

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC LAND CASE NO. E026 OF 2025

HANNAH MWIHAKI KARIUKI.....1ST

PLAINTIFF

LEWIS NDIRANGU KARIUKI..... 2ND PLAINTIFF

VERSUS

LAND REGISTRAR, NAIVASHA.....1ST

DEFENDANT

KENYA NATIONAL HIGHWAYS

AUTHORITY (KENHA).....2ND

DEFENDANT/APPLICANT

RULING.

1. Before me for determination is a Notice of Motion dated 31st October, 2025 brought pursuant to the provisions of Section 7 of the Civil Procedure Act, Orders 2 rule 15, Order 51 and 53 of the Civil Procedure Rules 2010 wherein the 2nd Defendant/Applicant herein has sought for the striking out of the Plaint dated 8th May, 2025 and that the cost of the Application and Suit be borne by the Plaintiff.
2. The said Application was supported by the grounds therein as well as the Supporting Affidavit of equal date sworn by Counsel for the 2nd Defendant herein who deponed that he had defended a Judicial Review proceedings in Naivasha ELCLJR/E002/2024; **Hannah Mwihaki Kariuki & Lewis Ndirangu Kariuki (Suing as the Legal Representative of the Estate of William Kariuki Ndirangu- deceased) v The Land Registrar Naivasha and Kenya National Highways Authority (KENHA)** in reference to the same title as in the present plaint and between the same parties wherein the matter was determined vide a Ruling of on 8th May, 2025. There was no Appeal filed.

3. That instead, the Plaintiff/JR Applicant re-filed the same suit, vide a Plaint dated 8th May, 2025, on the very date the Ruling in Naivasha ELCRJ/E002/2024 was delivered.
4. That whereas the orders sought in the current the Plaint are as follows:
 - i. A declaration be and is hereby issued declaring the 1st Defendant's Gazette Notice No. 17543 dated 22nd December, 2023, purporting to revoke the title to land parcel number Kijabe/Kijabe Block 1/30245 as null and void.
 - ii. An order of injunction be and is hereby issued compelling the 1st Defendant or equivalent officer to reinstate and/or rectify the Land Records contained in the Land Registrar relating to title number Kijabe/Kijabe Block 1/30245 to the position that existed immediately before the purported revocation of the said title by Gazette Notice No. 17543 dated 22nd December, 2023.
 - iii. A prohibitory and permanent injunction to issue restraining the 2nd Defendant, whether by itself, its servants and/or agents or representatives, from trespassing, entering into, occupying, processing or in any other manner howsoever and whatsoever, from dealing with or interfering with the Plaintiff's private use, occupation, ownership and quiet possession of land Title No. Kijabe/Kijabe Block 1/30245
5. The orders that had been sought in ELC.LJR/E002/2024 had been as follows:
 - i. That the Honourable Court be pleased to issue an order of Certiorari to remove into this Honourable Court and quash the decision of the Land Registrar, Naivasha District, to expunge the records relating to the land parcel No. Kijabe/Kijabe Block 1/30245 registered in the

name of William Kariuki Ndirangu as communicated vide Gazette Notice No. 17543 on 22nd December, 2023.

- ii. That the Honourable court be pleased to issue an order of Prohibition directed to the 1st Respondent, prohibiting the 1st Respondent from illegally revoking/ cancelling or expunging the records for land title No. Kijabe/Kijabe Block 1/30245
 - iii. That the Honourable court be pleased to issue an order of Prohibition directed to the 2nd Respondent, prohibiting the 2nd Respondent from trespassing and/or in any way interfering with the Applicant's ownership, use, and enjoyment of land title No. Kijabe/Kijabe Block 1/30245
6. That even at a glance, the orders sought and causes of action raised in the two suits are the same. Furthermore, the particulars in the Plaint in ELCLC/E026/2025 were replicas of the grounds that had been raised in the Statutory Statement (paragraphs 9-11) and Verifying Affidavit (paragraphs 13-16) in the Judicial Review proceedings.
7. That whereas paragraphs 15 and 16 in the JR were based on administrative complaints challenging the fairness, procedural impropriety, and legality of decisions by the 1st Defendant, paragraph 15 of the Plaint was on the decision of the same Defendant as contained in the Gazete Notice No. 17543 while paragraph 16 touched the said Defendant's decision having been made without a hearing or reasons thereto and based on irrationality, unfairness, procedural impropriety and marred with illegalities. He deponed that the instant suit was a judicial review case disguised as a civil suit.
8. That the Plaintiffs had filed the present Plaint to circumvent the effects of the 8th May, 2025 Ruling to pull the rug under the feet of the Defendants and the Court in the most flagrant abuses of court process while seeking a second bite at the cherry against the Defendants' right to a fair hearing.

