

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VIHIGA

ELCL (OS) NO. E011 OF 2025

IN THE MATTER OF:

REGINA M'MBONE MANYU APPLICANT

VERSUS

NATHAN ONDEGO MDEIZI RESPONDENT

AND

SECTION 38 OF THE LIMITATION OF ACTIONS ACT CAP 22 OF THE
LAWS OF KENYA

AND

SECTION 28 (h) OF THE LAND REGISTRATION ACT NO. 3 OF 2012

AND

ORDER 37 RULE 7 (1) & (2) OF THE CIVIL PROCEDURE RULES, 2010

AND PARCEL NO KAKAMEGA/ MBALE/2533.

RULING

Regina M'mbone Manyu claims to be entitled to ownership of the entire of land parcel no KAKAMEGA/ MBALE/2533, currently registered in the name of the respondent, Nathan Ondego Mdeizi, by virtue of her continuous, open, peaceful and uninterrupted possession and occupation of said parcel of land for a period exceeding 12 years.

Vide the originating summons dated 6th June 2025, she placed before court a number of questions for determination in her quest for orders to be declared as owner of the said parcel of land under the doctrine of adverse possession.

In response to the Originating Summons the respondent filed grounds of objection dated 4th July 2025. On 8th December 2025 when the matter came up for mention to confirm compliance with earlier given directions, the respondent prayed that the issue of *res judicata* raised in the grounds of objection be addressed first. The applicant was agreeable.

Directions were then given that the issue of *res judicata* be disposed of first and the same be canvassed by way of written submission to be filed within given timelines.

A reading of the grounds of objection filed by the respondent shows that ground 1 thereof is to the effect that the claim the subject matter of the suit herein is *res judicata* in view of a judgment by a competent court having been delivered on the same issues, claim and subject matter in Vihiga High Court ELC Case number 4 of 2021 between the same parties and substantially the same issues.

It was submitted on behalf of the respondent vide the written submissions filed by the firm of Wasilwa Makhakara & Company Advocates that the applicant Regina M'mbone Manyu was a party (the 4th defendant) in VIHIGA ELC CASE NO. 4 OF 2021 (herein referred to as the former suit).

That the applicant was represented by K.N Wesutsa Advocates in the former suit. That on 21st July 2022 the court delivered a judgment allowing the respondent's claim and revoked the applicant's title to the said land which she had obtained illegally. That it is apparent that the applicant had concealed material facts from the court when filing this suit. That the conduct of the applicant exhibits malice, bad faith and abuse of the justice system.

Counsel submitted further that the instant proceedings is an abuse of the court process by the applicant seeking to reopen issues heard and determined on merit by court of competent jurisdiction. That the applicant has never appealed or applied for review of the judgment dated 21st July 2022.

That the applicant has not made out a case to warrant grant of the orders sought. Counsel urged the court to dismiss the application.

Written submission dated 26th January 2026 were filed by K.N Wesutsa & Co Advocates on behalf of the applicant. Counsel submitted that the sole issue for determination is whether or not the applicant's claim for adverse possessions is barred by the doctrine of res judicata arising from earlier proceedings in Vihiga ELC Case No. E004 of 2021

That the elements of res judicata as set out in section 7 of the Civil Procedure Act cannot be presumed but must be demonstrated through evidence, pleadings and judgments from the former suit. That by electing to raise the objection solely through grounds of objection the respondent has not placed documentary material before the court to establish the factual foundation necessary to sustain the plea of res judicata hence the objection should be dismissed.

That in the former suit the court did not consider continuous exclusive or adverse possession. That there was no inquiry into dispossession or discontinuation under the Limitation of Actions Act and that limitation was not pleaded. Counsel urged the court to dismiss the objection and allow the Originating Summons to proceed to hearing.

I have keenly considered the objection and the submissions by Counsel for both parties. The existence of the former suit namely; VIHIGA ELC CASE NO. 4 OF 2021(formerly KAKAMEGA ELC NO. 645 OF 2021) is not denied. A copy of the judgment emanating from the former suit was annexed to the applicant's Affidavit supporting the Originating Summons. A reading thereof shows that

the applicant herein was the 4th defendant in the former suit whereas the respondent herein was the 2nd plaintiff. The 1st plaintiff was Chavakali Yearly Meeting of Friend (Quakers).

