were litigating under the same title.
- d. The issues were 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 was raised.

16. The 1st Respondent avers that the issues herein were fully determined in 1493 of 2007. The 1st Respondent did not file any affidavit that would enable the court determine whether the parameters for Res Judicata have been met. Efforts by the court to access the pleadings on the Case Tracking System bore no fruit as the pleadings have not been uploaded. It is therefore not possible to make a determination on the issue of Res Judicata at this interlocutory stage.

17. The only evidence on record and which the court accepts is that of the Applicants who insist they were not parties to 1493 of 2007; they have a

claim to the plots based on the allotment letters which were issued to them by the 2nd Defendant. They have a right to be heard.

18. As the matter is being heard, it is essential that the substratum of the case is not lost. The courts have held that even where the elements for grant of an injunction are not met, the court in the interest of preserving the substratum of the suit can give a status quo order.

19. Justice Murithi J in the case of **Mombasa Misc. Civil Application (JR) No.26 of 2010 Republic –vs- The Chairperson Business Premises Rent Tribunal at Mombasa (Bench Mochache) Exparte Baobab Beach Resort (Mombasa Limited) & Monica Clara Schriel** sought to draw the distinction and opined: *“In my view, an order to Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof. It does not depend on proof of right or prima facie case. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.”* (see in The Matter of an Application By Saifudeen Abdullabhai & 4 Others For Leave To Apply For Judicial Review And For Orders Of Certiorari And Prohibition [2013] eKLR).

20. I emphasize that all parties should ensure that the status relating to title and occupation is maintained as it is today 17th December 2025. I am aware that the 1st Defendant has commenced proceedings to execute Judgment in 1493 of 2007 and that this order will delay this process. In order to mitigate this, all parties should be ready to comply with the courts time table for hearing of the case failing which the orders will be discharged.

21. In the end the court makes the following orders;

- a. The status quo obtaining us at 17th December 2025 is to remain in place. None of the parties is to interfere with title or occupation as it is today
- b. The parties are to strictly comply with the courts time table to be agreed upon by all parties for hearing of the case failing which the status quo orders are to be discharged
- c. The issue of Res Judicata shall be determined at the full hearing
- d. Costs shall abide the outcome of the main suit

Ruling Signed dated and delivered via Microsoft teams this 17th day of December 2025

JUDY OMANGE

JUDGE

In the presence of

Court Assistant Catherine

Mr. Otieno for Anzala for Plaintiffs

Mr. Maanzo for 1st Defendant

Mr Kibkosya for Awele for 2nd Defendant