

2REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ELCA CASE NO. E001 OF 2025

**MARGARET WAMBUI
MICHORI.....APPELLANT**
VERSUS
**GEORGE W.
OKUMU.....RESPONDENT**

RULING:

1. This ruling is in respect of the Appellant’s Notice of Motion application dated 28th October, 2025 seeking the following orders:-
 1. Spent
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 3. That there be a stay of execution of the judgment in Eldoret Chief Magistrate court ELC No. E002 of 2021 George C. Okumu -Vs- Margaret Wambui Michori pending the hearing and determination of this appeal.
 4. That the costs of this application be provided for.
2. The application is premised on the grounds that the appellant will suffer substantial loss; that sufficient cause exists to warrant the grant of a stay of execution; that the appellant is willing to offer such security as will be ultimately binding and that the application has been made without unreasonable delay.
3. The application is supported by the affidavit of Margaret Wambui Michori, the applicant, sworn on even date. The

applicant's case is that the respondent impleaded her vide Eldoret Chief Magistrate Court ELC No. E002 of 2021 seeking for an order of permanent injunction restraining the applicant, her agents and/or servants from entering, creating boundaries, sub-dividing, cultivating or any other way dealing with the respondent's parcel of land known as KAPYEMIT/BLOCK 20 PLOT No. 104 measuring approximately 25ft by 100 ft. That the applicant entered appearance and filed her defence on 19th January, 2021 together with her witness statement and list of documents.

4. The applicant deponed that the suit was heard and judgment delivered on 25th April, 2024. That being aggrieved by the said judgment, the applicant sought an extension of time to appeal which was granted and the appeal validated by a ruling delivered on 25th September, 2025. The applicant states that she has now moved the court seeking a stay of execution pending the hearing and determination of the appeal in order to preserve the subject matter of the appeal by maintaining the status quo of her occupation of the land.
5. The applicant argued that the appeal raises arguable matters for pronouncement by this court which constitute sufficient cause to warrant the grant of a stay of execution pending appeal, adding that she stands to suffer substantial loss as the respondent has never had occupation of the land, and that in the event he takes over occupation, he may sale

it to a third party which will render it impossible to recover in the event the appeal succeeds.

6. The applicant deponed that she has enjoyed continuous possession of the land for over 10 years, and denied that eviction has taken place as alleged by the respondent. The applicant claimed that sufficient cause exists to warrant the grant of the orders sought, adding that the application has been made without unreasonable delay.
7. The application is opposed by the Respondent who filed a Replying Affidavit sworn on 31st October, 2025. He deponed that the application herein has been overtaken by events as execution has already been carried out and finalized and that he has developed his land and there is nothing to stay. The respondent reiterated that he is now in use, possession and occupation of the land to the exclusion of the appellant who was restrained from interfering with the respondent's possession of the land.
8. The respondent also pointed out that the application for stay of execution is wrongly before court as the same prayer had earlier been dismissed by this Honorable court vide its ruling of 25.09.2025 and therefore the matter is *res judicata*.
9. The respondent further contended that the trial court was within its rights to issue further orders in view of the observations of the court at the hearing and evidence, adding that the applicant contradicted herself in her evidence before the trial court. It is also contended that the

applicant has not provided any security nor shown any substantial loss and has not met the conditions under Order 42 rule 6 of the Civil Procedure rules in respect of stay of execution.

10. The applicant filed a supplementary affidavit dated 13th November, 2025 in response to the replying affidavit by the respondent, stating that the Police have not filed a report in court of having executed the judgment in the magistrate's court. The applicant claimed that the application is not res judicata as the ruling of 25th September, 2025 did not determine the issue of stay of execution pending appeal. The applicant stated that in the application dated 22nd January, 2025, there was an inadvertent omission to incorporate the prayer for a stay of execution abiding the outcome of the appeal and which her advocate informs her it was an error made in the typing of the application. She prayed that the orders sought be granted as land is an emotive matter.
11. The application was canvassed by way of written submissions. The applicant's submissions are dated 12th November, 2025 while the respondent's submissions are dated 7th November, 2025. The court has read and considered the said submissions together with the authorities relied on and I need not reproduce the same in this ruling.

Analysis and determination;

12. I have considered the application, the response thereto as well as the submissions of the parties and the applicable law.

