



**In re Estate of Wamukira Karuru (Deceased) (Succession Cause  
69 of 2000) [2026] KEHC 1589 (KLR) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1589 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 69 OF 2000  
MA ODERO, J  
FEBRUARY 13, 2026**

**IN THE MATTER OF THE ESTATE OF WAMUKIRA KARURU (DECEASED)**

**BETWEEN**

**PETER MUNYORO WANJOHI ..... 1<sup>ST</sup> APPLICANT  
MARGARET WARUGURU WACHIRA ..... 2<sup>ND</sup> APPLICANT  
ESTHER WANJIRU NDERITU ..... 3<sup>RD</sup> APPLICANT**

**AND**

**ROBERT IRUNGU KING'ORI ..... 1<sup>ST</sup> RESPONDENT  
IRUNGU NDERITU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this Court for determination is the Summons dated 31<sup>st</sup> May 2024 by which the Applicants Peter Munyoro Wanjohi, Margaret Waruguru Wachira And Esther Wanjiru Nderitu seek the following orders:-
  - “ 1. That, the Respondents be ordered to allow the Applicants to cut down the trees which said trees were left standing on the suit property prior to the death of the deceased and said trees are still the property of the deceased till the same will be transferred to beneficiaries by this Honourable Court as now appears that the said Respondents have refused the said trees to be cut down and be utilized as explained herein above.
  2. THAT the cost of this application be in the cause.”
2. The summons was supported by the affidavit dated 9<sup>th</sup> October 2024 sworn by the 1<sup>st</sup> Applicant.



3. The Respondents Robert Irungu King'ori And Irungu Nderitu opposed the application through the Replying Affidavit dated 24<sup>th</sup> March 2025 sworn by the 1<sup>st</sup> Respondent. The matter was canvassed by way of written submissions. The Applicants filed the written submissions dated 7<sup>th</sup> August 2025 whilst the Respondent relied upon their written submissions dated 17<sup>th</sup> November 2025.

### **Background**

4. This succession cause relates to the estate of the late Wamukira Kararu (hereinafter 'the Deceased') who died intestate on on 9<sup>th</sup> March 1999.
5. Following the demise of the Deceased Grant of Letters of Administration Intestate was on 28<sup>th</sup> January 2022 made to the 1<sup>st</sup> Applicant Peter Munyoro Wanjohi. That Grant was duly confirmed vide the rectified certificate of confirmed Grant also dated 28<sup>th</sup> January 2022. The confirmed grant set out the mode of distribution of the estate. The Applicants have now filed this application seeking orders that the trees standing on estate property be cut down and sold in order to provide finances to facilitate the transmission of the estate to the various beneficiaries.

### **Analysis And Determination**

6. I have carefully considered the application before this court, the reply filed thereto as well as the written submission filed by the parties. The Applicants aver that the only issue remaining in this cause is the distribution and transmission of the estate. That there are no funds available to fund this transmission. The applicants pray that the trees now standing on estate property be cut and sold in order to provide the funds required.
7. The Respondents opposed the application. They contend that the administrator ought to call a meeting of all the beneficiaries and ask them to contribute funds for transmission of the estate. That the beneficiaries wish to inherit their shares of the estate unspoiled. Finally the Respondents aver that this present application is 'Res Judicata'.
8. I do agree with the respondents that the Administrator ought to have called a meeting of all the beneficiaries explained the predicament he was facing due to lack of finances and sought consensus on the way forward. Why rush with an application to cut down trees without first getting the opinion of the beneficiaries who stand to be directly affected by this action?
9. The Respondent submitted that the instant application is 'Resjudicata' The substantive law on Res judicata is found in Section 7 of the *Civil Procedure Act* Cap 21, Laws of Kenya which provides 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 Court of Appeal in Independent Electoral and Boundaries Commission -vs- Maina Kiai & 5 Others [2017] eKLR stated as follows:-

“That rule or doctrine of res judicata serves the solitary aim to bring finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and wounded by issues and suits that have already been determined by a competent court. It is designed



as a pragmatic and commonsensical protection against wastage of time and resources in an endless ground of litigation to the behest of intrepid pleaders keeping by a multiplicity of suits and fora to obtain at last outcomes favourable to themselves. Without it, there would be no end to litigation and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.” [Own emphasis]

11. In *John Florence Maritime Services Limited -vs- Cabinet Secretary For Transport And Infrastructure & 3 Others* [2021] eKLR the Supreme Court of Kenya stated thus

“81 We reaffirm our position as in the *Muri Caffee* case that the doctrine of res judicata is based on the principle of finality which is a matter of public policy. The principles of finality is one of the pillars upon which our Judicial System is founded and the doctrine of res Judicata prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party and liability for another conclusively.....

(86) We restate the elements that must be proven before a court may arrive at the conclusion that a matter is res judicata for res judicata to be invoked in a civil matter the following elements must be demonstrated;-

- (a) There is a former judgment which was final.
- (b) The judgment or order was on merit.
- (c) The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
- (d) There must be between the first and the second action identical parties, subject matter and cause of action.”

12. The record indicates that by the Summons dated 6<sup>th</sup> February 2020 the same applicants sought inter alia the following order

“That this Honourable Court be pleased to issue an order for cutting down the trees which stand within land Parcel Number Thegenge/Unjiru/297 and the Applicant to dispose them off by selling the same to the interested party so as to get funds towards costs of the matter now pending in court which is part of the estate of deceased.”

13. Once again the Respondents filed a Replying affidavit dated 19<sup>th</sup> February, 2020 opposing any cutting of trees. It would appear that this application dated 6<sup>th</sup> February 2020 was never dealt with. Instead of prosecuting that pending application the applicant simply filed a fresh application seeking the same orders. In the circumstances the present application cannot be said to be Res Judicata as the earlier application was never been determined.

14. That being said this court is not persuaded that the only way to raise funds to facilitate the transmission of the estate is to cut down the trees. The Administrator is a representative of the beneficiaries of the estate. He ought to seek consensus from said beneficiaries. The Administrator ought to seek the opinion of the beneficiaries who are at liberty to grant him authority to cut down the trees if they are so inclined. The Administrator has not shown what alternative steps he has taken to raise the required funds.



15. Finally I find no merit in this application. The summons dated 31<sup>st</sup> May 2024 is dismissed in its entirety. This being a family matter each side will bear their own costs.

**DATED IN NYERI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2026.**

.....

**MAUREEN A. ODERO**

**JUDGE**

