

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELC LAND CASE NO. E055 OF 2025

WILLIAM MBURU NJOROGE.....	1ST
PLAINTIFF	
JACKSON MIANO NDIRIRIGI.....	2ND
PLAINTIFF	
JAMES KANG'ETHE KURIA.....	3RD
PLAINTIFF	
STEPHEN THIRU GITUTU.....	4TH
PLAINTIFF	
JOSEPH GITONGA MWAURA.....	5TH
PLAINTIFF	
MARY WAMUCII MUIRURI.....	6TH
PLAINTIFF	
DERRICK KIBE.....	7TH
PLAINTIFF	
DANIEL NG'ANG'A KIRATU.....	8TH
PLAINTIFF	
LOISE WAMBUI NJOROGE.....	9TH
PLAINTIFF	
BONIFACE KANG'ETHE NJUGUNA.....	10TH
PLAINTIFF	
TERESIAH MBAIYA MAITAI.....	11TH
PLAINTIFF	
ALICE WANJIKU KARIUKI	12TH
PLAINTIFF	

VERSUS

TELEPOSTA PENSION SCHEME

REGISTERED TRUSTEES.....1ST
DEFENDANT

THE HONOURABLE THE ATTORNEY GENERAL.....2ND
DEFENDANT

AND

KENYA POWER & LIGHTING
COMPANY LIMITED.....INTERESTED
PARTY

RULING.

1. The instant suit was instituted vide a Plaint dated 27th November 2025, wherein the Plaintiffs herein sought the following orders:
 - i. A declaration that the actions of the Defendant and their officers on the 3rd November 2025 and 11th November 2025, including the unlawful demolitions, destruction of property, harassment, intimidation and arbitrary use of force, were unconstitutional, illegal, high-handed, unreasonable and in violation of the Plaintiff’s right under Articles 28, 29, 31, 39, 40, 43, and 47 of the Constitution of Kenya.
 - ii. That each of the Plaintiffs further pray for an award of general damages for the unlawful demolitions, loss of property, interruption of livelihood, displacements, pain, suffering, mental anguish, emotional distress and psychological trauma occasioned by the Defendant’s conduct.
 - iii. An order for special damages and specifically pleaded and particularly proved by each and every of the Plaintiffs.
 - iv. The Plaintiffs also seek aggravated and exemplary damages in view of the oppressive, malicious, reckless

and unconstitutional actions perpetrated by the Defendants' officers.

- v. The Plaintiffs further pray for a permanent order of injunction restraining the Defendants, whether by themselves or through their agents, officers, servants or any persons acting in their names or under their authority , from undertaking any further demolitions, harassment, threats, intimidation or any interference whatsoever with the Plaintiff's peaceful occupation of their homes and their respective business premises as particularly found on Title Numbers L.R. Gilgil/Karunga Block 9/2450, 2467, 2441, 2468, 5259, 3018, 7442, 3022, 4876, 5432, 5433, 5434, 2452, 7443, 3032 & 3033 (Ol Burgel) & Gil-Gil Ol-Begi Center Plot Nos. 3, 4 & 5 (hereinafter known as the Suit Properties)
 - vi. Cost of the suit and interest thereof.
2. Contemporaneously with the Plaintiffs' Application, the Plaintiff filed a Notice of Motion Application seeking orders of temporary injunction restraining the 1st Defendant from carrying out any act of omission that would displace or destroy. Interfere with or remove the Plaintiffs' houses, business premises, structures, crops, livestock or other property contained on the suit properties, pending the hearing and determination of the suit. They also sought conservatory orders restraining the Defendants from interfering in any way with their occupied portions of the suit properties, pending the hearing and determination of the suit.
 3. In response and opposition to the Applicants' Application, the 1st Defendant lodged an application dated 8th December 2025, urging that the Plaintiff's Suit and the Notice of Motion be struck out for being res judicata. The Plaintiff also submitted an application dated 15th December 2025 seeking contempt proceedings against the 1st Defendant.

