



M'Rimberia & another v Kirigia (Sued as the legal representatives of the Estate of Josephat Kirigia – Deceased) & 2 others; Meru Bakers Co Limited (Affected Party); Kiambati (Interested Party) (Miscellaneous Civil Application E023 of 2024) [2026] KEHC 593 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEHC 593 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E023 OF 2024
SM GITHINJI, J
JANUARY 29, 2026**

BETWEEN

**MUTEA M'RIMBERIA 1ST APPLICANT
JAPHET MBAE RUTERE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF STEPHEN M'RUTERE M'IKABU) 2ND APPLICANT**

AND

**LABAN KIRIMI KIRIGIA (SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF JOSEPHAT KIRIGIA – DECEASED) 1ST RESPONDENT
JOSEPH GITONGA (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF FREDRICK M'YTHINJI – DECEASED) 2ND RESPONDENT
ANDREW MWIRIGI 3RD RESPONDENT**

AND

MERU BAKERS CO LIMITED AFFECTED PARTY

AND

JULIUS KIAMBATI INTERESTED PARTY

RULING

1. For determination is the 2nd Respondent's Notice of Preliminary Objection dated 8/4/2024 raising 4 grounds that:
 1. The Intended action is time barred and therefore contravenes the provisions of Section 7 of the [Limitation of Actions Act](#) Caps 22 Laws of Kenya as the registration into the deceased names



Fredrick M’Ithinji and Josphat Kirigia occurred on 9.12.2002 and a certificate of lease issued in their names on 20.12.2002.

2. The Intended action is res judicata Meru HCCC NO. 165 OF 2001 and Meru HCCC NO. 112 OF 1996.
 3. The action is intended against a non-existent company known as Meru Bakers Co. Ltd.
 4. The application is incompetent and an abuse of the court process.
2. The Interested Party filed a Notice of Preliminary Objection dated 19/6/2024 raising 8 grounds that:
1. The Intended action is time barred and therefore contravenes the provision of Section 7 of the Limitation of Actions Act Cap 22 Laws of Kenya as the registration into the deceased names Fredrick M’ithinji And Josphat Kirigia occurred on 9.12.2002 and a certificate of Lease issued in their names on 20.12.2002.
 2. The Intended action is res judicata Meru HCCC NO. 165 OF 2001 and Meru HCCC NO. 112 OF 1996 and Meru ELC No. 172 of 2016.
 3. The application is sub judge Nyeri Court Of Appeal Civil Application No. E112 Of 2023 And Nyeri Court Of Appeal Civil Appeal No. E074 OF 2024.
 4. The application does not disclose any cause of action known in laws.
 5. The application is an abuse of court process in light of the referenced suits.
 6. The action is intended against a non-existent company known as Meru Bakers Co. Ltd.
 7. The applicants have no locus standi to institute the proceedings herein.
 8. The application is incompetent and an abuse of court process.
3. The Preliminary Objections were canvassed by way of written submissions, which were duly filed by counsel.
4. The Applicants, through the firm of Njindo Matiba & Co. Advocates, filed submissions dated 29/9/2025. Counsel argued that there was a clear dispute of facts, and as such, the preliminary objections were not pure points of law. Counsel contended that Meru HCCC No. 112/1996 was not a derivative suit, which could be sustained on behalf of the company by the Plaintiffs therein. Counsel further contended that Meru HCCC No. 165/2001 was a tactical, albeit unlawful and irregular maneuver by the directors of the affected company in collusion with the 3rd Respondent, purporting to be a director. Counsel asserted that the plea of res judicata as brought is unsustainable as it would require interrogation of facts involving those other cases, and cited Mukhisa Biscuits Manufacturing Company v West End Distributors (1969) EA. Counsel argued that under the statute of Limitation of Actions Act, time does not start running until an application for leave to file derivative actions is filed by the minority shareholders and or interested party.
5. The 1st and 3rd Respondents, through the firm of Leonard K. Ondari & Co. Advocates filed submissions dated 30/7/2025. Counsel contended that the suit was res judicata, having been determined in HCC 165/2001, HCC 461/1989 and HCC 112/1996, and cited Attorney General & another v ET (2012) eKLR, Omondi v National Bank of Kenya and Others (2001) EA 177, Njanju v Wambugu and Another Nairobi HCC No. 2340/1991 (U.R), Henderson v Henderson 1843-60 ALL ENG 378 and Kennedy Mokua Ongiri v John Nyasende Mosioma & Another [2022] KEELC 1631 (KLR). Counsel asserted that the application ought to have been filed in the parent files and not



through a miscellaneous application, and cited *South Nyanza Sugar Company Limited v Alfred Sagwa Mdeizi T/A Pave Auctioneers* (2010) eKLR, *Kennedy Ooko Jacob T/A Ssebo Intel. Co. Auctioneer v John Abich Ochanda* [2021] KEHC 8899 (KLR).