9. That judicial review orders were a reserve of the judicial review application statutorily prescribed to be brought under the provisions of Order 53 of the Civil Procedure Rules. The court's jurisdiction was therefore ousted. That, unless the Plaintiff is struck out, the Defendant will re-incur high costs to be taxed on the taxpayer. He thus prayed that the orders sought therein be granted as prayed.
10. In response and in opposition, the Plaintiff, through their Replying Affidavit dated 10th November 2025, which was sworn by their Counsel, deponed that the Application was frivolous, vexatious and an abuse of the Court's process and time. The allegation that the instant suit was improperly brought via a Plaintiff seeking judicial review orders was unfounded and ridiculous. That none of the three judicial review orders of Mandamus, certiorari and prohibition provided for under Section 8 of the Law Reform Act and Order 53 of the Civil Procedure Rules had been sought for in the Plaintiff.
11. That the claim that the instant case was res judicata, Naivasha ELCJR/E002/2024, was also unfounded, the substantive motion in the previous matter not having been heard and determined on merit since it was struck out for having been filed out of the prescribed time.
12. That subsequently, the instant Application was an abuse of the court's time and process, as its only achievement was delaying the hearing and determination of the suit herein. He sought the dismissal of the Application with costs.
13. The Application was disposed of by way of written submissions as herein summarized.

2nd Defendant/Applicant's submissions

14. The 2nd Defendant's submissions, dated 9th December 2025, raise two primary legal hurdles intended to defeat the Plaintiff's suit:
 - i. That the suit is procedurally illegal (contra-statute) and
 - ii. That it is barred by the doctrine of res judicata.

15. On the first issue, the 2nd Defendant argues that the Plaintiff has moved the court through the wrong legal vehicle, rendering the suit incompetent. Citing the provisions of Section 19 of the Civil Procedure Act and the case of **Cyril J. Haroo & Sonja Karen Anderson vs. Uchumi Services Limited [2014] eKLR**, the 2nd Defendant asserts that jurisdiction is only properly invoked when a suit follows the specific prescribed rules.
16. The 2nd Defendant pointed out that paragraphs 15 and 16 of the Plaintiff sought to challenge an administrative decision in the Gazette Notice No. 17543 based on irrationality and procedural impropriety, whereas under the provisions of Order 53 Rule 2 of the Civil Procedure Rules, such challenges must be brought via Judicial Review and within six months and not through a civil Plaintiff.
17. The 2nd Defendant argues that "declarations" and "injunctions" were merely semantic disguises for the writs of Certiorari and Prohibition. Relying on the decision in **Joseph Muriuki Kithinji v Chief Land Registrar (2019) eKLR**, they submit that a suit filed contra-statute cannot be saved by Article 159 of the Constitution on technicalities, or the Oxygen Principle, as these provisions cannot cure an express statutory prohibition.
18. On the second issue that the Suit is Res Judicata, the 2nd Defendant contended that the suit was a prohibited second bite at the cherry regarding a matter already decided.
19. Reliance was placed on the provisions of Section 7 of the Civil Procedure Act and the decision in the case of **Njue Ngai vs. Ephantus Njiru Ngai [2016] eKLR**, to argue that the parties, the land parcel, and the grievances in the present suit were identical to the previously struck-out case in Naivasha ELCLJR/E002/2024.
20. Submissions were that even though the previous case was struck out on a technicality as it was time-barred, rather than on merit, the subsequent suit suffered what was termed constructive res judicata.

Reliance was placed on the decision in **Kenya Commercial Bank Limited v Benjoh Amalgamated Limited [2017] eKLR**. They posit that because the previous ruling left the Land Registrar's decision unchallenged, it became final.

21. That the Plaintiff had a right to appeal the ruling of 8th May 2025 under Order 43 Rule 1(aa) but failed to do so, and so by filing a fresh Plaint on the same day instead of appealing, the Plaintiff cannot be permitted to re-litigate the same subject-matter under a different suit number in another fashion. That the cosmetic change from a Judicial Review application to a "civil suit" was clearly a semantic sleight of hand that could not defeat the operation of Section 7 of the Civil Procedure Act.
22. Citing Black's Law Dictionary, the 11th Ed. 2019, the 2nd Defendant emphasised the principle of finality of litigation and argued that allowing the suit to proceed would encourage endless re-litigation and waste taxpayer resources.

