

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL CASE NO. E328 OF 2022

JOSEPH MUSUNI TIAMPATI & HASSAN MOROWA

(Suing as Chairman and Secretary of the Bellevue

Estate Welfare Dev. Association) **PLAINTIFF/RESPONDENT**

= VERSUS =

LAPFUND.....1ST DEFENDANT

NEMA.....2ND DEFENDANT

COUNTY GOVT OF NAIROBI AND

FIVE OTHERS 3RD TO 8TH DEFENDANTS

RULING

1. The Plaintiffs/Applicants filed the notice of motion application under the provisions of order 40 of the Civil Procedure Rules in which they are seeking for these orders:

a) **Spent**

b) **Spent**

c) **That the honourable court be pleased to issue orders of temporary injunction restraining the 1st Respondent, its agents, employees, contractors and or servants from continuing with excavation construction fencing development or any dealings whatsoever on the road reserve situated on the suit property known as Nairobi**

Block 98/108 pending hearing and determination of the main suit.

- d) That this court be pleased to issue an order compelling the 1st Respondent to immediately remove all construction materials barriers and or obstructions and to forthwith grant unobstructed access to the residents of Bellevue Estate on the road reserve situated on the property known as Nairobi Block 98/108 pending hearing and determination of the main suit.**
- e) That the OCS having jurisdiction over the area along Popo road, South C, Bellevue be and is hereby directed to ensure compliance with enforcement of the orders issued to maintain peace and public order in the area**
- f) That any other orders that meet the ends of justice be issued.**
- g) Costs of the application be provided for.**

2. The application was supported by the grounds listed on its face, supporting and further affidavits both sworn by James Musuni Tiampati.

The grounds listed include the following;

- i. THAT in compliance with the conditions issued by the then Nairobi City Council Works and Town Planning Committee,*

the Applicant surrendered all road reserves, public purpose spaces and foot paths to the government

- ii. *THAT the 1st Respondent is in the process of constructing Residential Multi Dwelling units cum commercial shops and Education Cum Commercial Shops on Block C even though it comprises a public road and public space.*
- iii. *THAT the ongoing construction by the 1st Respondent constitutes encroachment and obstruction of public infrastructure, disrupts access to the estate, and violates zoning laws which designate the area as low-density residential.*
- iv. *THAT the Plaintiff/Applicant has a pending suit raising serious legal and constitutional questions on the legality of LAPFUND's title and use of the road reserve.*

3. The 2nd to 8th Defendants did not file any pleadings in opposition to the application as there are no interim reliefs sought against them. However, the 1st Defendant filed a replying affidavit sworn by James Tugee dated 28th October, 2025 and grounds of opposition dated 27th October, 2025.
4. The 1st Defendant pleads that the application is res judicata, this Honourable Court having determined the same on similar issues raised therein by a ruling delivered herein on 28th September 2023 on the

original Plaintiffs' injunction applications dated 6th July 2022 and 24th March 2023.

5. Mr Tugee deposes that the Applicant did not obtain interim orders on the application dated 6th July 2025 therefore the 1st Defendant commenced construction on the suit property after it obtained all the relevant licenses and permits. He also deposed to the present application being res judicata the applications dated 6.7.22 and 24.3.2023.

Analysis and Determination:

6. I have read and considered the pleadings filed in respect to the current application as well as the Plaintiffs' written submissions dated 2nd December, 2025. The Applicants have raised two issues for determination which I hereby adopt thus;

1) Whether the present application is res judicata or

2) If it is not, whether the orders sought are merited and should be granted.

7. The 1st Defendant pleaded in detail in their grounds of opposition and replying affidavit why they considered the present application is res judicata. For instance, it avers that the ground of the parcels of land in respect of which the 1st defendant had acquired title (the suit property) have been part of an access road for use by occupants of Bellevue Estate and playground for Bellevue estate children was raised in grounds 1 and 7 of the notice of motion dated 6th July 2022.

8. Further, that in the previous application, the Applicants also pleaded that the development site constitutes an access road to Bellevue Estate and a playground for children of the Estate.
9. It is not in dispute that the two previous applications were heard and determined on merits and a ruling rendered on 28th September, 2023 by Wabwoto J. The Applicants did not file an application for review or an appeal against the said ruling.
10. Instead, they contend their application is not res judicata because their current application is anchored on new and continuing circumstances that were neither in existence during the filing of the two former applications and which therefore were not adjudicated upon. They aver that the 1st Defendant commenced construction in April 2025 which construction has obstructed and encroached upon part of the estate access road forming part of all the suit property Nairobi Block 98/108
11. The Applicants assert that these continuing acts constitute a fresh cause of action materially different from issues raised in the previous application. In support of this assertion, they cited the case of **Republic versus County Government of Nairobi and 2 Others Ex Parte United Boda Boda Welfare Association (2017)Eklr.** The same position was expressed in the written submissions.

12. Section 7 of the Civil Procedure Act describes in detail what constitute res judicata. For purposes of this application, I will reproduce explanation 4 and 6 which states as follows:

“3. The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other

4. Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

13. The Applicants argue the issues raised in the current application are new and continuous hence the doctrine of res judicata does not apply. On the face of the Ruling rendered in the two former applications, the orders sought inter alia to stop the 1st Defendant from commencing development on plots numbers Nairobi Block 98/104 to 108 until the suit is determined.

14. One of the grounds stated in support of the former applications was that the parcels of land which the 1st Defendant acquired title has been part of an access road for use by occupants of Bellevue Estate and playground for Bellevue Estate children.

15. Additionally, the Applicants pleaded that the 1st Defendant’s development

blocking only provided access road to create space for development means that vehicles to and from Bellevue Estate will suffer chokehold in and or out of their residences.

16. I have flipped through the reliefs sought in the plaint and noted that the orders sought include cancellation of the 1st Defendant's title on the basis that it is encroaching on a portion of the access road and the children's playground. They also sought orders of permanent injunction to stop the 1st Defendant from erecting a building on a public access road and children's playground.
17. In the present motion dated 1st August, 2025, the Applicants want this court to stop construction on the suit plot Nairobi Block 98/108 inter alia under paragraphs (g) and (h) of the application THAT the 1st Respondent is in the process of constructing Residential Multi Dwelling units cum commercial shops and Education Cum Commercial Shops on Block C even though it comprises a public road and public space . THAT the road reserve which is situated on Block C serves as an access to the Estate and is currently being used to access Houses number 400-416.
18. It is discernable that the orders of temporary injunction are being sought on account that the impugned construction commenced by the 1st Defendant on Nairobi Block 98/108 is being undertaken on playground and is also blocking access road used by the Applicants. This is one of the

reasons the present suit was filed together with the two former applications.

19. I am not persuaded that there are new issues arising as the cause of action remains constant- whether or not the 1st Defendant should build on the suit property and whether such action should be put on hold by granting of interim reliefs until the suit is heard and determined.
20. A judge of concurrent jurisdiction having considered the prayer for injunction sought on these grounds and dismissed the application, the doctrine of res judicata bars me from re-opening the facts and reconsidering them again as the Applicants are urging me to do through their current application.
21. It is my considered opinion, and I so hold, that this application is res judicata to the previous applications dated 23.4.2025 and 6.7.2025, as highlighted in section 7, explanation 4, of the Civil Procedure Act. It is therefore ordered struck out with costs in the cause.

Dated, Signed and Delivered at Nairobi this 22nd day of January, 2026

A. OMOLLO
JUDGE