



REPUBLIC OF KENYA



KENYA LAW
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**Saka v Muraya & another (Land Case E418 of 2025)
[2026] KEELC 1270 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1270 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E418 OF 2025
OA ANGOTE, J
MARCH 5, 2026**

BETWEEN

JAMES SIMPSON SAKA APPLICANT

AND

BERNARD WANDURWA MURAYA 1ST RESPONDENT

EMBAKASI RANCHING COMPANY LIMITED 2ND RESPONDENT

RULING

1. What is coming up before the court is the 1st Respondent's Notice of Preliminary Objection dated 3rd October, 2025 premised on the grounds that:
 - i. The Applicant's Originating Summons Application filed under a Certificate of Urgency and dated 21st August 2025, is bad in law, fatally defective, incompetent and misconceived and ought to be struck out forthwith as the cause of action therein is res judicata, having been instituted in brazen breach of the mandatory requirements of Section 7 and 8 of the Civil Procedure Act, Chapter 21 Laws of Kenya.
 - ii. The issue of legal ownership of all those properties known as Nairobi Block 136/165 and Nairobi Block 136/166 situated in Ruai has conclusively been dealt with by this Honourable Court in Milimani Environment and Land Court, ELC Suit No. 962 of 2012- Bernard Wandurwa Muraya vs James Simpson Saka where Justice Mogeni J. declared that Bernard Wandurwa Muraya, the Respondent herein, is the registered legal owner of properties known as Nairobi Block 136/165 and Nairobi Block 136/166 vide judgment delivered on 19th January 2023.
 - iii. Following the judgment of this Honourable Court on 19th January 2023, there is already in place a permanent injunction restraining the Applicant herein, James Simpson Saka, either acting by himself or through his agents, servants, workers or persons claiming any right through



him from trespassing onto, getting into, remaining on, constructing or continuing with the construction of anything upon the subject two properties.

- iv. Further, the Court of Appeal vide its judgment delivered on 18th July 2025, in Nairobi Civil Appeal No. E367 of 2023- James Simpson Saka vs Bernard Wandurwa Muraya confirmed and upheld the Judgment of the High Court in Milimani Environment and Land Court, ELC Suit No. 962 of 2012- Bernard Wandurwa Muraya vs James Simpson Saka where Bernard Wandurwa Muraya, the Respondent herein, was declared to be the registered legal owner of the two properties known as Nairobi Block 136/165 and Nairobi Block 136/166.
 - v. Vide the aforesaid judgment delivered on 19th January 2023, this Honourable Court declared the Applicant herein, James Simpson Saka, a trespasser over the aforesaid two properties known as Nairobi Block 136/165 and Nairobi Block 136/166 and proceeded to issue a permanent injunction against the Applicant herein from ever interfering with or trespassing on the aforesaid two properties.
 - vi. In Milimani Environment and Land Court, ELC Suit No. 962 of 2012- Bernard Wandurwa Muraya vs James Simpson Saka, the Applicant herein filed a Counterclaim against Bernard Wandurwa Muraya and Embakasi Ranching Company Limited where he sought to be declared the legal owner of the aforesaid two parcels of land but which Counterclaim was dismissed with costs.
 - vii. As such, the parties in the current proceedings before this Court were exactly the same as those in Milimani Environment and Land Court, ELC Suit No. 962 of 2012- Bernard Wandurwa Muraya vs James Simpson Saka and the appeal in Nairobi Civil Appeal No. E367 of 2023- James Simpson Saka vs Bernard Wandurwa Muraya with the subject matter involving the legal ownership of the two properties known as Nairobi Block 136/165 and Nairobi Block 136/166 where this Honourable Court and the Court of Appeal have rendered themselves with finality upon hearing all the parties involved on merits.
 - viii. The proceedings herein are therefore a surreptitious attempt by the Applicant herein to review and or appeal, through the backdoor, the decisions of this Court and the Court of Appeal in Milimani Environment and Land Court, ELC Suit No. 962 of 2012- Bernard Wandurwa Muraya vs James Simpson Saka and Nairobi Civil Appeal No. E367 of 2023- James Simpson Saka vs Bernard Wandurwa Muraya, respectively.
 - ix. On account of the foregoing, the cause of action and the proceedings herein instituted vide the Applicant's Originating Summons Application filed under a Certificate of Urgency and dated 21st August 2025, is res judicata, having been instituted in brazen breach of the mandatory requirements of Section 7 and 8 of the [Civil Procedure Act](#), Chapter 21 Laws of Kenya and consequently, ought to be struck out with costs.
2. The Objection was canvassed by way of submissions. The 1st Respondent's counsel filed submissions in support of the Preliminary Objection on 21st November, 2025. Counsel submitted that, as articulated in Communications Commission of Kenya & 5 Others vs Royal Media Services Limited & 5 Others [2014] eKLR, the doctrine of res judicata is anchored on well-established principles, namely, that the issue in the former suit was determined by a court of competent jurisdiction; the matter directly and substantially in issue in the subsequent proceedings is the same as that determined in the earlier suit; and that the parties in both suits, or those claiming under them, are litigating under the same title.