Plaintiffs/Respondents' submissions.

23. The Plaintiffs/Respondents vide their submissions dated the 4th December 2025, robustly opposed the striking out of their Plaint. Their argument was based on the following;
 - i. Whether the instant suit has been instituted contra statute.
 - ii. Whether the Applicant's Application is frivolous, vexatious and an abuse of Court process.
 - iii. Whether the Applicant's Application has demonstrated adequate grounds for striking out the Respondent's Plaint.
 - iv. Whether the case herein is res judicata.
24. On the first issue, they argued that their suit was not a "disguised" Judicial Review (JR) and maintained that it was properly before the court as a civil claim. In the present suit, they were seeking declarations of

rights and permanent injunctions, which were civil remedies. They clarify that they are not seeking orders of *Certiorari*, *Mandamus* or *Prohibition*.

25. Citing the nature of a Judicial Review as *sui generis* (a unique class of law), they referred to the case of **Ng'okonyo and 2 others vs. KPTC (1992) KLR** to emphasise that a Judicial Review required specific leave and followed the Law Reform Act and Order 53. That since they were not invoking these specific statutory powers, they contended that the Plaint was the correct vehicle for their civil grievances.
26. The Plaintiffs claimed that the 2nd Defendant failed to point out exactly where in the Plaint judicial review orders were sought, calling the 2nd Defendant's objection a misuse of judicial resources.
27. Their submission was that the 2nd Defendant's attempt to strike out the suit was in itself an abuse of the court process. They assert that for a pleading to be frivolous and vexatious, it must be so hopeless that no reasonable person could treat it as *bona fide*. They relied on the decision **Joseph Okumu Simiyu vs. Standard Chartered Bank (K) Ltd (1994) LLR 1332** and **Trust Bank Limited vs. Amin & Company Ltd and another (2000) KLR 164** to argue that the 2nd Defendant's Application was scandalous and intended to cause unnecessary expense and anxiety.
28. That the 2nd Defendant had not met the high threshold required to prove that the Plaint disclosed no reasonable cause of action or would prejudice a fair trial.
29. It was their further argument that the doctrine of *res judicata* was not applicable in the instant case because the previous matter was never decided on its merits. They contended that the Naivasha ELCLJR/E002/2024 matter was struck out on a pure judicial review procedural technicality, specifically, being filed three days late. That consequently, there was no "final judgment" on the actual rights or issues.
30. Relying on the decision in **Karia and another vs. AG and others (2005) EA (SCU)**, the Plaintiffs listed the factors necessary for *res*

judicata to bind a party, emphasising that the issue must have been heard and finally decided. They relied on the decisions in **James Katabazi and 21 others vs. the Attorney General of the Republic of Uganda Reference No. 1 of 2007, EACJ, Uhuru Highway Development Ltd vs. Central Bank of Kenya and 2 others, Civil Appeal No. 36 of 1996** and **Bernard Mugo Ndegwa vs. James Nderitu Githae and 2 others (2010) eKLR**.

31. In conclusion, they submitted that having demonstrated that the Plaintiff was properly on record, the Application ought to be dismissed with costs.

Determination.

32. I have considered the Notice of Motion Application dated 31st October, 2025, the response thereto, the submissions for and against the same, the

authorities cited and the applicable law.

33. The Applicants bring the said application, arguing that the current suit is a disguised attempt to relitigate a matter already decided by the court and that it involved the same parties, the same land parcel (Kijabe/Kijabe Block 1/30245), and the same subject matter as a previous case, being Naivasha ELCLJR/E002/2024. They assert that the prayers in the current suit (seeking a declaration against a Gazette Notice and an injunction) are functionally identical to the *Certiorari* and *Prohibition* orders sought in the previous JR proceedings. They argue the Plaintiff is trying to circumvent the previous ruling instead of appealing it, wherein they had sought judicial review remedies through a civil Plaintiff, which is procedurally improper under Order 53 of the Civil Procedure Rules.

34. The Plaintiffs, on the other hand, have opposed the striking out of the suit, maintaining that the current action is distinct and legally viable. That the suit was not a disguised Judicial Review because it did not seek the

specific statutory orders of *Mandamus*, *Certiorari*, or *Prohibition*, but instead, sought for declaratory and permanent injunction orders.

35. That the previous Judicial Review case was struck out on a technicality, having been filed out of time, and therefore it had not been heard and determined on merit. They contended that the Defendant's application was a delay tactic for which the suit should proceed to a full hearing to ensure justice was served.

