



Evangelical Church of Christ in Africa (Hera Mar Adier) (Suing through Bishop & Secretary) & another v Church of Christ Africa CCA (Kwogo) (Being Sued through Its Officials) & 3 others (Environment and Land Case E010 of 2024) [2026] KEELC 390 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEELC 390 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT AND LAND CASE E010 OF 2024**

**AE DENA, J
JANUARY 29, 2026**

BETWEEN

**EVANGELICAL CHURCH OF CHRIST IN AFRICA (HERA MAR ADIER)
(SUING THROUGH BISHOP & SECRETARY) 1ST APPLICANT
DR JULIUS OKELLO KUNGU 2ND APPLICANT**

AND

**CHURCH OF CHRIST AFRICA CCA (KWOGO) (BEING SUED THROUGH ITS
OFFICIALS) 1ST RESPONDENT
PATRICK LIGAWA 2ND RESPONDENT
MICHAEL OWINO OKOTH 3RD RESPONDENT
TITUS OBUNGA 4TH RESPONDENT**

RULING

1. The subject of this ruling is the Notice of Motion dated 5/9/025 seeking that the suit herein be struck out for being res judicata. The application is supported by the affidavit of Ayako Kapinde Counsel on record for the respondents/applicants as well as the grounds on its face.
2. The applicants aver that a judgement was delivered in Kisumu HCCA no. 121 of 2005 The Archbishop Dr. Abnego Mathew Ajuoga & 3 Others (suing as officials of the Church of Christ in Africa) Vs John Henry Tulu & 11 Others (Sued on behalf of the Evangelical Church of Christ of Christ in Africa). That the said judgement touched on the rights of the parties in relation to parcel SIAYA / USIGU/4444 following the spilt of the 1st plaintiff from the 1st defendant.
3. It is averred that a ruling was also delivered in Bondo CMELC E014 of 2023 Jehu Oduor Nyawara & Ano. (Both Suing as Officials of Evangelical Church of Christ of Christ in Africa)-Hera Mar Adier



Vs. Titus Obunga & Another (Being Sued as officials/Trustees of CCA) wherein the court found the plaintiffs suit claiming adverse possession over the same parcel to be res judicata.

4. It is asserted that the plaintiff failed to seek a review of the said ruling and are barred from filing a fresh suit over the same property seeking to litigate the same issues.

Replying affidavit

5. The application is opposed by the replying affidavit sworn by the 2nd plaintiff on 11/9/2025. It is averred that the respondents herein were not party to the 2005 case and the same had nothing to do with Evangelical Church of Christ of Christ in Africa Hera Mar Adier which also applies to Kwogo ECCA. According to the deponent none of the defendants in the 2005 case are members of the 1st plaintiff. That the cause of action in the present case is different and the application is a delay tactic.
6. The application was canvassed by way of written submissions. The applicant however relied on its supporting affidavit. The respondents filed submissions dated 21/09/2025.

Analysis and Determination

7. I have considered the application, supporting affidavit, the reply in opposition thereto and the submissions filed. The main issue for determination is whether the suit is res judicata.
8. The applicant has attached to the application a judgement delivered by Aburili J in Kisumu HCCA no. 121 of 2005 and Bondo CMELC E014 of 2023.
9. The legal provisions on the doctrine of res judicata are set out under Section 7 of the [Civil Procedure Act](#) 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 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”.

10. The threshold to be met for a suit to be termed as being res judicata was enunciated by the Court of Appeal in the case of *The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, [2017] eKLR), and which spells out the factors to be considered as follows;

For the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

- 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. In the case of John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR the essence of the doctrine of res judicata was expounded as follows:

