

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT MILIMANI**  
**ELC NO. E364 OF 2024**

---

**DANIEL OTIENO MIGANGA** - **1<sup>ST</sup>**  
**PLAINTIFF/RESPONDENT**

**PETER KIHUYU MUTHEE** - **2<sup>ND</sup>**  
**PLAINTIFF/RESPONDENT**

**COLLINS AWANDU WASONGA** - **3<sup>RD</sup>**  
**PLAINTIFF/RESPONDENT**

**JACKSON ONYANGO NYANGOMA** - **4<sup>TH</sup>**  
**PLAINTIFF/RESPONDENT**

**[all suing on behalf of ROYSA**  
**COMMUNITY DEVELOPMENT SOCIETY]**

**VS**

**CHIEF OF THE DEFENCE FORCES** - **1<sup>ST</sup>**  
**DEFENDANT/APPLICANT**

**THE PRINCIPAL SECRETARY,**  
**MINISTRY OF DEFENCE** - **2<sup>ND</sup>**  
**DEFENDANT/APPLICANT**

**THE HON ATTORNEY GENERAL** - **3<sup>RD</sup>**  
**DEFENDANT/APPLICANT**

**RULING**

**[In respect of the Defendants' Notice of Motion dated**  
**22/9/2025]**

1. The Plaintiffs moved this Court vide a plaint dated the 30/8/24 seeking orders that;

- a. A declaration that the Plaintiff Society is the registered lease holder, owner, and allottee of LR NO Nairobi/Block 184/1-147 [ hereinafter called the suit land].
  - b. A declaration that any encroachment and or development of the Suit Property by the Kenya Defence Forces is unlawful and illegal.
  - c. A permanent injunction restraining the 1st and 2nd Defendants and the Kenya Defence Forces, whether individually or through their officers, agents, servants, or persons acting on their behalf, from encroaching, trespassing upon, interfering with, making construction, or engaging in development, or in any other manner meddling in the peaceable possession and occupation by the plaintiff's society on the suit property.
  - d. An order for vacant possession of the suit land by the Kenya Defence Forces
  - e. General damages for loss
  - f. Costs of the suit.
2. Denying the Plaintiffs' claims, the Defendants state in their statement of defence dated 23/9/2024 that they provided a lengthy history of the suit land from 1949 to date. They argued that the land, formerly LR No 5875/2 and now LR No NBI/184/2., has been the subject of litigation, including ELC 495 of 2011, in which the Plaintiffs were the defendants. The court's decision, issued on 18/8/2017, found that the Plaintiffs had no valid claim to the suit land and dismissed the case in favour of Kasarani Mall Limited. There is also an active case, ELC 010 of 2020 - Kasarani Mall Ltd & Anor v The Principal Secretary, Ministry of Defence & 4 others, consolidated with NBI ELC 1499 of 2013 - Sidhi Investments Limited v Uchumi Supermarkets Ltd and others.
3. The Defendants averred that the suit herein is resjudicata and that the jurisdiction of the Court was ousted and undertook to raise the preliminary objection at the opportune time.

4. True to its word, the defendants filed the current application dated 22/9/2025 seeking orders that the Plaintiffs' claim dated 30/8/2024 be struck out on grounds of res judicata, and that the costs be awarded in their favour.
5. The application is based on the grounds therein and the supporting affidavit of Major Boniface Maina Ombiro sworn on the same date.
6. The deponent stated that he works for the Ministry of Defence and is responsible for maintaining the records of all military properties, hence he is competent to swear the affidavit.
7. That the dispute revolves around the same land, namely LR NO 5875/2, now Nbi Block 184/2, which the plaintiffs misrepresent to the Court as LR Nbi Block 184/1-147.
8. He confirmed that the Court has already determined the ownership of the suit land in *Kasarani Mall Vs David Oyieno Maganaga & 3 others* [2015] ECLR and in *Kasarani Mall Limited & Anor Vs Principal Secretary, Ministry of Defence & 4 others*, as consolidated with ELC 1499 of 2013 - *Sidhi Investments Ltd Vs Uchumi Supermarkets Ltd & 1 other* [2025] KELC 4075 KLR.
9. In *Kasarani Mall Vs David Otieno Miganga & 3 others* [2015] ECLR, the plaintiffs were sued as representatives of Roysa Community Self Help Group for encroachment and trespassing on the suit land. The Court found that Kasarani Mall held a valid title to the land, while the plaintiffs had no legitimate claim to it; therefore, it definitively determined the ownership claim.
10. Despite securing a favourable judgement, Kasarani Mall Limited, unable to access the land, filed another suit titled *Kasarani Mall Limited & Anor Vs Principal Secretary, Ministry of Defence & 4 others*, seeking ownership of the land in question. Later, this suit was consolidated with ELC 1499 of 2013 - *Sidhi Investments Ltd Vs Uchumi Supermarkets Ltd & 1 other* [2025] KELC 4075 KLR. In this case, the Court determined that the defendants were the lawful owners of the land, which had been acquired lawfully for