36. From the above summation, I find the issue herein arising for my determination to be:

- i. Whether the suit is barred by the doctrine of res judicata.
- ii. Whether the suit is instituted contra-statute (procedurally defective).
- iii. Whether the suit constitutes an abuse of the court process.

37. The provision of Order 2 Rule 15(1) (a) of the Civil Procedure Rules states that at any stage of the proceedings, the court may order to be struck out or amend any pleading on the ground that it discloses no reasonable cause of action or defence in law. The said provision of the law provides:

"1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—
a) it discloses no reasonable cause of action or defence in law; or
b) it is scandalous, frivolous or vexatious; or
c) it may prejudice, embarrass or delay the fair trial of the action; or
d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be."

38. The main objective of Order 2 Rule 15(1) (a) of the Civil Procedure Rules is to prevent the court's time and resources from being wasted on cases that are doomed to fail from the start because they lack a legal foundation. If a Plaintiff's claim, even if all facts pleaded are taken as true, does not give rise to a right recognised by law, it discloses no reasonable cause of action and should not proceed to trial.
39. By striking out legally unsustainable claims or defences at an early stage, the rule promotes the overriding objective of the Civil Procedure Act: the just, expeditious, proportionate, and affordable resolution of civil disputes. It saves time for judges, court staff, and the litigants themselves, who would otherwise incur unnecessary costs in preparing for a full trial.
40. It also serves to protect Defendants from having to defend themselves against sham or frivolous claims that are purely aimed at harassment or delay and implicitly encourages legal practitioners to draft pleadings with clarity and legal grounding, thereby compelling them to ensure that the facts they present logically and legally support the remedy they are seeking, aligning the claim with a recognised head of law.
41. The dispute pertains to land parcel Kijabe/Kijabe Block 1/30245. Previously, the Plaintiffs filed a Judicial Review (JR) application in Naivasha ELCLJR/E002/2024 challenging the 1st Defendant's decision to revoke their title via Gazette Notice No. 17543. On the 8th May 2025, the JR application was struck out for being filed outside the statutory timelines. Curiously, on the very same day that the ruling was delivered, the Plaintiffs filed the instant civil suit (Plaint) seeking declarations and injunctions over the same property and against the same parties.
42. I have considered the orders that had been sought in the Notice of Motion herein annexed as "CO-2" as herein above stated, and in essence, therefore, the Applicant sought from the court to invalidate and cancel the decision of the Land Registrar, Naivasha, which had expunged the records of land parcel No. Kijabe/Kijabe Block 1/30245 vide a Gazette

Notice No. 17543 dated 22nd December 2023 and thereafter prohibit the Land Registrar from further revoking, cancelling, or deleting the ownership records of the specified land title. This was a preemptive request to stop any future administrative moves against the property's registration. Lastly, the Applicant sought to have the 2nd Defendant prohibited from trespassing on the land and interfering with the Applicant's ownership, use, or enjoyment of the property.

43. In the present suit, again as enumerated earlier, the Plaintiffs have sought a formal declaration that the Gazette Notice No. 17543 dated 22nd December 2023 was null and void to legally invalidate the 1st Defendant's attempt to revoke the title for land parcel Kijabe/Kijabe Block 1/30245. The Plaintiffs further sought to compel the 1st Defendant (the Land Registrar) to Reinstate the land records and rectify the register to reflect the status of the title as it existed before the Gazette Notice was published and thereafter, there be a Permanent Prohibitory Injunction restraining the 2nd Defendant (KeNHA), its agents, and representatives from Trespassing or entering the property and interfering with their (Plaintiffs') private use, ownership, and quiet possession of the land.

44. A look at the previous suit and the present suit, it is clear that apart from the similarity of the subject suit and the parties, doubtless that the previous matter was not heard and a determination made on merit on the issues therein raised. The striking out of the matter, therefore, did not conclude the matter but generally left the Plaintiff at liberty to file a fresh suit on the same cause of action. However, while it is true the merits were not ventilated, the court notes the concept of Constructive Res Judicata as was held in **Kenya Commercial Bank Limited v Benjoh Amalgamated Limited [2017] eKLR** where the court had this to say;

Therefore, there are instances where the public interest is given prominence over parties' interests in a suit. Such an instance, in our view, would be like in the instant suit where great burden of litigation has been placed upon a party

necessitating such a party to seek protection from court. The Supreme Court of India in the case of State of UP v Nawab Hussain, AIR 1977 SC 1680, considered the doctrine of constructive res judicata and delivered itself thus,

“This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon.”

