



**Wanjohi & 2 others v Gichuhi (Environment and Land Case
E265 of 2024) [2026] KEELC 622 (KLR) (4 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 622 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E265 OF 2024
TW MURIGI, J
FEBRUARY 4, 2026**

BETWEEN

ISAAC GATHUNGU WANJOHI 1ST PLAINTIFF

ISABELLA NYAGUTHI WANJOHI 2ND PLAINTIFF

WAHFAM LIMITED 3RD PLAINTIFF

AND

GEORGE MURIUKI GICHUHI DEFENDANT

RULING

1. Before me for determination is the Notice of Motion dated 4th February 2025, brought under Article 50 of *the Constitution* of Kenya 2010, Section 7 of the *Limitation of Actions Act*, and Order 51 of the Civil Procedure Rules, in which the Defendant/Applicant seeks the following orders:
 - a. Spent.
 - b. That the suit is time-barred, having been brought outside the statute limitation timelines provided under Section 7 of the *Limitation of Actions Act* 2012.
 - c. That the Honourable Court lacks jurisdiction to hear and determine this suit.
 - d. That the suit is frivolous, vexatious, time-barred, and an abuse of the court process and should be dismissed with costs to the Defendant.
 - e. That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of George Muriuki Gichuhi, sworn on even date.



The Applicant's Case

3. The Applicant averred that the Plaintiffs filed a Plaint dated 28th June 2024, seeking to enforce the terms of an alleged sale agreement and transfer, both dated 24th December 2002, 23 years after the cause of action arose.
4. He further averred that the majority of the parties and witnesses involved in the alleged transaction concerning the disputed property, which is part of the Estate of the late Margaret Wanjiru Gichuhi, have either died or are mentally incapacitated.
5. He deposed that he is 85 years old and is unable to gather evidence or witnesses to defend the current suit, which would greatly prejudice him. He argued that the suit is time-barred and that none of the exemptions under Section 26 of the Limitation of Actions Act apply because the Plaintiffs have not pleaded fraud, mistake, or ignorance of material facts.
6. In conclusion, the Applicant urged the court to dismiss the suit with costs.

The Respondents' Case

7. The Respondents filed a replying affidavit sworn by Eng Isaac Gathungu Wanjohi on 30th May 2025, in opposition to the application.
8. The deponent averred that the Defendant has, since 24th December 2002, taken all necessary measures to prevent the Plaintiffs from enjoying the benefits of their return.
9. He further averred that the suit property was transferred to the Plaintiffs by the late Margaret Wanjiru Gichuhi, the vendor. He gave a detailed history of the suit property. He asserted that the Defendant has no title to the suit property and consequently has no basis for trespassing on it. He maintained that the Defendant has not challenged the conveyance held by the Plaintiffs. He contended that the Defendant's application is based on material non-disclosure of facts. He asserted that the fact that the Defendants' witnesses are old is not a defence in law
10. The application was canvassed by way of written submissions.

The Plaintiffs Submissions

11. The Plaintiffs filed their submissions dated 17th May 2025.
12. On behalf of the Plaintiff, Counsel reiterated the contents of the replying affidavit to support his submissions.

The Defendant's Submissions

27. The Defendant filed his submissions dated 15th September 2025.
28. On behalf of the Defendant, Counsel submitted that the only issue for determination is whether the Plaintiff's suit is time-barred and whether it should be struck out on that basis. Counsel reiterated the contents of the supporting affidavit in support of his submissions.

Analysis and Determination

27. Having considered the application, the respective affidavits, and the rival submissions, the issue for determination is whether the application is properly before the court. The court notes that the



Applicant filed a Notice of Preliminary Objection dated 1st October 2024, raising the following grounds:

- i. That this suit is time-barred, having been brought outside Section 7 of the *Limitation of Actions Act*, as it allegedly seeks to enforce the terms of a sale agreement dated 24th December 2002, almost 22 years later.
- ii. That the Honourable Court lacks jurisdiction to hear and determine the suit.
- iii. That the suit is frivolous, vexatious, time-barred, and should be dismissed with costs to the Defendant.

27. The preliminary objection was dismissed vide the ruling delivered on 6th March 2025.

28. This court is called upon to determine whether the application is res judicata. The doctrine of res judicata is grounded in Section 7 of the *Civil Procedure Act*, 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.

27. In *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] KECA 477 (KLR), the Court discussed the applicability of the res judicata doctrine as follows:

Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms;

- (a) The suit or issue was directly and substantially in issue in the former suit.
- (b) That former suit was between the same parties or parties under whom they or any of them claim.
- (c) Those parties were litigating under the same title.
- (d) The issue was heard and finally determined in the former suit.
- (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

27. In the matter at hand, the Applicant substantially reiterates arguments that have previously been dismissed. Pursuing the same arguments amounts to an abuse of the court's process, as established in *Muchanga Investment Ltd v Safaris Unlimited (Africa) Ltd & others* (2009).

28. Based on the foregoing, I find that the application is devoid of merit and is hereby dismissed with costs.

RULING DATED, SIGNED & DELIVERED VIA MICROSOFT TEAMS THIS DAY, 4TH OF FEBRUARY, 2026

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T. MURIGI

JUDGE

In the presence of:



Nduta Kamau holding brief for Mr Munyori for the Plaintiffs/Respondents

Nkatha holding brief for Hussein for the Defendant/Applicant

