



REPUBLIC OF KENYA



**Karanja v Wamai aka Wamae; Registrar of Lands, Nyeri County & another (Interested Parties)  
(Civil Appeal E137 of 2022) [2025] KECA 2236 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KECA 2236 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL E137 OF 2022  
J MOHAMMED, LK KIMARU & AO MUCHELULE, JJA  
DECEMBER 19, 2025**

**BETWEEN**

**EDWARD MAINA KARANJA ..... APPELLANT**

**AND**

**SIMON NDERITU WAMAI AKA WAMAE ..... RESPONDENT**

**AND**

**THE REGISTRAR OF LANDS, NYERI COUNTY ..... INTERESTED PARTY**

**HIPPO GENERAL MERCHANTS (AUCTIONEERS) ..... INTERESTED PARTY**

*(Being an appeal from the ruling of the Environment and Land Court at  
Nyeri (J. Olola, J.) dated 26th May 2022 in Misc. Appl. No. E004 of 2022)*

**JUDGMENT**

**Background**

1. Edward Maina Karanja (the appellant) being dissatisfied with the ruling of the Environment and Land Court (ELC) at Nyeri (Olola, J.) delivered on 26<sup>th</sup> May 2022 in ELC Miscellaneous Application No. E004 of 2022 now appeals to this Court. In the impugned ruling, ELC dismissed the appellant's Notice of Motion dated 27<sup>th</sup> January 2022 with costs, holding that the application was res judicata.
2. Simon Nderitu Wamai a.k.a Wamae is the respondent, while the Registrar of Lands, Nyeri County and Hippo General Merchants (Auctioneers) are the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties respectively.
3. By the Notice of Motion dated 27<sup>th</sup> January 2022, the appellant sought the following substantive reliefs:



- a. An order directing the Registrar of Lands, Nyeri County, to produce before the Court all documents pertaining to the registration of Simon Nderitu Wamae as proprietor of land parcel known as Aguthi/Mungaria/562 (the suit property);
  - b. An order compelling the Archivist, Nyeri Law Courts, to produce for perusal the court file in Civil Case No. 31 of 1987 at the Chief Magistrate’s Court, Nyeri;
  - c. An order directing the Archivist, High Court of Kenya at Nyeri, to produce for inspection the complete court file in HCCC No. 112 of 1984 at the High Court in Nyeri;
  - d. An order directing the Registrar of Lands, Nyeri County, to register a caution against the suit property;
  - e. A declaration that the registration of Simon Nderitu Wamae as proprietor of the suit property is null and void ab initio and stands revoked;
  - f. A declaration that Edward Maina Karanja is the lawful proprietor of the suit property;
  - g. An order directing that the court file in Civil Case No. 31 of 1987 be returned to the Chief Magistrate’s Court at Nyeri for closure;
  - h. An order that the court file in HCCC 112 of 1984 be returned to the High Court at Nyeri for closure;
  - i. Any other orders that the Court may deem fit and just in the circumstances; and
  - j. Costs of the application.
4. The application was premised on, inter alia, the grounds that the appellant’s son, Peterson Mwaniki Maina was found dead on 3 January 2022 and the family intended to bury him on their ancestral land, the suit property; that the deceased’s body was preserved at Kenyatta University Funeral Home; that the appellant retained the original title deed in respect of the suit property which had never been surrendered or revoked; that the respondent allegedly procured registration through fraud and misrepresentation; and that no prejudice would accrue to the respondent if the document production orders were granted.
  5. The respondent opposed the application through a replying affidavit sworn on 7<sup>th</sup> February 2022, arguing that the application was incompetent and constituted an abuse of the court process. The respondent contended that the dispute had been litigated in the High Court and subsequently before the subordinate court, culminating in arbitration whose award was adopted as a judgment. The respondent asserted that the applicant participated fully in the arbitration and in subsequent proceedings, and that upon the applicant’s failure to satisfy the decree, the suit property was lawfully sold by public auction, at which sale the respondent emerged the highest bidder and was registered as proprietor on 13<sup>th</sup> February 2009. The respondent maintained that the issue of ownership of the suit property had been conclusively determined and was therefore *res judicata*.
  6. Upon considering the parties’ pleadings and submissions, the ELC observed that prayers 1, 2, and 3 concerning production of documents had already been addressed at the preliminary stage. The only substantive prayers for determination concerned the validity of the respondent’s title.
  7. The ELC held that the applicant had fully participated in prior proceedings, including arbitration and an unsuccessful challenge to the arbitral award before both the subordinate court and the High Court. The Court held that the issues raised in the Miscellaneous Application had previously been



litigated and determined by courts of competent jurisdiction. The application was therefore barred by the doctrine of res judicata.

