



Kimani & another (Suing as the legal representatives of Estate of Hannah Njoki Njoroge - Deceased) v Njuki (Environment and Land Miscellaneous Application E210 of 2025) [2026] KEELC 1159 (KLR) (19 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1159 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E210 OF 2025
AA OMOLLO, J
FEBRUARY 19, 2026

BETWEEN

AMOS NJOROGI KIMANI 1ST APPLICANT
PETER MUTHEE KAMAU 2ND APPLICANT
SUING AS THE LEGAL REPRESENTATIVES OF ESTATE OF HANNAH NJOKI
NJOROGI - DECEASED

AND

GEORGE KIMANI NJUKI RESPONDENT

RULING

1. Vide a Notice of Motion dated the 22nd July, 2025, brought pursuant to the provisions of Article 159 (2) (d) of *the Constitution*, 152A, 152E and 152F of the *Land Act*, 2012 and Sections 3 and 3A of the *Civil Procedure Act*, the Applicants seek the following reliefs: That
 - i. Spent
 - ii. Spent
 - iii. Pending the hearing and determination, the honourable court be pleased to issue an order compelling the Respondent herein from carrying on with any construction works, blocking of access road, fencing off any section of the said Land Registration Number Dagoretti/ Mituini/268 until after survey, demarcation and fixation of beacons thereof has been undertaken by the land registrar.
 - iv. This court do hereby issue an injunction against the Respondent compelling him to cease from carrying on with any construction works, blocking of access road, fencing off any section of



the said land Registration Number Dagoretti/Mituini/268 until after survey, demarcation and fixation of beacons thereof has been undertaken by the land registrar.

- v. In the alternative, this honourable court be pleased to order the land registrar to survey, demarcate and affix beacons on the said land Registration Number Dagoretti/Mituini/268 within 14 days of the date of this Application.
 - vi. This court be pleased to make any other order or further orders as it pleases in the interest of justice.
 - vii. Costs of this Application be provided for.
2. The Motion is supported by the affidavit of Amos Njoroge Kimani, sworn on an even date. Mr. Kimani deponed that he is aware that on or about 29th February, 2024, this court in Milimani ELC Suit No. 850 of 2007, George Kimani Njuki vs Hannah Njoki Njoroge entered judgment in favour of the Respondent, directing that he is registered as proprietor of a one-acre portion to be excised from Land Reference Number Dagoretti/Mituini/268(hereinafter the suit property).
 3. He explained that, to the best of his knowledge, the land registry records show that no resurvey, demarcation, or subdivision of the said parcel has been undertaken. He avers that, notwithstanding the foregoing, the Respondent, without any colour of right, unlawfully hived off and commenced fencing the entire six acres of the suit property, in the process blocking an access road that has been in continuous use for over thirty years. He explains that this action has effectively denied the Applicants and the tenants of the estate of the late Hannah Njoki Njoroge access to their homes.
 4. As a consequence, the Applicants and tenants aforesaid have been compelled to park their vehicles outside the property, and children residing on the estate have been unable to access school and other essential services, gravely interfering with the Applicants' and the tenants' right to quiet possession and peaceful enjoyment of the adjoining property.
 5. According to Mr. Kimani, all efforts by the Applicants to resolve the matter amicably have been unsuccessful, and the Respondent has remained adamant in maintaining the blockage by purporting to hive off the entire six acres, despite the fact that the land has neither been surveyed nor subdivided in accordance with the court's judgment.
 6. As advised by Counsel, he stated, this court is clothed with the requisite jurisdiction and powers to order the Respondent to cease any further blockage of the access road pending the delimitation and demarcation of boundaries by the Land Registrar, and that the orders sought will not occasion prejudice to any of the parties herein but are necessary to ensure that justice is served.
 7. He urges that unless this court intervenes, the estate will continue to suffer irreparable harm, including disruption of daily activities, denial of access to education for children residing on the property, and a gross violation of the estate's constitutional right to property.
 8. In response, the Respondent filed a Notice of Preliminary Objection dated the 29th October, 2025 in which he averred THAT:
 - i. The application and the entire proceedings thereof are res judicata, inter alia, in that:
 - a) The dispute between the parties in the said Title Number Dagoretti/Mituini/268 (hereinafter referred to as the Suit Premises) was heard in ELC No. 850 of 2007, George Kimani Njuki – Plaintiff vs Hannah Njoki Njoroge, and determined by the Honourable Lady Justice A. Omollo in her judgment delivered on 29th February 2024