3. Also referenced was *Uhuru Highway Development Limited v Central Bank of Kenya & 2 Others* [1996] eKLR and *Independent Electoral & Boundaries Commission v Maina Kiai, Khelef Khalifa & 4 Others* [2017] eKLR.
4. Counsel further submitted that, as explained by the Court of Appeal in *William Koross (Legal Representative of the Estate of Elijah C.A Koross) vs Hezekiah Kiptoo Komen & 4 Others* [2015] KECA 906 [eKLR], the philosophy underpinning the doctrine of *res judicata* is that litigation must come to an end and that it seeks to prevent endless disputes, protect parties from repeated vexation and unnecessary costs, and ensure that a successful litigant enjoys the fruits of a judgment while the unsuccessful party accepts the outcome.
5. According to Counsel, in *Milimani Environment and Land Court, ELC Suit No. 962 of 2012 - Bernard Wandurwa Muraya vs James Simpson Saka*, the Plaintiff, who is the 1st Respondent herein, sought reliefs whose net effect was a declaration of ownership over the properties known as Nairobi Block 136/165 and Nairobi Block 136/166 (formerly V11890 and V7492) situated at Embakasi Ranching, Ruai as against the Applicant who had filed a counterclaim. This issue, it was deposited, was conclusively determined and upon appeal, the trial court's finding was affirmed.
6. Counsel asserts that the Originating Summons dated 21st August 2025 raises substantially the same question of ownership litigated in the earlier proceedings, the only distinction being the legal basis now invoked and that whereas in the counterclaim the Applicant asserted ownership through purchase, in the present proceedings he claims ownership by way of adverse possession.
7. Counsel contended that these are mutually inconsistent legal doctrines which cannot be pursued in separate proceedings, and that the common denominator in both suits remains the issue of title to Nairobi Block 136/165 and Nairobi Block 136/166, thereby grounding the plea of *res judicata*.
8. Citing *William Koross (Legal Representative of the Estate of Elijah C.A Koross) vs Hezekiah Kiptoo Komen & 4 Others* [2015] eKLR, it was submitted that even where reliefs differ, *res judicata* may still apply where the common denominator in both suits is ownership of the suit property. It was urged that the summons is for dismissal.
9. The Plaintiff through Counsel filed submissions on 28th November, 2025. It was submitted that the Preliminary Objection does not meet the established threshold set out in *Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd* (1969) EA 696, and reaffirmed by the Supreme Court in *Hassan Ali Joho & Another vs Suleiman Said Shahbal & 2 Others* and *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others* [2015] eKLR not being one raising a pure point of law.
10. According to Counsel, the 1st Respondent's objection requires the court to interrogate pleadings and ascertain contested facts, thereby defeating the essence of a preliminary objection. Reliance in this regard was placed on the cases of *Hassan Nyanje Charo vs Khatib Mwashetani & 3 Others* [2014] eKLR and *Aviation & Allied Workers Union Kenya vs Kenya Airways Ltd & 3 Others* [2015] eKLR.
11. Nonetheless, it was submitted, the plea of *res judicata*, as set out in Sections 7 and 8 of the [Civil Procedure Act](#) and explained in *Kenya Commercial Bank Limited vs Muiiri Coffee Estate Limited & Another* [2016] eKLR, bars only matters that were directly and substantially in issue in a former suit and conclusively determined.
12. It was contended that the present proceedings, being a claim for adverse possession over Nairobi Block 136/165 and Nairobi Block 136/166, raise new and distinct issues that were neither litigated in *Milimani ELC No. 962 of 2012 - Bernard Wandurwa Muraya v James Simpson Saka* nor in Nairobi



Civil Appeal No. E367 of 2023 - James Simpson Saka v Bernard Wandurwa Muraya. Consequently, Counsel maintained that the present suit cannot be barred by res judicata.