8. Aggrieved, the appellant lodged the instant appeal, advancing several grounds in the memorandum of appeal dated 11<sup>th</sup> November 2022, principally faulting the ELC for failing to appreciate alleged procedural irregularities, the status of Civil Case No. 31 of 1987, issues arising from the sale agreement of 29<sup>th</sup> June 1982, and alleged illegalities in respect to the respondent's registration.
9. The appellant seeks, inter alia, the setting aside of the impugned ruling, nullification of the arbitration award of 7 November 1987, and a declaration that the respondent's title to the suit property is null and void.

### **Submissions by Counsel**

10. The appeal was disposed of by way of written submissions with oral highlighting. Learned counsel, Mr. Ongoro appeared for the appellant, learned counsel Mr. H.K. Ndirangu appeared for the respondent while learned counsel Ms. Chege appeared for the 1<sup>st</sup> Interested Party.
11. Mr. Ongoro submitted that the claim before the subordinate court was initially for specific performance before being amended to a monetary claim; that the arbitral award was inconsistent with the agreement; that the subsequent execution was irregular; and that the ELC erred in invoking the doctrine of res judicata. Reliance was placed on the decisions of Kennedy Mokuva Ongiri v John Nyasande [2022] eKLR and John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport & Infrastructure & 3 Others [2021] KESC 39.
12. Counsel further submitted that the respondent did not complete payment of the purchase price under the sale agreement; that the arbitrator misapprehended the evidence; that enforcement of the award was time-barred under section 4 of the *Limitation of Actions Act*; and that the process leading to the respondent's title was vitiated by fraud.
13. Counsel for the respondent opposed the appeal and submitted that the appeal was devoid of merit. He emphasized that the respondent obtained the suit property through a lawful public auction following execution of a money decree. He asserted that the issues raised had been litigated repeatedly, and that the ELC correctly applied the doctrine of res judicata.
14. Ms. Chege opposed the appeal and associated herself with the respondent's position. Counsel submitted that the registration of the respondent as proprietor of the suit property was conducted strictly in accordance with court orders.

### **Determination**

15. As a first appellate court, this Court is obliged to re-evaluate the evidence and draw its own independent conclusions, while bearing in mind that it neither saw nor heard the witnesses. The applicable principles are well-established in *Selle v Associated Motor Boat Co.* [1968] EA 123, *Gitobu Imanyara & Others v Attorney General* [2016] eKLR, and *Peters v Sunday Post* [1958] EA 424.
16. The central issue for determination is whether the appellant's Notice of Motion dated 27<sup>th</sup> January 2022 was legally barred on the grounds of res judicata. It is undisputed that the dispute over the suit property was the subject of litigation in Nyeri HCCC No. 112 of 1984 (later transferred to Nyeri CMCC No. 31 of 1987), referred to arbitration, and resulted in an award dated 7<sup>th</sup> November 1987 which was adopted as judgment of the court. The appellant's challenge to the award was dismissed, and his appeal to the High Court was similarly dismissed as incompetent. The subsequent execution, including the public auction and transfer to the respondent, arose directly from that decree.



17. The appellant's present attempt through a miscellaneous application to challenge the very judgment, auction, and registration constitutes an impermissible collateral attack on matters long settled by courts of competent jurisdiction. Allegations of fraud, irregularity, and procedural impropriety ought to have been pursued in the original forum or by the appropriate appellate process, not through fresh proceedings.
18. The elements of res judicata, as restated by the Supreme Court in John Florence Maritime Services (supra), were fully satisfied. The parties are the same, the subject matter is identical, the issues were previously adjudicated on their merits, and competent courts rendered final judgments.
19. We therefore find that the ELC did not err in finding that the application was res judicata. The additional prayers now sought in this appeal such as setting aside the arbitration award and invalidating Civil Case No. 31 of 1987 are not only untenable but fall outside the scope of the instant appeal, which is strictly confined to the ruling delivered on 26<sup>th</sup> May 2022.
20. For the foregoing reasons, we find no merit in the appeal. The appeal is accordingly dismissed with costs to the respondent and the 1st Interested Party.
21. It is so ordered.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF DECEMBER, 2025.**

**JAMILA MOHAMMED**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**JUDGE OF APPEAL**

**A. O. MUCHELULE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**Signed**

**DEPUTY REGISTRAR**

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