- b) The said judgment ordered and decreed, inter alia, that the Plaintiff was entitled to be registered as the proprietor of one (1) acre out of Title Number Dagoretti/Mituini/268 in place of Hannah Njoki.
 - c) The said judgment was final and binding on the parties.
 - d) The Applicant has neither appealed against the said judgment and/or any part thereof, nor has he sought for the same to be reviewed.
 - e) In these circumstances, this Honourable Court does not have jurisdiction to entertain and/or grant the prayers sought in the Application.
- ii. That the said Notice of Motion Application and the entire process are incurably defective and the same do not lie.
9. The Respondent also filed a Replying Affidavit dated 2nd December 2025. He reiterated the contents of the Preliminary Objection, maintaining that the application contravenes the doctrine of res judicata and is a veiled attempt to relitigate issues already determined, in the hope of obtaining a more favourable outcome. He further avers that the Applicants neither appealed against nor sought a review of the judgment of the court so as to warrant the present application.
10. According to Mr. Njuki, the factual status on the ground before, during, and after the trial, as confirmed by the judgment of the court, is that he has been in full possession and occupation of the three-acre portion of land together with the one-acre portion acquired from Hannah Njoki, which parcels adjoin each other. He avers that to date he remains in occupation of the said land, secured by a fence and treated as one contiguous parcel measuring four acres.
11. In that regard, the Respondent contends that paragraphs 4, 5, 6, 8 and 9 of the Applicant's Supporting Affidavit are untrue, far-fetched, and calculated to provoke further litigation on matters already conclusively resolved by the court. He further disputes the allegations contained at paragraph 7 of the Supporting Affidavit, stating that there have never been any discussions or proposals for settlement as alleged.
12. In any event, he explains, it is not possible to reach any agreement with the Applicants because the reliefs sought in the application are aimed at subverting and effectively rewriting the judgment of this court in the Applicants' favour. He similarly disputes the allegations at paragraphs 9 and 10 of the Supporting Affidavit, asserting that the court lacks the jurisdiction and powers to grant the orders sought therein.
13. He urges that granting the orders sought will be highly prejudicial to him, considering his occupation, possession, and ownership of the three-acre portion together with the one-acre portion decreed to him by the court. He adds that the Applicants neither filed any counterclaim nor advanced any claim against him during the trial, save for defending the suit. That the Motion seeks to improperly introduce a new party, namely the Land Registrar, into concluded proceedings, which is untenable in law.

Submissions:

14. The Applicants filed submissions dated 19th January 2025, submitting that the test for the application of the doctrine of res judicata is set out under Section 7 of the [Civil Procedure Act](#), and that all the elements therein must be satisfied conjunctively. Reliance was placed on the decision in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] eKLR and *Henderson v Henderson* (1843) 67 ER 313.