military purposes and occupied by the Kenya Defence Forces for their operations.

11. Furthermore, the Court ordered the cancellation of the title for LR No. 5875/2, requiring its nullification within 60 days of the judgment, a cancellation that was confirmed by a search dated 28/7/2025. On 30/7/25, the Ministry of Lands and Physical Planning confirmed that, according to their records, parcel Nos NBI Block 184/1/-147 no longer existed, as FR Nos 437/24/-25 and computations No 70928 had been cancelled, and the land records had been reverted to NBI Block 184/2, as per FR No 102/112.
12. He deponed that once a title has been declared fraudulent by a court, it ceases to have any effect and the said cancelled titles are incapable of conferring any legal or equitable rights. The question of the ownership of the suit lands being determined by a competent court, the suit herein is rendered res judicata.
13. The current suit aims to reopen previously decided cases, and the present suit is barred by the provisions of section 7 of the CPA.
14. Furthermore, the deponent stated that the 2<sup>nd</sup> -4<sup>th</sup> Plaintiffs who purport to bring the suit as officials of Roysa Community Self Help Group are aware that their interest in the suit land was determined by the Courtin Kasarani Mall Vs David Otieno Miganga & 3 others [2015] EKL.R. Re-introducing the claim by giving a cosmetic rebranding is a deliberate venture to defeat the Defendant's rights in the property.
15. The defendants opposed the preliminary objection vide a replying affidavit sworn 13/10/2025 by Peter Kihuyu Muthee on behalf of the co-plaintiffs.
16. He deponed that LR No 5875/2 was closed following the subdivisions of the land in regularisation of the settlers' members in 2017. Upon closure of LR No 5875/2, LR No Nbi Block 184/2 was then subdivided into several plots, namely LR No 184/1-147, and allotment letters were issued to the members of the Society as shown in the list annexed thereto. He accused the defendants of

scheming to have LR No 184/1-147 cancelled. Meanwhile, the deponent stated that the defendants have not explained how LR No 5875/2 changed to LR No 184/2.

17. Furthermore, he stated that the Plaintiffs were not parties in ELC 495 of 2011. He added that the entity involved in the suit was Roysa Community Self-Help Group, which is separate and distinct from Roysa Community Development Society. A certificate of registration of the Society dated 6/5/2014 was annexed to the affidavit. Equally, the deponent stated that the Plaintiffs were not involved in ELC 010 of 2022 and therefore the current suit is not barred by the doctrine of res judicata.
18. Furthermore, he stated that the judgment in ELC 495 of 2011 was not in rem and that the current parties were not involved in that suit, while the case in ELC 010 of 2022 was dismissed, and they are reviewing it to determine their next course of action. He urged the Court to dismiss the application entirely.
19. The Court directed the parties to file written submissions, which they both complied with.
20. Counsel for the Defendants presented a single issue for the court's consideration, namely, whether the suit as filed is res judicata. The defendant responded affirmatively and reaffirmed its position that the main issue in the suit concerns the proprietorship and ownership of LR No 5775/2, now LR No NBI Block 184/2, which the plaintiffs have incorrectly identified as LR Nbi/Block 184/1-147. Additionally, the defendant argued that the ownership issue was definitively settled.
21. Counsel for the plaintiff similarly framed a single issue, which is whether the Plaintiffs' suit is res judicata and contravenes the doctrine of finality to judgment. Counsel argued that the parties in the current suit and the previous suits are different, as the defendants in this case have never been parties to the earlier proceedings, nor have the plaintiffs. The Society is separate and distinct from the Self-help group, with entirely different

memberships. The issue to be decided in the current suit is the legality of the defendant's title and possession, which, in their view, has not yet been determined.