The issues for determination are:-

- i. Whether the application is *res judicata*.
- ii. Whether an order of stay of execution of the judgment/decreed of the trial court in Eldoret CMC ELC No. E002 of 2021 delivered on 19th April, 2024 should issue pending the appeal.
- iii. Who shall bear the costs of the application.

i. Whether the application is *res judicata*;

13. The law on *res judicata* is provided for in section 7 of the Civil Procedure Act which states 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 suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

14. *Res judicata* originated from the Roman Law, “*ex captio res judicata*”, which means “one suit and one decision is enough

for any single dispute”, and the Latin phrase has further been defined by Spencer Bower and Handley: *Res Judicata* (Butterworths Common Law) 4th UK ed Edition as:-

“... a decision, pronounced by a judicial tribunal having jurisdiction over the cause and the parties, that disposes once and for all the matter(s) so decided, so that except on appeal it cannot be relitigated between the parties or their privies.”

15. Section 28 of the Environment and Land Court Act also bars the court from adjudicating over disputes between the same parties relating to the same issues previously and finally determined by any court of competent jurisdiction. The *res judicata* principle is meant to lock out from the court system a party who has had his day in a court of competent jurisdiction from re-litigating the same issues against the same opponent.
16. In the case of **John Florence Maritime Services Limited & Another -v- Cabinet Secretary for Transport and Infrastructure & 3 others (2015) eKLR**, the Court of Appeal stated that the ingredients of the doctrine of *res judicata* are firstly, that the issue in dispute in the former suit between the parties must be directly or substantially be in dispute between the parties in the suit where the doctrine is 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.

17. The Court of Appeal in the above case also stated as follows:

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“The rationale behind res judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res judicata ensures the economic use of court’s limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon.”

18. It has also been stated that the principle applies to applications with the same force whether the application be final or interlocutory.

19. I have perused the application dated 22nd January, 2025 and the ruling delivered by this court on 25th September, 2025. There is no dispute that the parties are the same in all these proceedings. In the application dated 22nd January, 2025, the Appellant was seeking orders of extension of time to appeal against the judgment in Eldoret Chief Magistrates court ELC No. E002 of 2021 and for the appeal filed to be deemed validated by the grant of the extension as well as an

order for stay of execution of the said judgment pending the hearing and determination of the application. In its ruling of 25th, September, 2025, the court noted that whereas it was clear from the application that there was no prayer for a stay pending appeal, the parties nonetheless submitted as though there was such a prayer. Consequently, the court declined to grant the order of stay of execution. The appellant has submitted that there was no pronouncement on the inherent merits of the application by the court.

20. In the case of **Gurbachau -vs- Yowani Ekori (1958) EA 450**, the Court of Appeal of Eastern Africa, while considering the doctrine of *res judicata* cited at page 453 a passage from the judgment of the **Vice Chancellor in Henderson -V- Henderson (1) 67 ER 313 at page 319** wherein it was stated that:-

“In trying this question, I believe I state the rule of the court correctly when I say that where a given matter becomes the subject of litigation in, and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not, except under special circumstances, permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought

forward, only because they have, from negligence, inadvertence or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties exercising reasonable diligence, might have brought forward at the time.”

21. In **Attorney General & another -vs- ET (2012) eKLR** it was held that;-

“The courts must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi vs NBK & others (2001) EA 177 the court held that “parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.” In that case the court quoted Kuloba J, (as he

then was) in the case of Njanju -vs Wambugu and another, Nairobi HCC No. 2340 of 1991 (unreported) where he stated: If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift in every occasion he comes to court, then I do not see the use of doctrine of res judicata...

The statutory provisions under section 7 of the Civil Procedure Act and the above cited case law are clear and bars a court from hearing a suit, application or issue if the same was substantially in issue in a former suit (or application) between the same parties, if the issues in a former suit (or application) after a hearing. Whatever issues being raised now in the application dated 28th October, 2025 could have been raised, and was indeed raised in the previous application.

22. By virtue of section 7 of the Civil Procedure Act, this application is barred by the doctrine of res-judicata. I find that the Notice of motion dated 28th October, 2025 is an abuse of the Court Process as it raises issues which had been substantially litigated and adjudicated upon by the court.
23. Consequently, the Notice of motion application dated 28th October, 2025 is devoid of merit and is dismissed with costs to the Respondent.

24. It is so ordered.

DATED, SIGNED and DELIVERED in ELDORET this 19th day of FEBRUARY, 2026.

**HON. C. K. YANO
JUDGE**

Ruling delivered in the presence of: -

Ms. Tum holding brief for Dr. Chebii for the Respondent.

Mr. Mugambi for the Appellant.

Court Assistant - Laban

ORIGINAL