It also shows that the subject matter of the suit was a land parcel known as N/MARAGOLI/ MBALE/1232 which had been subdivided to create NORTH MARAGOLI/ MBALE/1954,1955,1956 and 1957.

The judgment further shows that the court did find that the original parcel No. N. MARAGOLI/ MBALE/1232 was the property of the 1st plaintiff in that suit and that the subdivision that ensued under which the resultant parcels were registered in the name of the defendants was fraudulent. That by reason of the fraud the titles held by the defendants were defective and liable to cancellation.

The court noted in the said judgement that as the 1st plaintiff did not deny or contest the claim by the 2nd plaintiff (respondent herein) the 1st plaintiff could transfer the portion claimed by the 2nd plaintiff (respondent herein) to him.

The copy of the judgement further shows that the court proceeded to enter judgment in favour of the 1st plaintiff in that suit and made orders inclusive of an order cancelling the titles held by the defendants on grounds of having been obtained by fraud.

The title registered in the name of the applicant herein namely; NORTH MARAGOLI/ MBALE/1957 was one of the titles cancelled.

The applicant explained the nexus between land parcel number N. MARAGOLI/ MBALE/1957 which was the subject matter of the former suit and No. N. MARAGOLI/ MBALE/2533, the suit land herein that the two numbers refer to one and the same piece of land measuring 0.015 Ha or thereabouts.

Vide the Supporting Affidavit sworn by the applicant on 9/6/2025, the applicant deposed in paragraphs 3, 4 and 5 thereof that the portion which was previously

registered in her name as NORTH MARAGOLI/ MBALE/1957 and whose registration was cancelled vide the judgment in the former suit, is what was subsequently registered in the name of the respondent herein as NORTH MARAGOLI/ MBALE/2533.

As correctly submitted by both parties herein, the doctrine of *res judicata* as provided for in section 7 of the Civil Procedure Act prohibits the court from handling a matter between the same parties and in respect of the same subject matter, that has already been handled and decided upon by a court of competent jurisdiction. Section 7 of the Civil Procedure Act which provides that-

“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.

Explanation (1) – The expression “former suit” means a suit which has been decided before the suit in question, whether or not it was instituted before it.

Explanation (2) – For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation (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.

Explanation (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.

Explanation (5) – Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purpose of this section be deemed to have been refused.

Explanation (6) – where persons litigate bona fide in respect of a public right or a private right claimed in common for themselves and others, all persons interested in such right shall for the purpose of this section, be deemed to claim under the persons so litigating.”

From these provisions and as held by the Supreme Court in *John Florence Maritime Services Limited & Another -vs- Cabinet Secretary for Transport and Infrastructure and 3 others (2015) eKLR*

“....the ingredients of res judicata are firstly, the issues in dispute in the former suit between the same parties must be directly and substantially be in dispute between the parties in the suit where the doctrine is pleaded as a bar. Secondly, that the former suit should be between the same parties or parties under whom they or any of them claim, litigating under the same title and lastly that the court

or tribunal before which the former suit was litigated was competent and determined the suit finally.”

There is no doubt that the parties herein were parties in the former suit and the subject matter the same as demonstrated herein above. It is also clear that was the issue of ownership of the suit land was adjudicated between the applicant herein and the respondent and a final judgment made awarding the land to the 1st Plaintiff with an observation that the respondent herein could get his share from the 1st plaintiff therein. The same determination found the title held by the applicant herein to be fraudulent and cancelled it.

Under explanation 4 of section 7 of the Civil Procedure Act Explanation (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.

The applicant who had, together with the other defendants filed a defence in the former suit and was represented by Counsel had the liberty to raise the defence based on adverse possession if indeed such relief or defence was available to her. Having not done so the doctrine of *res judicata* applies.

The basis for the doctrine of *res judicata* as held in *John Florence Maritime Services Ltd & Another (supra)* is the principle of finality which is a matter of public policy. It ensures that litigation comes to an end and the verdict translates to fruit for one party and liability for the other party conclusively.

I find that the ingredients of *res judicate* have been demonstrated in the present suit. The result is that the present suit is hereby struck out for being *res judicata*. Each party to bear own costs of the suit.

Orders accordingly.

**Ruling dated and signed at Vihiga and read this 12th day of February 2026
virtually through Microsoft Teams Online Application.**

**E. ASATI,
JUDGE.**

In the presence of:

Ajevi--Court Assistant.

Kundu for the Applicant.

Wasilwa for the Respondent.