15. Additional reliance was placed on the case of Attorney General & Another v ET [2012] eKLR, and Omondi v National Bank of Kenya & Others [2001] EA 177, where the court cautioned against litigants evading the doctrine by introducing new causes of action in order to obtain the same relief, and which affirmed that res judicata cannot be avoided by merely adding parties or causes of action. Also cited was Njanju vs Wambugu & Another, HCC No. 2340 of 1991 (unreported).
16. Counsel submitted that whereas the earlier suit concerned a claim for adverse possession over approximately one acre carved out of the suit property which measures approximately six acres, the present application is concerned with the demarcation of the suit property to enable the Applicants and other interested parties clearly ascertain boundaries and to access the estate of the late Hannah Njoki Njoroge without obstruction.
17. As to whether the plea is merited, Counsel urged in the affirmative, stating that the application concerns the demarcation and establishment of boundaries of the suit property measuring approximately six acres. Reliance was placed on Section 18 of the *Land Registration Act*, which vests the authority to determine, rectify, and re-establish land boundaries in the Land Registrar.
18. Counsel submitted that, given the statutory mandate vested in the Land Registrar, the Applicants are entitled to seek orders directing the re-establishment of boundaries for Land Parcel No. Dagoretti/Mituini/268. It was argued that such orders would safeguard both parties' rights to quiet possession by preventing encroachment, particularly because, although the Respondent was awarded one acre through adverse possession in ELC No. 850 of 2007, the absence of survey and demarcation has left the exact extent of that portion unascertained on the ground.
19. No submissions were filed by the Respondent as at 11th February, 2026.

Analysis & Determination:

20. Having considered the Motion, responses and submissions, I frame the following issues for determination:
 - i. Whether the present Motion contravenes the doctrine of res judicata and if not?
 - ii. Whether the same is merited?

I. Whether the present Motion contravenes the doctrine of res judicata?

21. The Applicants asked the court to issue orders restraining the Respondent from carrying out any construction works, blocking off the access road, and fencing off any section of L.R No Dagoretti/Mituini/268 until after a survey, demarcation and fixation of beacons of the said land have been undertaken by the Land Registrar.
22. Vide a preliminary objection in response, it is asserted that this court has no jurisdiction to grant the orders aforesaid, as this Motion contravenes the doctrine of res judicata.
23. Section 7 of the *Civil Procedure Act*, Cap 21 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”.



24. In the present matter, the existence of ELC Suit No. 850 of 2007, George Kimani Njuki v Hannah Njoki Njoroge, is not disputed. The judgment delivered therein has been annexed to the application and forms part of the record before the court. Thus, the court is not being invited to interrogate contested facts, but merely to compare the proceedings and issues in the present application with those in the earlier suit, in order to determine whether the doctrine of res judicata has been offended.
25. The rationale underpinning the doctrine of res judicata was succinctly articulated by the Supreme Court in John Florence Maritime Services Limited & another v Cabinet Secretary for Transport & Infrastructure & 3 others (Petition No. 17 of 2015) [2021] KESC 39 (KLR), as follows:

“...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. Thus, 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.
27. The Respondent asserts that the case ELC Suit Number 850 of 2007, George Kimani Njuki -vs- Hannah Njoki Njoroge, was between the parties herein, albeit that the Applicant was the Defendant and the Respondent was the Plaintiff. From a comparison of the pleadings, issues and reliefs sought in ELC Suit No. 850 of 2007 vis the present Motion, it is evident that the former suit was confined to the Respondent’s claim for adverse possession over a one-acre portion of the suit property. The court found in his favour.
28. The present application does not seek any similar relief as the Applicants allege that, rather than limiting himself to his one-acre parcel in accordance with the court’s judgment, the Respondent has hived off, blocked, and begun fencing off the whole six acres, and is in the process of blocking an access road that has been in use for over 30 years.
29. Thus, the dispute here does not concern the Respondent’s entitlement to the one-acre portion already determined in ELC Suit No. 850 of 2007, but rather the manner in which the Respondent is alleged to be exercising that entitlement on the ground. The Applicants’ grievance concerns the alleged encroachment beyond the adjudicated one-acre boundary, the fencing and obstruction of access, and the need for survey, demarcation, and preservation pending ascertainment of the true boundaries.