Analysis and Determination

13. Having considered the Preliminary Objection, and the submissions thereto and against, the issues that arises for determination are whether the Preliminary Objection is competent, and if so, whether the Preliminary Objection is merited?
14. Vide the present objection, the 1st Respondent asserts that this suit is barred by the doctrine of res judicata. On its part, the Applicant contends that the Preliminary Objection is not only unmerited, but is also incompetent, on the ground that it does not raise pure questions of law capable of determination at the preliminary stage.
15. The law with respect to Preliminary Objections is now well settled. Law JA in *Mukisa Biscuits Manufacturing Co. Ltd. vs. West End Distributors (1969) EA 696 at 700* stated that:

“...a ‘preliminary objection’ consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
16. Newbold, P further held:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing butt unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop.”
17. The Supreme Court in the case of *Hassan Ali Joho & Another vs Suleiman Said Shahbal & 2 Others [2014] eKLR* re-affirmed the principles as set out in the *Mukhisa Case*(supra) stating:

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
18. It is apparent from the foregoing that a Preliminary Objection should raise pure points of law, argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or if the court is called upon to exercise judicial discretion. Further, the objection should be capable of disposing off the suit.



19. The substantive law on res judicata is found in 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.”

20. The doctrine of res judicata prohibits a court from re-litigating matters that have been conclusively determined between the same parties, or those claiming under them, over the same issues, by a court of competent jurisdiction. It operates as a jurisdictional bar and, where the material facts are undisputed and ascertainable from the pleadings alone without recourse to extraneous evidence, it raises a pure point of law capable of determination at the preliminary stage.

21. Indeed, as to whether such a plea may properly be raised by way of a preliminary objection, the Court of Appeal in *John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure, Attorney General, Kenya Maritime Authority & Office de Gestion du Fret Maritime (OGEFREM)* held as follows:

“There is no legal requirement or factual basis for the submission that the doctrine must only be invoked and/or ventilated through a formal application. It can be raised through pleadings as well as by way of a preliminary objection.”

22. The 1st Respondent contends that the present suit is barred by the doctrine of res judicata, the issues herein having been conclusively determined as between the same parties in *Milimani Environment and Land Court, ELC Suit No. 962 of 2012- Bernard Wandurwa Muraya vs James Simpson Saka* which was affirmed by the Court of Appeal in *Nairobi Civil Appeal No. E367 of 2023- James Simpson Saka vs Bernard Wandurwa Muraya*.

23. The existence of the said suits is not in dispute. Both parties have expressly referred to them in their pleadings and submissions. Further, the same were annexed to the Replying Affidavit of the 1st Respondent. The court is therefore able to ascertain, from the pleadings whether the statutory elements of res judicata have been satisfied without the necessity of calling for additional evidence. This issue is accordingly amenable to determination.

24. Having found that the plea of res judicata is capable of determination at this stage, the court will proceed to consider it. As earlier noted, the doctrine of res judicata finds its statutory foundation in Section 7 of the *Civil Procedure Act*.

25. In the case of *John Florence Maritime Services Limited & another vs Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment)*, the Supreme Court delved into an in-depth discussion of the concept thus:

“... The essence of the res judicata doctrine is further explicated by Wigram, V-C in *Henderson v Henderson* (1843) 67 ER 313, as follows:... 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” [emphasis supplied].”