4. On 18th December 2025, directions were issued for the hearing of the Applications dated 8th December 2025 alongside the Application dated 15th December 2025.
5. Consequently, what is before me for determination are two applications wherein, for ease of reference, the parties herein shall be referred to as they appear in the main suit.
6. The 1st application dated 8th December 2025 is a Notice of Motion brought by 1st Defendant pursuant to the provisions of Sections 3A, 7, 34 (1), 63 (e) of the Civil Procedure Rules, Order 2 Rule 15 (1) (b), (c) and (d), Order 51 Rule 1 of the Civil Procedure Rules 2010 in which the 1st Defendant seeks that the Plaintiffs' Plaint and Notice of Motion Application both dated 27th November 2025 be struck out for being *res judicata*, and the consequential orders be aside. They also seek costs.
7. The said Application was based on the grounds therein and the Supporting Affidavit of the same date, sworn by Peter K. Rotich, the 1st Defendant's Administrator/Trust Secretary. He deposed that the 1st Defendant was the proprietor of the parcels of land known as Gilgil/Township Block 4/82 and 83. The issue concerning the said Title Numbers Gilgil/Township Block 4/82 and 83 versus Title Numbers Gilgil/Karunga Block 9/2450, 2467, 2468, 5259, 3018, 7442, 3022, 4876, 5432, 5433, 2452, 3032, and 3033 (Olbrugel) and Gilgil Olbegi Centre Plot Nos. 3, 4, and 5 had already been adjudicated by the Environment and Land Court in Nakuru Case No. 225 of 2012 (Telposta Pension Scheme Registered Trustees vs John Mbugua Kenda & 5 Others), consolidated with ELC Case Number 226 of 2012, ELC 153 of 2014, and ELC No. 75 of 2015, wherein the Court had ordered that the Plaintiffs' titles be cancelled because the 1st Defendant was the lawful owner of the disputed parcels.
8. The Plaintiffs lodged an appeal at the Court of Appeal, being Civil Appeal Number 118 of 2023. It is argued that the suit herein is *res judicata* because the issues in dispute had already been litigated in ELC Case No. 225 of 2012, as consolidated with the earlier suits. Reliance was placed

on the provisions of Sections 7 and 34 (1) of the Civil Procedure Act to demonstrate that the issues arising from the suit parcels after the delivery of judgment and issuance of the decree could only be determined in those earlier suits, not in a new separate suit.

9. The structures in this subsequent suit were erected after the judgment was delivered by individuals who were not parties to the previous suits, with the intention of establishing a new claim of ownership over the parcels and drawing the 1st Defendant into endless litigation. Furthermore, the Plaintiffs have provided no evidence whatsoever, such as permit licences to operate businesses, records of rates and land rent payments, payments made to obtain trade licences, trial balance reports, or asset registers, to demonstrate that they have been conducting any businesses on the suit premises in their personal capacities or that they have any connection at all with the illegally erected structures.
10. He deponed that the Plaintiffs had dismally failed to demonstrate that they had a prima facie case with a probability of success and/or that the damages would be an adequate remedy. That all in all, the Court lacks jurisdiction to entertain the suit herein as the matter was before the Court of Appeal from a decision of a Court of equal jurisdiction. He prayed that the Plaintiffs' application and suit be dismissed with costs.
11. In response and in opposition, the Plaintiffs, through their Replying Affidavit dated 23rd January 2023 and sworn by William Mburu Njoroge, the 1st Plaintiff herein, deponed that the interim and permanent orders sought in the Application dated 27th November 2025 and the Plaint thereof were necessitated by the events that took place on the nights of 3rd November 2025 and 11th November 2025, between 2:00 am and 3:00 am, when armed individuals and police officers assigned to Gilgil Police Station, under the supervision of the OCPD & OCS Gilgil Police Station, unlawfully descended on their homes and business premises, conducting violent, unwarranted, and illegal demolitions, under the direction and/or authority of the 1st Defendant. They also vandalized utility infrastructure.

12. That the purported demolition order, dated 4th October 2025, had emanated from a clandestinely filed suit in the Business Premises Rent Tribunal (BPR) Case No. 129 of 2025 and did not concern or relate to any of the Plaintiffs, but to fictitious parties to the proceedings, despite the existence of the Nakuru Court of Appeal, Civil Appeal No. E118 of 2023, in respect of the same land where stay orders had been issued and were still in force. He reiterated that they were the lawful occupants, residents and owners of the houses, business premises, farms and other improvements situated on the suit properties.
13. Indeed, some of the Plaintiffs had an active and ongoing appeal in the Court of Appeal (Nakuru Civil Appeal No. E118 of 2023) concerning the ownership and title of the aforementioned suit lands, which originated from Nakuru ELCLC 225 of 2012 where the ELC Court ordered the cancellation of the titles belonging to the Plaintiffs/Respondents. However, the Court of Appeal stayed the judgment through an order dated 5th February 2020. The filing of BPRT Case No. 129 of 2025, the nighttime demolitions, and interference with the occupation and use of their respective titles were all deliberate, in bad faith, and aimed at undermining the stay orders issued by the Court of Appeal. Subsequently, the actions of the 1st Defendant created a completely new cause of action, as the issues involved—including the claim for damages due to illegal demolitions, evictions, and loss of business and properties—could not be addressed within the matter at the Court of Appeal, where most of the Plaintiffs were not parties.
14. He deponed that the instant matter was not *res judicata* as envisaged under the provisions of Sections 7 and 34 of the Civil Procedure Act for the following reasons:
 - i. The cause of action was fresh, having arisen from the demolitions of their residences, business premises, loss of their goods and properties and illegal evictions which had been carried out pursuant to the orders fraudulently