“The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the economic use of court’s limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably.”
12. The present suit has been commenced by way of Originating Summons where the Plaintiffs crave to be declared to have acquired the parcel No. SIAYA /USIGU/4444. Applying the criteria set out in the law and judicial precedent above I will scrutinize the present suit and the two former suits that have been identified.
13. In relation to the parties the plaintiffs in the present suit aver that the respondents herein were not party to the suit filed in 2005 being Kisumu HCC No. 121 of 2005. In that matter the plaintiffs filed the suit as officials of the Church of Christ in Africa. The defendants were sued in their individual capacities as members who had delinked from the church to start Evangelical Christ Church of Africa (ECCA).
14. The court has keenly looked at the 12 defendants listed vis a vis the defendants in the present suit. The later have been sued as officials of CCA and not as individuals. Assuming they are sued as individuals none of them feature among the 12 defendants named in the proceedings in Kisumu HCC No. 121 of 2005.
15. ECCA has now sued Church of Christ in Africa in the present proceedings and insist they were not parties to the above suit. I have seen the registration certificate of the year 2011 meaning it was not in existence at the time the suit was filed. I also have no evidence that the pleadings therein were amended to include ECCA.
16. The court also look at the issues of contention in suits herein. The plaint in Kisumu HCC No. 121 of 2005 dated 24/10/2005 forms part of the record in this matter as contained in the Respondents List of documents dated 21/5/2025. The same does not refer to the parcel SIAYA /USIGU/4444. The plaint refers to the entry by the defendants into the plaintiffs churches in various parts of the country and purportedly taking them over including the use of the name causing confusion among the plaintiffs members damaging the church and its name.
17. But the above notwithstanding paragraph 35 of the judgement delivered by lady Justice Aburili on 17/3/2023 also attached to the respondents list of documents lists the specific properties (seven) whose titles were presented before court as belonging to Church of Christ in Africa. The parcel SIAYA / USIGU/4444 nor its mother title parcel LR. No. Siaya/Usigu/1238 are not included.
18. At paragraph 34 the court held that ‘From the documents produced in evidence, I’m satisfied that in the absence of evidence to the contrary, the properties stated in the suit belong to the plaintiffs and no other interpretation is necessary as the documents speak for themselves.’ Paragraph 40 of the judgement also echoes these contents.



19. Based on the foregoing it is the finding of this court that the ownership of the SIAYA /USIGU/4444 nor its mother title parcel LR. No. Siaya/Usigu/1238 was not litigated upon neither was it determined in the judgement delivered in Kisumu HCC No. 121 of 2005.
20. Having made the above finding I see no need to look at the other requirements for a suit to be declared res judicata as regards Kisumu HCC No. 121 of 2005.
21. But what about the alleged 2nd former suit being Bondo MCELC/014/2023. I have seen a copy of the ruling delivered by J.P. Nandi on 29/06/2023. My reading of the ruling in the matter is that the suit was struck out for being res judicata Kisumu HCC No. 121 of 2005 where the trial court noted that Justice Aburili had made a final pronouncement that former members of CCA church who have formed their own churches have no right to use any of the facilities of CCA church for worship or for any other purposes.
22. I think with regard to the suit filed in the CM Court at Bondo my position is that it was not heard on its merits. The same was declared res judicata by the court in view of the judgement delivered. The present suit cannot therefore be rendered res-judicata on the basis of the Bondo MCELC/014/2023 which though orders of adverse possession were sought a determination was never made on the ownership by dint of adverse possession.
23. Further it is my considered view that the plaintiffs in the current proceedings claim under the doctrine of adverse possession in reference to parcel Siaya/Usigu/4444 which was not an issue in Kisumu HCC No. 121 of 2005. That while it was an issue in Bondo MCELC/014/2023 it was never determined on merit.
24. I think I have said enough to show that the application dated 5/9/2025 is for dismissal as it has no merits. It is hereby dismissed.
25. Noting that the suit involves matters of faith involving churches, I will make an order that parties bear their own costs of this application.

Orders accordingly

DELIVERED AND DATED AT SIAYA THIS 29TH DAY OF JANUARY 2026

HON. LADY JUSTICE A.E. DENA

JUDGE

29/1/2026

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Kapinde for the Applicant

Bishop Joash Kadero on behalf of Dr. Kungu for the Respondent

Court Assistant: Ishmael Orwa