6. The 2nd Respondent, through the firm of Muia Mwanza & Co. Advocates, filed submissions dated 15/9/2025. Counsel contended that the Applicants were estopped by the doctrine of Res Judicata from re-litigating over the same issues that were previously heard and determined in a previous suit touching on the same issues, and cited *Kenya Pharmaceutical Distributors Association & Anor v Anti-Counterfeit Authority Nairobi Constitutional Petition No. E536/2022*. Counsel asserted that the suit was time barred, as 12 years had lapsed since the cause of action arose on 9/12/2002. Counsel argued that the application was incompetent as a dispute as to the ownership of the said plot was heard and determined by the ELC Judge.
7. The Interested Party, through the firm of Thangicia M. David & Co. Advocates filed submissions dated 15/9/2025. According to counsel, the principle of res judicata not only affects the issue that was presented before the former court, but also any related issue that was not presented by the litigants, and such, litigation by piecemeal is forbidden by law. Counsel contended that the Applicants lacked locus standi to institute the application since they were neither shareholders of the affected company nor personal representatives of its directors. Counsel further contended that the application violated the provisions of the *Limitation of Actions Act*, as the intended suit ought to have been instituted before the lapse of 12 years.

Determination

8. The sole issue for determination is whether the Preliminary Objections have been properly raised.
9. The doctrine of res judicata has been expounded 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. That doctrine was encapsulated in *Lotta v Tanaki* [2003] 2 EA 556 as follows:

“The doctrine of res judicata is provided for in Order IX of the Civil Procedure Code of 1966. Its object is to bar multiplicity of suits and guarantee finality to litigation. It makes conclusive a final judgment between the same parties or their privies on the same issue by a court of competent jurisdiction in the subject matter of the suit. The scheme of section 9, therefore, contemplates five conditions which, when co-existent, will bar a subsequent suit. The conditions are: (i) the matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit; (ii) the former suit must have been between the same parties or privies claiming under them; (iii) the parties must have litigated under the same title in the former suit; (iv) the court which decided the former suit must have been competent to try the subsequent suit; and (v) the matter in issue must have been heard and finally decided in the former suit.”
11. In their application dated 31/1/2024, the Applicants seek inter alia an order of inhibition restraining the 1st and 2nd Respondents, their agents, servants and/or legal representatives from making/registering



any dealings whatsoever against the suit land parcel No. Meru Municipality Block 11/51 pending the determination of the Application and the derivative suit.

12. By way of background, Joel Muriuki, Moses Kithinji, Justus Kinoti and Kanata Mungania sued Josphat Kirigia (deceased), Fredrick M'Ithinji (deceased) and the affected company, vide Meru High Court Civil Case No. 112/1996, which was dismissed on 25/1/2001 for want of prosecution. Fredrick M'Ithinji (deceased) and Josephat Kirigia (deceased) then sued the affected company vide Meru High Court Civil Case No. 165/2001, wherein judgment was entered in favour of the defendants against the plaintiffs in terms of the consent dated 8/11/2002. In its judgment in Meru ELC No. 172/2016, wherein the 2nd Respondent had sued Jeniffer Nkirote and the Interested Party herein, the court (C.K Nzili J) declared that;

“The transfer of the half share of L.R No. Meru Municipality Block 11/51 to the name of the 1st defendant and later to the name of the 2nd defendant as irregular, null and void ab initio. The Court, under Section 80 of the Land Registration Act, cancels any entries made after 14.7.2016, and the land registrar is directed to revert the title to its original state as of 14.7.2016 for the portion of half share belonging to the late M'Ithinji M'Mwamba to be dealt with under the Law of Succession Act.”

13. I find that the ownership of L.R No. Meru Municipality Block 11/51 was conclusively and decisively determined in Meru HCCC No. 112/1996, Meru HCCC No. 165/2001 and Meru ELC No. 176/2016.
14. In view of the court's determination that the property in dispute does not belong to the affected company, whose continued existence has not been demonstrated, there is no legal foundation for instituting a derivative suit to protect the aforementioned property, which it does not own.
15. I concur with the Respondents and the Interested Party that any action by the Applicants to recover the property in dispute ought to have been commenced within the statutory limitation period of 12 years.
16. The inevitable conclusion is that the application dated 31/1/2024 is indeed res judicata, vexatious and the epitome of the abuse of the court process.
17. From the foregoing analysis, I find that the Notices of Preliminary Objection dated 8/4/2024 and 19/6/2024 were properly raised, and consequently, the Applicants' application dated 31/1/2024 is struck out, with costs to the 2nd Respondent and the Interested Party.

DATED AND DELIVERED AT MERU THIS 29TH DAY OF JANUARY, 2026.

S.M. GITHINJI

JUDGE

Appearances:

Mr. Njindo for the Applicant.

Mr. Ondari for the 1st and 3rd Respondents (absent)

Ms. Mwanzia for the 2nd Respondent.

Mr. Thangicia for the Interested Party (absent)

Mr. Njindo:-

I apply for general leave to appeal.



Court:-

Leave to appeal is granted.

29/1/2026

