

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT VOI**

**ELC CASE NO. E014 OF 2025**

**JOSHUA TIPTIP SARUNI & 10 OTHERS**

**(Suing on their own behalf and on behalf of 439 others**

**being**

**Residents of Kasaani, Majengo Mpya and Salaita villages)**

**..... PLAINTIFFS**

**VERSUS**

**JIPE MUTLITPURPOSE CO-OPERATIVE SOCIETY**

**LIMITED ..... 1<sup>ST</sup>**

**DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup>**

**DEFENDANT**

**THE NATIONAL LAND COMMISSION ..... 3<sup>RD</sup>**

**DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup>**

**DEFENDANT**

**AND**

**COUNTY COMMISSIONER,**

**TAITA TAVETA COUNTY ..... 1<sup>ST</sup> INTERESTED**

**PARTY**

**OFFICER, COMMANDING POLICE DIVISION,**

**TAVETA ..... 2<sup>ND</sup> INTERESTED**

**PARTY**

**RULING**

1. The 1<sup>st</sup> Defendant's Notice of Motion dated 29.08.2025 is for determination. The application seeks to have the suit struck out for being res judicata. The application was premised on the grounds on its face and supported by the Affidavit sworn by **Kipasha Laurent** on 29.08.2025.
2. It was the 1<sup>st</sup> Defendant's contention that the suit herein involves the same parties, same subject matter being L.R No, 17933/L. R 1 - 287 (Orig No. 7331) and raises similar issues that were directly and substantially raised in two previous suits being **Mombasa HCCC No. 157 of 2007 Jipe**

**Multipurpose Co-operative Society Limited vs Elijah Saronge & 59 Others and Voi ELC Case No. 7 of 2023 (Formerly Mombasa ELC No. 213 of 2020 Joshua Muema Sita & 450 Others vs Jipe Multipurpose Co-operative Society Limited and 4 Others).**

3. It was further contended that parties in the instant suit are similar to the parties in the previous cases. The two cases were heard and determined conclusively by a court of competent jurisdiction. A ruling was delivered on 11<sup>th</sup> December 2008 in respect to Mombasa HCCC No. 157 of 2007 and a Judgment delivered on 8<sup>th</sup> May 2025 in respect to Voi ELC Case No. 7 of 2023 all in favour of the 1<sup>st</sup> Defendant and as such the suit offends the doctrine of res judicata and ought to be struck out.
4. The application was opposed vide a Replying Affidavit sworn by Joshua Muema Sita on 6<sup>th</sup> October 2025. It was deposed that the suit herein involves different parties with Mombasa HCCC No. 157 of 2025 and it was in respect to a claim of

trespass while Voi ELC No. 7 of 2023 was in respect to adverse possession over L.R No. 10287/3.

5. It was further deposed that the current suit though concerning the same subject matter as the previous suits, relates to a different cause of action being that it impugns the title held by the 1<sup>st</sup> Defendant on the grounds of fraud, misrepresentation and illegality on the part of the 1<sup>st</sup> Defendant in the manner in which it acquired the title to the suit property and hence the bar of res judicata cannot apply.
6. The Plaintiffs urged the court to dismiss the application.
7. The said application was cavasses by way of written submissions pursuant to the directions issued by the court. The 1<sup>st</sup> Defendant filed written submissions dated 4<sup>th</sup> November 2025 while the Plaintiffs filed written submissions dated 11<sup>th</sup> November 2025. The court has duly considered both submissions as filed by counsel for the parties herein.
8. Having considered the application, the written submissions and all the authorities cited therein, the main issue for determination is whether the Plaintiffs' suit as filed herein is

res judicata by dint of two previous suits to wit Mombasa HCCC No. 157 of 2007 Jipe Multipurpose Co-operative Society Limited vs Elijah Saronge & 59 Others and Voi ELC Case No. 7 of 2023 (Formerly Mombasa ELC No. 213 of 2020 Joshua Muema Sita & 450 Others vs Jipe Multipurpose Co-operative Society Limited and 4 Others).

9. **Section 7 of the Civil Procedure Act, Cap 21** Laws of Kenya provides as follows;

**“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 their 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 determined by such court.”**

10. In Salama Beach Hotel Limited & 3 others v Christopher Orina Kenyariri t/a Kenyariri and Associates Advocates [2019] eKLR, the Court of Appeal stated as follows on *res judicata*:

**“32. It follows therefore, in determining whether a suit or application is res-judicata, whichever the case may be, all the elements outlined in Section 7 must be satisfied conjunctively. That is:**

- 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.**

11. Being guided by the above principles and authorities, I have taken the liberty to peruse the pleadings and judgment delivered in VOI ELC No. 7 of 2023 and it is evident that the issue therein was in respect to the Plaintiffs claim for adverse possession against the 1<sup>st</sup> Defendant which is different from the Plaintiffs claim herein and as such the same cannot be res judicata.

12. In respect to Mombasa HCCC No. 157 of 2007, it is worth noting that the Learned Judge in his ruling dated 11<sup>th</sup> December 2008 which was in respect to the Plaintiffs application for a summary judgment against the Defendants therein, stated that: -

***“.....the defendants have not alleged and fraud or misrepresentation in the acquisition of the title by the Plaintiff”.***

13. It is evident that the issues of fraud and or misrepresentation in respect to the acquisition of the 1<sup>st</sup> Defendant's title were not pleaded, neither were they considered and adjudicated upon in that matter and further there was no trial undertaken in respect to the same. As such there was no finality on that aspect and further the said matter was not heard on merit. The current raises a different cause of action which ought to be considered by this court.
14. In the circumstances, it is the finding of this court that equally the doctrine of res judicata cannot apply in respect to the Plaintiffs suit and applying the same will occasion an injustice to the Plaintiffs.
15. In conclusion, I find no merit in the 1<sup>st</sup> Defendant's notice of motion dated 29.08.2025. The same is dismissed. Each party shall bear own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17<sup>TH</sup>  
DAY OF DECEMBER 2025.**

**E.K. WABWOTO**

## **JUDGE**

### **In the presence of:-**

**Mr. Mutinda for the Plaintiffs.**

**Mr. Kiarie for the 1<sup>st</sup> Defendant.**

**N/A for the other parties.**

**Court Assistant: Mary Ngoira.**

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