

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. E040 OF 2025 (O.S)

HENRY NJAU NGOIRI PLAINTIFF/APPLICANT

VERSUS

JOYCE NJERI NJAU DEFENDANT/RESPONDENT

RULING

1. Before me for determination is the Plaintiff's Notice of Motion application dated 22nd September 2025 seeking an order of temporary injunction restraining the Defendant/Respondent from evicting the plaintiff, demolishing structures, selling, disposing of, transferring or in any other manner interfering with the Plaintiff's occupation, possession or access to the property known as L.R No. Kabete/Nyathuna/313 measuring 100 feet by 100 feet (suit property) pending the hearing and determination of the main suit.
2. The application is based on the Plaintiff's supporting affidavit in which he states that he has been in occupation of the suit property since he was born in 1970. The Plaintiff depones that the Defendant filed Thika ELC Case No. E041 of 2020 in which he sought an eviction order against him from the suit property.
3. In response to the application the Defendant filed a Notice of Preliminary Objection dated 5th October 2025 raising the following points:

- i) *That the present suit offends Section 7 of the Civil Procedure Act Cap 21 of the Laws of Kenya in that the issues raised herein have been directly and substantially in issue in Thika ELC Case No. 41 of 2020 Margaret Ngoiri Ngotho v Joyce Njeri Njau concerning the same parcel of land namely L.R No. Kabete/Nyathuna/313.*
- ii) *That this honourable court lacks jurisdiction to hear and determine the instant suit as framed.*
- iii) *That the said ELC Case No. 41 of 2020 was heard and fully determined by a court of competent jurisdiction and a final judgment was delivered which decision was subsequently appealed to the Court of Appeal vide Court of Appeal Application No. E201 of 2025 and the appeal was dismissed conclusively affirming the lower court's decision.*
- iv) *That the Applicant herein Henry Njau Ngoiri is the biological son of the Plaintiff/Applicant in ELC Case No. 41 of 2020 namely, Margaret Ngoiri Ngotho, and is therefore litigating under the same title, right and interest as his mother, consequently the doctrine of res judicata applies both directly and constructively as he claims through and under her.*
- v) *That in the said ELC Case No. 41 of 2020, the current applicant was a key witness in support of his mother's claim and therefore was well aware of the nature, substance and outcome of the proceedings and cannot now purport to re-open or re-litigate the same cause of action through a separate suit.*
- vi) *That the subject matter in both suits is identical, being land parcel number Kabete/Nyathuna/313 and the parties are either the same or claiming under the same*

title hence fulfilling all the elements required to sustain the plea of res judicata.

- vii) That the issues raised in this application, including alleged rights of occupation, ownership , adverse possession and eviction were heard, canvassed and conclusively determined in the former suit and therefore, the instant proceedings amount to a collateral attack on a final and binding judgment.*
- viii) That subsequent to the judgment in ELC Case No. 41 of 2020, an application seeking to stay execution or restrain eviction from the suit property was also dismissed and a valid eviction order issued and executed, confirming the finality of litigation on the same subject matter.*
- ix) That this honourable court does not have the original jurisdiction to handle the claim as presented and neither does it have appellate jurisdiction as the said jurisdiction lies with the Court of Appeal as contemplated by Article 164 (1) of the Constitution of Kenya and section 3 of the Appellate Jurisdiction Act.*
- x) That the current proceedings are an abuse of the court process, calculated to undermine, reverse or delay the enforcement of lawful court orders and to vex the Respondent with repetitive litigation over a matter conclusively settled by competent courts.*
- xi) That the law frowns upon a multiplicity of suits, forum-shopping and once a mater has been finally adjudicated, it cannot be reopened through another party claiming under the same title as this offends the principle of finality of litigation, judicial economy and public policy.*

xii) That this Honourable court is functus officio in respect of the subject matter, the same having been conclusively determined by a court of concurrent jurisdiction and affirmed by the Court of Appeal.

4. The court directed that the Preliminary Objection be heard first and that the same be canvassed through written submissions. Although none of the parties had filed their submissions at the time of writing this ruling, the Defendant's counsel filed his Digest of Authorities together with the Preliminary Objection.

ANALYSIS AND DETERMINATION

5. Having examined the application and Notice of Preliminary Objection, the singular issue for determination is whether the Preliminary Objection should be upheld.
6. The Defendant's Preliminary objection is solely based on the grounds that this suit is res judicata.
7. The doctrine of res judicata finds its statutory foundation in Section 7, Civil Procedure Act which declares that:

"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."

8. In essence, this provision enshrines *res judicata* as a bar on relitigation once a competent court has delivered a final decision on the merits.
9. Kenyan jurisprudence has consistently reinforced the principle of *res judicata*. In **Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another [2016] eKLR** the court held:

“The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.”

10. The judgment meticulously articulated the essential ingredients for *res judicata*: identical parties, substantially the same matter, the same title, a competent forum, and a final determination. Only when these elements converge does *res judicata* operate, transforming a prior judgment from a mere record into an impervious shield of legal certainty. In **E. T v Attorney General & Another[2012] eKLR** the court observed that:

“The doctrine of res judicata is a fundamental principle of law which precludes parties from re-litigating issues that have already been determined by a court of competent

jurisdiction. It is based on public policy that litigation must come to an end.”

11. The Supreme Court in **Kenya Commercial Bank Limited (supra)** went on to state as follows:

“Hence, whenever the question of res judicata is raised, a Court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The Court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a Court of competent jurisdiction.”

12. It is not in dispute that Margaret Ngoiri Ngotho who is the Plaintiff’s mother filed **Thika ELC Case No. 41 of 2020 (O.S)** against Joyce Njeri Njau, the Defendant herein claiming that she was entitled to the suit property by virtue of a customary trust. The said suit was heard by this Honourable court and by a judgment delivered on 27th January 2025, Hon. Justice J.G Kemei dismissed the Plaintiff’s case. The Defendant subsequently filed an application for eviction of the plaintiff or anybody acting on her instructions or interest from the suit property. The said application was allowed and the plaintiff was given 6 months to relocate her family from the suit property.

13. I am therefore constrained to agree with the Defendant that this matter having been litigated between the plaintiff’s mother and the defendant, by this same court which is a court of competent jurisdiction, is res judicata. I have no doubt in my mind that the

subject matter is the same and that the plaintiff is litigating under the same title. In effect the plaintiff seeks to reverse the decision of this court through the back door. This is not only an abuse of the court process but it is also a waste of judicial time and resources.

14. It is disingenuous for the Plaintiff to approach the same court that dismissed his mother's case over the suit property and purport to introduce a claim for adverse possession.

15. As was held in **Omondi v National Bank of Kenya Limited & Others**

[2001] EA 177, parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.

16. In the case of **Henderson v Henderson [1843] 67 ER 313** the court held that:

"Where a given matter becomes the subject of litigation in an adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward the whole case. The plea of res judicata applies not only to points upon which the court was required to form an opinion but to every point which properly belonged to the subject matter."

17. Applying the principle in the Henderson case to the instant case, the issue of adverse possession ought to have been raised by the plaintiff's mother in her previous case. Having failed to so, the plaintiff who is her son and litigating under the same title, cannot purport to bring it up in this case.

18. In view of the above analysis and based on the doctrine of res judicata, I have no choice but to uphold the Preliminary Objection and dismiss the plaintiff's suit with costs to the Defendant/Respondent.

Dated, signed and delivered virtually at Thika this 20th day of January 2026.

**J. M ONYANGO
JUDGE**

In the presence of

1. Mr Thairu for the Applicant
2. Mr King'angi for the Respondent

Court Assistant: Hinga