



Daniel Kenneth Advocates LLP v Muthee Kihiko & Associates LLP also known as Kihiko N & M Law Advocates Muthee-Kihiko Advocates LLP Muthee- Kihiko & Associates LLP & Muthee Kihiko Advocates LLP & another; Reliable Food Logistics Limited & 2 others (Interested Parties) (Environment and Land Case E232 of 2025) [2026] KEELC 356 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELC 356 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E232 OF 2025**

**MN KULLOW, J
JANUARY 29, 2026**

BETWEEN

DANIEL KENNETH ADVOCATES LLP APPLICANT

AND

**MUTHEE KIHICO & ASSOCIATES LLP ALSO KNOWN AS KIHICO N & M
LAW ADVOCATES MUTHEE-KIHICO ADVOCATES LLP MUTHEE- KIHICO &
ASSOCIATES LLP & MUTHEE KIHICO ADVOCATES LLP .. 1ST RESPONDENT**

DANIEL NJOROGE KIHICO 2ND RESPONDENT

AND

RELIABLE FOOD LOGISTICS LIMITED INTERESTED PARTY

KIBURU ENTERPRISES LIMITED INTERESTED PARTY

MINALOVE HOTEL AND RESTAURANT LIMITED INTERESTED PARTY

RULING

1. The applicant filed an originating summons application dated 8th April 2025 that sought to have orders to enforce a professional undertaking by the respondents.
2. The application sought the following orders
 - a. That pending hearing and determination of this suit the honourable court be pleased to issue an order restraining the respondents jointly or severally from transferring or releasing to the 2nd and 3rd interested parties either to themselves or through its agents, assigns, directors, employees and or third parties the sum of Ksh 13,000,000 paid to them by the firm of Daniel & Kenneth



Advocates LLP in respect of the purchase of the property known as LR NO Nairobi/Block 160/4

- b. That pending hearing and determination of this suit the honourable court be pleased to order the firm of Muthee Kihiko & Associates LLP to deposit the sum of Ksh 13,000,000 paid to them by the firm of Daniel & Kenneth Advocates LLP in respect of the purchase of the property known as LR NO Nairobi/Block 160/4 in a joint interest earning account in the names of the Advocates for the Applicant and the Respondents herein within the next 3 days of this order.
- c. That pending hearing and determination of this suit the honourable court be pleased to issue an order compelling the firm of Muthee Kihiko & Associates Advocates LLP an account of the sum of Ksh 13,000,000 paid to them by the firm of Daniel & Kenneth Advocates LLP and details of the interest the amount is earning within three (3) days of this order
- d. That pending hearing and determination of this suit the honourable court be pleased to issue an order compelling the respondents to jointly and severally honour the terms of the professional undertaking dated 16th November 2023 and refund the sum of Ksh 13,000,000.00 paid to the firm of Muthee Kihiko & Associates LLP by the firm of Daniel & Kenneth Advocates LLP in respect of the purchase of the property known as LR NO Nairobi/Block 160/4 together with all accrued interest to the firm of Rashid Obayi Advocates within 3 days of this order,.
- e. Costs of the application.

Respondent's case

3. The respondents in opposing the application filed a Notice of preliminary objection dated 30th May 2025 premised on grounds that the court lacked jurisdiction to entertain the application.

Submissions by the respondents

4. That the main issue that was to be decided upon was on the enforcement of a professional undertaking which was more commercial than environmental as it did not touch to the use and occupation of land hence ought to be decided by the High court relying on the case of Joel Kyatha Mbaluka t/a Mbaluka & Associates Advocates Vs Daniel Ochieng Ogola t/a Ogola Okello & Co advocates (2019)eKLR.

Submissions of the Applicant

5. The applicant in response to the preliminary objection indicated that the matter was res judicata having been determined by the high court in HCCC/E108/2025 via an order dated 25th April 2025 and further by this court on the 20th May 2025, the issue having been raised by the applicant's counsel.
6. Counsel further submitted that issue as in the application went far beyond the issue of a professional undertaking which issues touched on breach of a contract for sale of land within the jurisdiction of this court

Analysis and Determination

7. Having considered the Preliminary objection and the submissions herein the only issues for determination are
 1. If the matter of jurisdiction is res judicata.



2. If the answer on the above is in the negative whether the court has jurisdiction to entertain the application

The applicant alleges that the issue of jurisdiction as raised in the Notice of preliminary objection dated 30th May 2025 is res judicata to HCCC/E108/2025 and further the orders issued by this court on the 20th May 2025

The existence of the matter in the High court HCCC/E108/2025 and the order transferring it to this court Ruling are not factually disputed. The Court is privy to the aforesaid. In the circumstances, the Court does not consider that any extraneous evidence is required in this regard and finds that the objection is properly before it.

The substantive law on res judicata is found in Section 7 of the *Civil Procedure Act* which provides 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.”

The test to determine whether a matter is res judicata was well laid in the case of Bernard Mugo Ndegwa –v- James Nderitu Githae and 2 others [2010] eKLR. The party alleging res judicata, must show that;

- (a) The matter in issue is identical in both suits,
- (b) That the parties in the suit are substantially the same
- (c) There is a concurrence of jurisdiction of the court
- (d) That the subject matter is the same and finally,
- (e) That there is a final determination as far as the previous decision is concerned.

It is not in doubt that the high court gave an order dated 25th April 2025 which order is on record. The terms of the order were clear in that it read “this matter falls under the jurisdiction of the Environment and Land Court (ELC) by dint of section 13 of the ELC Act.” The issue for determination then as now was on jurisdiction, which issue was finally determined by a court of concurrent jurisdiction, from the pleadings the parties are identical. The respondents can therefore not relitigate the same issue before this court considering that this same court also indicated it has jurisdiction to entertain this matter.

The upshot of the foregoing is that;

1. The notice of preliminary objection is not merited and the same is dismissed with costs to the applicants.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 29TH DAY OF
JANUARY 2026.**

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -



Mr. Obay for the Applicant

Mr. Guandaru for the Respondent

No appearance for Interested Party

Philomena W. Court Assistant.