Further that,

But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and it would be accurate to say that res judicata for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could; have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them. This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of res judicata, by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has sometimes been referred to as constructive res

judicata which, in reality, is an aspect or amplification of the general principle.”

45. In essence, the Court of Appeal held that finality in litigation is a matter of public policy. When a party’s chosen legal path is terminated by a competent court, they cannot simply re-dress the same claim in different legal attire to bypass a limitation period they already failed to meet.

46. Of importance to note is that in the subsequent matter, the Plaintiffs/Respondents herein sought to nullify a Gazette Notice. Under Order 53 of the Civil Procedure Rules, challenges to administrative actions by public bodies must be brought via Judicial Review. Despite the Plaintiffs/Respondents' argument that they are seeking civil declarations in the present suit. Paragraphs 15 and 16 of their Complaint is as follows:

“The Plaintiffs contend that all these decisions were made without their knowledge and or involvement. They were never given reasons for the drastic decisions nor were they given an opportunity to be heard. They only came to learn of the 1st Defendant’s decision after the 30 days given in the gazette notice had lapsed.

16. The plaintiffs therefore contend that the 1st Defendant’s decision made without according the Plaintiffs an opportunity for a fair hearing and without giving sufficient reasons was based on irrationality, unfairness, procedural impropriety and marred with illegalities ab initio.”

47. The pleadings herein explicitly attacked the procedural impropriety and irrationality that were the hallmarks of Judicial Review. I find that the Plaintiffs/Respondents are attempting to obtain Certiorari and Prohibition remedies through a Complaint to circumvent the strict 6-month window prescribed for Judicial Review.

48. In a persuasive decision in **Cyril J. Haroo & Sonja Karen Anderson vs. Uchumi Services Limited & Peter Kinyua Muchendu & 2 others**

[2014] eKLR Justice O.A. Angote had observed as follows:

“[37]. Section 19 of the Civil Procedure Act provides that every suit shall be instituted in such manner as may be prescribed by the rules. For this Court to have the requisite jurisdiction to handle a suit, that suit must be filed in accordance with the rules. For example, a party cannot commence a suit by way of a letter, and where that happens, the court will not have the jurisdiction to handle such a matter because a “suit” would not be said to have been instituted in accordance with the rules in such a case. The court will have no option but to declare such “a suit” a nullity. [38]. The Civil Procedure Rules allows parties to commence suits in certain circumstances by way of Originating Summons. The only other mode of initiating suits recognized by the Civil Procedure Rules is by way of Plaint pursuant to provisions of Order 3. The Constitution and the rules thereunder on the other hand provides that matters raising constitutional issues may be commenced by way of a Petition. [39]. There are several other pieces of statutes which provide the mode in which the court may be moved in particular circumstances. For example, section 55 of Anti-corruption and Economic Crimes Act provides that where the Commission seeks to have an individual’s assets forfeited to the State, it shall move the High Court by way of Originating Summons. [40]. It therefore follows that the mode of instituting a suit has to be in accordance with the law for a proper and just determination of the issues that arise therefrom. [41]. Where a party, whether intentionally or by mistake, moves the court contrary to the provisions of the law, the court may call upon such a party to move the court appropriately by nullifying what was filed contra-

statute in the first place. A proper suit may be filed again."

49. The holding herein was that a suit filed in total disregard of the prescribed statutory mode of commencement is incompetent. I also find that the filing of a fresh suit on the same day the ruling was delivered in a related matter would suggest that the Plaintiffs had prepared a "Plan B" to avoid the consequences of the Judicial Review ruling, rather than appealing as a calculated move to circumvent a valid ruling.
50. While Article 159(2)(d) of the Constitution encourages the court to look past technicalities, it is not a "magic wand" to save suits that are fundamentally flawed or designed to circumvent the law. The Plaintiffs had their day in court in the Judicial Review proceedings, wherein their failure to adhere to timelines in the previous suit cannot be cured by filing an irregular civil suit herein disguised as a Plaint.
51. To protect the integrity of the judicial system, the Court finds in favour of the 2nd Defendant's Motion dated 31st October 2025. The Plaint dated 8th May 2025 is hereby struck out. Costs of both the Application and the Suit shall be borne by the Plaintiffs.

Dated and delivered via Microsoft Teams at Naivasha, this 5th day of February 2026.



M.C. OUNDO
ENVIRONMENT & LAND COURT- JUDGE.