obtained in BPRT Case No. E129 of 2025 and therefore could not be addressed in Nakuru Civil Appeal No. E118 of 2023.

- ii. Whereas only three (3) of them were parties in the matter before the Court of Appeal, the 6th, 7th and 12th Plaintiffs in the present matter lay claim to the damages and loss pursuant to orders of the Tribunal.
- iii. The suit filed before the BPRT involved fictitious and/or improper parties where they were not parties.
- iv. The BPRT had no jurisdiction as there had been no Landlord and Tenant relationship between them and the 1st Defendant. Accordingly, the execution of the impugned orders of 14th October 2025 had been unlawful *ab initio*.
- v. The impugned orders from the Tribunal had been executed outside the stipulated time for execution.
- vi. The BPRT acted outside its power by ordering the demolitions and eviction of the purported 1st Defendant's "tenants", despite the dispute being a land ownership one.
- vii. That in any case, the present suit was seeking orders of injunction to stop any interference with the quiet possession and occupation, damages for illegal demolitions, loss of their properties and illegal evictions, among others, which had been effected on the strength of the impugned orders in BPRT Case No. E129 of 2025, which orders had been stayed.
- viii. That the present application and suit were founded on impugned acts and omissions committed post-delivery of the judgment in Nakuru ELC No. 225 of 2012, but during the pendency of Nakuru Civil Appeal No. E118 of 2023,

hence their complaint could not be canvassed within the pending Appeal before the Court of Appeal at Nakuru.

- ix. That the issues raised in the present suit had never been heard nor determined by any court of competent jurisdiction or otherwise and were not an invitation to re-litigate the question of ownership of the suit land.
15. He deponed that no new structure had been erected on the suit properties since the judgment of 22nd January 2020 in Nakuru ELCLC 225 of 2012 or after the issuance of the orders of stay of execution on 5th February 2020.
 16. The Plaintiffs or their children were the original owners of the suit lands, and no third parties occupied them. The Plaintiffs, living on and running businesses on the suit properties, held valid licences issued by the appropriate statutory authorities. These licences had been properly renewed periodically, demonstrating their ownership, occupation, and proprietary rights over the suit properties. He sought the dismissal of the Application dated 8th December 2025 with costs for lack of merit.
 17. The Application dated 15th December 2025 on the other hand is a Notice of Motion Application brought by the Plaintiffs pursuant to the provisions of Articles 2, 10, 40, 43, 159 and 165 of the Constitution, Section 5(1) of the Judicature Act, Sections 3, 3A and 63 (e) of the Civil Procedure Act, Order 40 Rule 3 and Order 51 Rule 1 of the Civil Procedure Rules, 2010, and all other enabling provisions of law wherein they have sought for the following orders:
 - i. That the Honourable Court be pleased to find and hold that the 1st Defendant, Teleposta Pension Scheme Registered Trustees, together with its Chief Executive Officer, Directors, Managers and/or Agents were in contempt of court for willfully disobeying the Orders of the Honourable Court made and issued on the 27th November 2025, directing maintenance of status quo in

respect of Title Numbers L.R. Gilgil/Karunga Block 9/2450, 2467, 2441, 2468, 5259, 3018, 7442, 3022, 4876, 5432, 5433, 5434, 2452, 7443, 3032 & 3033 (Ol Burgel) & Gilgil Ol-Begi Center Plot Nos. 3, 4 & 5.

