



Rajab v Abdalla & 6 others (Environment and Land Case E002 of 2025) [2026] KEELC 1298 (KLR) (3 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1298 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E002 OF 2025**

FM NJOROGE, J

MARCH 3, 2026

BETWEEN

RISHARD RAMADHAN RAJAB PLAINTIFF

AND

MWINYI ABDALLA & 6 OTHERS & 6 OTHERS & 6 OTHERS & 6 OTHERS DEFENDANT

RULING

1. The application dated 25th June 2025 is seeking to have the present suit struck out with costs for being res judicata or res subjudice. The ground relied on for that application is that there exists another suit in Malindi being Malindi ELC Case Number 11 Of 2014 involving the same subject matter. The application is supported by the affidavit of Richard Otara, advocate, acting on behalf of the applicant. In the supporting affidavit is exhibited a copy of the plaint in Malindi ELC Case Number 11 Of 2014 which is has the following parties:

Naima Sulumu AbdunPlaintiff

Versus

Bahati MohamedDefendant

Hadija Mohamed DefendantDefendant

Rehema MohamedDefendant

Mwinyi MohamedDefendant

2. That suit was filed by the plaintiff therein through Kiarie Kariuki and Company advocates and has plot number 4370/III/MN as its subject matter. The Plaintiff therein claims that she is the registered owner of that land and her claim is for damages for trespass and for delivery of vacant possession of the suit property. She also claims an order of demolition of all structures on the suit property.



3. In the present case the plaintiff is Rishard Ramadhan Rajab (as director of Andalus Limited.) There is a copy of a search certificate showing that andalus is the owner of the land in the present case. The plaint dated 23rd February 2023 in the present case is seeking a permanent injunction against the defendants, restraining them from interfering in any way with two portions of land, one of which is CR36763, Subdivision Number 4370/III/MN (Original Number 3368/4).
4. The circumstances in which the doctrine of res judicata is applicable are:
 - a. Where the matter issue is directly and substantially in issue in a former suit;
 - b. Where the former suit has been between the same parties or parties under whom they claim;
 - c. Where the matter has been heard and finally decided by a competent Court.
5. I have examined the claims in the two suits and I have established that they do not have any common parties. None of the parties in either suit professes to sue on behalf of a party who has been joined in the other suit: each defendant appears to have been sued independently of any connection with any other party in the other suit. Also, each plaintiff appears to have sued independently of any connection with any party in the other suit.
6. In the circumstances I find that though the suits are not therefore related in any other way save that the same parcel of land has been mentioned in both suits, and that the different plaintiffs in each case are claiming some interest in respect of the same land parcel, no 4370/III/MN.
7. The doctrines of res judicata or res sub judice cannot apply in the present circumstances. Consequently, the application dated 25th June 2025 lacks merit and it is hereby dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 3RD DAY OF MARCH 2026.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**