26. Hence, whenever the question of *res judicata* is raised, a court will look at the decision claimed to have settled the issues in question and ascertain whether the parties are the same, or are litigating under the same title; whether the issues are the same and whether the previous case was fully determined by a court of competent jurisdiction. This test is summarized in *Bernard Mugo Ndegwa vs James Nderitu Githae & 2 others*, (2010) eKLR, under five distinct heads:
- “(i) the matter in issue is identical in both suits;
 - (ii) the parties in the suit are the same;
 - (iii) sameness of the title/claim;
 - (iv) concurrence of jurisdiction; and
 - (v) finality of the previous decision.”
27. The 1st Respondent asserts that the present suit is barred by the doctrine of *res judicata*, on account of the judgment delivered in *Milimani Environment and Land Court, ELC Suit No. 962 of 2012- Bernard Wandurwa Muraya vs James Simpson Saka* which judgement was affirmed by the Court of Appeal in *Nairobi Civil Appeal No. E367 of 2023- James Simpson Saka vs Bernard Wandurwa Muraya*.
28. In response, the Applicant contends that the issues in the present suit are distinct. In particular, the present suit is one for adverse possession, a new and separate issue that was not litigated in *Milimani Environment and Land Court, ELC Suit No. 962 of 2012- Bernard Wandurwa Muraya vs James Simpson Saka* and *Nairobi Civil Appeal No. E367 of 2023- James Simpson Saka vs Bernard Wandurwa Muraya*.
29. The court has carefully considered the matters placed before it. *Milimani Environment and Land Court, ELC Suit No. 962 of 2012 — Bernard Wandurwa Muraya v James Simpson Saka* was instituted by Bernard Wandurwa Muraya against James Simpson Saka. He sought, inter alia, a permanent injunction restraining Mr. Saka from interfering with plot Numbers V11890 and V7492 situated at Embakasi Ranching Company Limited, Ruai within Nairobi County; a declaration that the said parcels belonged to him; and damages for alleged illegal and malicious trespass, together with compensation for the loss of Plot No. V7492 and building materials said to have been on site.
30. In response, the Defendant lodged a counterclaim seeking, among other reliefs, a declaration that he was the lawful allottee and exclusive owner of Plot Number P6960 (equivalent to Nairobi Block 136/166) situated at Ruai within Embakasi Ranching Company Limited; an order that any title deed or lease issued over the said plot be declared unlawful and cancelled; and permanent injunctive orders restraining interference with the property.
31. He further sought orders compelling the 2nd Defendant to process and issue title in his favour, and, in the alternative, compensation equivalent to the prevailing market value of Plot Number P6960 (Nairobi Block 136/166).



32. The ELC court found in favour of the Plaintiff declaring him the lawfully registered proprietor of Plot Nos. V11890 and V7492 and issued among others permanent injunctive orders restraining the Defendant from interfering thereon. This position was affirmed on appeal.
33. In the present suit, the Applicant seeks a declaration that he has acquired title to Plot No. P6960, Nairobi Block 136/165 and Nairobi Block 136/166 by way of adverse possession. He contends that any interests, rights or title previously held by the 1st Respondent and Embakasi Ranching were extinguished upon the lapse of twelve (12) years from 1992, pursuant to Sections 7, 13, 37 and 38 of the *Limitation of Actions Act*, with the consequence that no lawful interest, estate or title in the suit properties could thereafter be transferred or transmitted to them.
34. It is evident from the foregoing that the parties in the present proceedings are the same parties who litigated in Milimani ELC Suit No. 962 of 2012, save for the land registrar, and that both matters concern the ownership of Nairobi Block 136/165 and Nairobi Block 136/166.
35. Although the Applicant now advances a claim framed under adverse possession, the substance of the dispute remains the question of title to the same parcels, an issue that formed the core of the earlier suit and was conclusively addressed therein, and subsequently affirmed on appeal in Nairobi Civil Appeal No. E367 of 2023.
36. It bears emphasis, and as restated by the Court of Appeal in *Mwikali & another v Mutungi & 3 others* (Civil Appeal 189 of 2019) [2026] KECA 231 (KLR) (13 February 2026) that parties cannot evade the doctrine of res judicata by recasting an ownership dispute through new causes of action once the core question has been conclusively determined. In affirming the trial court, the Court of Appeal observed that the joinder of new parties or the introduction of new causes such as adverse possession, amount to a stratagem designed to reopen issues already settled.
37. The court is further guided by the well-known principle in *Henderson vs Henderson* (1843) 67 ER 313, which expressed that res judicata extends beyond matters expressly determined to include those issues which properly formed part of the earlier litigation and which, with reasonable diligence, ought to have been raised at that time.
38. Indeed, the Applicant cannot evade the doctrine merely by reformulating the claim, shifting from a case grounded on purchase or allotment to one framed as adverse possession where the ultimate objective remains a declaration of ownership over the same parcels of land.
39. Ultimately, the court is satisfied that the present suit contravenes the doctrine of res judicata, the ownership of the suit parcels having been conclusively determined in Milimani Environment and Land Court, ELC Suit No. 962 of 2012- Bernard Wandurwa Muraya vs James Simpson Saka and Nairobi Civil Appeal No. E367 of 2023- James Simpson Saka vs Bernard Wandurwa Muraya.
40. Accordingly, the Preliminary Objection dated 3rd October, 2025 is found to be merited. Consequently, the Originating Summons dated 21st August 2025 is hereby dismissed with costs to the 1st Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 5TH DAY OF MARCH, 2026

O. A. ANGOTE

JUDGE

In the presence of:

Mr. Adagala for the Applicant



Ms. Wangeche for the 1st Respondent

Court Assistant: Tracy