**Analysis and determination**

22. Having considered the application, the pleadings and written submissions, the key issue is whether the suit is resjudicata.
23. Section 7 of the Civil Procedure Act, cap 21 Laws of Kenya provides for the doctrine of res judicata as a bar for the Court to determine a subsequent similar suit in the following terms;

“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. Section 28 of the Environment and Land Court also bars the Court from adjudicating over disputes between the same parties and relating to the same issues previously and finally determined by any Court of competent jurisdiction.
25. Flowing from the above statutory provisions, it is therefore clear that to succeed in the plea of res judicata, the following elements must be proved;
  - a. The Court that heard the matter must have been competent
  - b. The matter directly and substantially in issue must be the same as that formerly determined.
  - c. The parties must be the same and or litigating under the same titles.
  - d. The matter must have been heard and finally decided.

26. These principles were stated in the case of *The Independent Electoral and Boundaries Commission -vs- Maina Kiai & 5 Others*, [2017] eKLR, where the Court of Appeal held that:

“For the bar of *res judicata* to be effectively raised and upheld on account of a former suit, the following elements must 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. The Supreme Court stated the purpose of the doctrine of *res judicata* in the case of *John Florence Maritime Services Ltd & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others* (2021) eKLR, para 54 as follows;

“The doctrine of *Res judicata* in effect, allows a litigant only one bite at the cherry. It prevents a litigant or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier actions. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.”

28. With the above principles in mind, I will now determine the application.
29. Matters at issue; I have reviewed the two previous cases cited in the application. The subject matter of the land in all three cases concerns the determination of ownership of LR No 5875/2, now NBI/184/2. The Plaintiffs have acknowledged this, and their purported parcel of land, namely LR No 184/1-147, originates from LR No 5875/2. It is undisputed that this land was adjudicated to Kasarani Mall in ELC 495 of 2011. However, unable to access the land, Kasarani filed E010 of 2022, which was consolidated with other cases, and in its judgment, the Court determined that the lands were compulsorily acquired for the Ministry of Defence, and Kasarani Mall therefore did not acquire any title. The Defendants have stated that LR No NBI/Block 184/1-147 has been cancelled and is accordingly non-existent, and that no rights can arise from it. The issue of land ownership has thus been finally determined, and there is no matter for any party to relitigate.
30. Parties in both suits are the same; the Plaintiffs have attempted to persuade the Court that they represent Roysa Community Development Society and that the said Society is different from the self-help Group which was the defendant in ELC 495 of 2011. My careful review of the pleadings and the judgment in that case reveals that the 1st Plaintiff is a common link between the two groups. I agree with the Defendants' submissions that the Plaintiffs are attempting to relitigate the matter by changing the identity of the litigants, but the overall result is that the parties are the same. It behoves the Plaintiff to present their entire case before the Court in ELC 495 of 2011 to avoid frivolous litigation, which is abhorred by the doctrine of res judicata.
31. Finality of the decision; the rationale behind this doctrine is to bring finality to litigation. In the two previous cases, the Court was satisfied that the issue of ownership had been settled, and the Plaintiffs were adjudged not to be the owners of the property. The

Court pronounced that the suit land belongs to the Ministry of Defence, and unless appealed, the judgment of the Court stands.

32. Competent jurisdiction; The Court that determined the controversy linked to ownership of the suit land was and is a competent court.

**33. Final orders for disposal**

In conclusion, and for the above reasons, I find the application has merit. It is allowed and I hereby make the following orders;

- a. The suit herein is res judicata. It is dismissed entirely
- b. The costs of the suit shall be borne by the Plaintiffs severally and jointly.

34. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF MARCH 2026 VIA MICROSOFT TEAMS.**

**J. G. KEMEI  
JUDGE**

**Delivered online in the presence of;-**

1. Mr Thiga for the Plaintiffs
2. N/A for the Defendants
3. C/A- Ms Yvette Njoroge