II. Whether the Motion is merited?

30. The Applicants case, in summary, is that although judgment was entered on 29th February 2024 in Milimani ELC Suit No. 850 of 2007, George Kimani Njuki v Hannah Njoki Njoroge, awarding



the Respondent one acre out of L.R. No. Dagoretti/Mituini/268, no resurvey, demarcation, or subdivision has ever been carried out to give effect to that judgment.

31. Despite this, the Respondent is alleged to have unlawfully fenced off and hived the entire six-acre parcel, thereby blocking a long-standing access road and denying the Applicants and the estate's tenants of the late Hannah Njoki Njoroge access to their homes. The Applicants contend that these actions have disrupted daily life, denied children access to school and essential services, interfered with quiet possession, and caused tenants to vacate the property, resulting in ongoing and irreparable economic loss to the estate.
32. On the other hand, the Respondent maintains that the factual position on the ground, both before and during the trial and as confirmed by the judgment of the court, is that he has always been in full possession and occupation of his original three-acre parcel together with the adjoining one acre awarded to him from the estate of Hannah Njoki Njoroge, which he treats as a single fenced parcel measuring four acres.
33. He disputes the Applicants' allegations, describing the same as untrue, far-fetched, and a deliberate attempt to reopen matters already conclusively determined by the court. The Respondent further denies any settlement discussions, contending that the reliefs sought are aimed at subverting and rewriting the judgment in the Applicants' favour, which the court lacks jurisdiction to do.
34. A careful reading of the judgment in ELC No. 850 of 2007 reveals that the court's determination was directed at the question of entitlement through adverse possession and not the technical delimitation of boundaries. While the court was satisfied that the Respondent had established a right to one acre, the Applicants assert that a survey was undertaken or that the precise boundaries were fixed.
35. The Applicants do not disclose when the impugned fencing was done, and the pictorial evidence annexed does not help to prove fencing of the entire six acres as alleged. It was crucial to provide evidence of the extent of the fencing, noting the averment of the Respondent that he has always had possession of the three (3) acres plus the one acre awarded by the court judgment. Further, the court cannot discern from the photographs that an access road has been blocked.
36. Section 18 of the [Land Registration Act](#) vests the authority and responsibility on the Land Registrar to determine, rectify, and re-establish land boundaries upon application by interested parties where it provides:
 - “ 1. Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.”
37. The jurisprudence cited, including the Court of Appeal decision in *Azzuri Properties v Pink Properties Ltd* [2018] eKLR underscores that where the dispute revolves around the identification or fixing of boundaries, the Land Registrar must first undertake the exercise before the court intervenes. The reason for this is clear, this court lacks the technical capacity to determine such boundaries.
38. In the present application, the Applicants did not plead that they approached the Land Registrar to exercise that mandate and it failed them. It is my considered opinion that the verification of what constitutes the “one acre” awarded in ELC No. 850 of 2007 is therefore a matter falling squarely within the jurisdiction of the Land Registrar and the survey office under the [Survey Act](#).
39. Regarding the Applicant's request to prohibit the Respondent from encroaching upon the suit property, it follows logically that the court can only grant such an injunction if, upon re-establishment



of the boundaries, it is determined that the Respondent has indeed infringed upon the Applicant's property. The issuance of an injunction in such circumstances would be predicated on clear evidence of encroachment, once the boundary re-establishment process has been undertaken.

40. In this instance, the Applicants approached the court through a miscellaneous application not predicated upon a substantive suit. They are seeking prohibitory orders pending demarcation of the boundaries by the Land Registrar and the Survey Office, but they have not moved the two offices to take action. Therefore, I find the application is premature.
41. In light of the absence of evidence that the whole land was fenced and that no request has been made to the Land Registrar under section 18 of the *Land Registration Act*, I hold the application is premature and without merit. I dismiss it with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT KISII, THIS 19TH DAY OF FEBRUARY, 2026
(THROUGH ONLINE PLATFORM)**

A. OMOLLO

JUDGE