- ii. That they be summoned to personally appear before the Honourable Court and Show Cause why they should not be punished for contempt of court for willful disobedience of the Orders of the Honourable Court made and issued on 27th November 2025.
- iii. That upon such hearing, they be committed to civil jail for a term not exceeding six (6) months, or such other sanction as the Honourable Court shall deem fit for the deliberate disobedience of the Orders of the Honourable Court made and issued on the 27th November 2025.
- iv. That the 1st Defendant be ordered to immediately and forthwith remove all the barriers erected around the suit properties, including the perimeter fence made of wooden posts and barbed wire erected around the suit properties blocking access to the suit premises, within seven (7) days and in default the Applicants be allowed to remove the same at the 1st Defendant's expense and cost.
- v. That the Inspector General of the National Police Service be summoned to appear personally before the Honourable Court to show cause why his officers namely the OCS and OCPD Gilgil Police Station failed, neglected and/or refused to comply with the subsisting Orders of the Court despite having been duly served with the said orders.
- vi. That the Inspector General of Police be directed to ensure that both the OCS and the OCS Gilgil Police Station

enforce the observance of the Court Orders issued on 27th November 2025 to ensure restoration of the status quo obtaining as at 27th November 2025 at the suit properties and to prevent further disobedience thereof and to further protect the Plaintiffs' lives and property.

vii. That the costs of the Application be provided for.

18. The said Application was premised on the grounds therein and the Supporting Affidavit of equal date sworn by William Mburu Njoroge, the 1st Plaintiff herein who deponed that on 27th November 2025, the Honourable Court had upon perusal of the Plaintiffs/Applicants' Application dated 27th November 2025, issued an order of maintenance of status quo among other directions, pending inter partes hearing. That the said orders had duly been extracted and served upon the 1st and 2nd Defendants on the 27th November 2025 as per an Affidavit of Service. That notwithstanding due service and the clear wording of the said orders, on the 10th December 2025, the 1st Defendant willfully erected a perimeter fence of wooden posts and barbed wire, thus blocking access to the premises and/or barricading the suit parcels namely Title Numbers L.R. Gilgil/Karunga Block 9/2450, 2467, 2441, 2468, 5259, 3018, 7442, 3022, 4876, 5432, 5433, 5434, 2452, 7443, 3032 & 3033 (Ol Burgel) & Gil-Gil Ol-Begi Center Plot Nos. 3, 4 & 5, and had been continuing with the violations as late as on the 14th December 2025.
19. He deponed that they had video evidence of the impugned activities, which evidence could be produced before the Honourable Court when directed. That the deliberate disobedience amounted to impunity and open contempt of the court order and was calculated to defeat the course of justice and render the pending application and Petition nugatory.
20. That the OCPD and the OCS Gilgil were unresponsive and had flatly ignored the Applicants' pleas to enforce and ensure compliance with the said order of the Court.

21. That it would require the intervention of the court to have the 1st Defendant restore the status quo existing on 27th November 2027 within seven (7) days, and in default, the Plaintiffs be permitted to do so at the expense and cost of the 1st Defendant.
22. That the actions of the 1st Defendant have interfered with their livelihood, both socially and in business, and they continue to endure unnecessary suffering, which the honourable court should halt and restore sanity to the suit properties. Had they chosen to resist the actions of the 1st Defendant and, by extension, those of the 2nd Defendant, it could have led to anarchy and possible bloodshed, but instead they opted to do the right and legal thing by seeking court intervention.
23. That on being served with the pleadings and orders of the court, on 18th December 2025, the 1st Defendant moved into the suit properties in defiance of the said orders, primarily to defeat the court appearance on the said date. That subsequently, it is only by an order of restoration of status quo as obtained on 27th November 2025 that the dignity of the Honourable court would be restored and its authority respected and revered. He thus deponed that it was in the interest of justice, public order, and rule of law that the contemnors be punished to vindicate the authority of the Court and ensure compliance with its lawful orders.
24. In response and in opposition to the Application, the 1st Defendant, through its Replying Affidavit dated 13th January 2026, sworn by Peter K. Rotich, its Administrator/Trust Secretary, deponed that the Plaintiffs were not in possession of the 1st Defendant's parcels of land known as Title Numbers Gilgil/Township Block 4/82 and 83. That through a Supplementary Affidavit sworn by William Mburu Njoroge on 17th December 2025, the Plaintiffs had annexed "WMN7", which was a bundle of licenses the Plaintiffs alleged were for operating businesses in the said parcels. However, the said licenses were in the names of limited liability companies, namely Furniture Mart Investment, In Murfur Limited, Luciasally Enterprise and Edi Supplies Agencies, which companies had no

nexus with the Plaintiffs and neither were the said companies parties to the instant suit.

25. That further, three (3) of the licenses referred to parcels of land known as Plot Numbers 107 and 1317/85, which were not part of the plots that had been pleaded by the Plaintiffs. That the Plaintiffs were not candid, but were attempting to mislead the Court and had come to court with unclean conduct.
26. That indeed, the Plaintiffs claim ownership of the parcels whose measurements were as follows; LR Nos. Gilgil/Karunga Block 9/2450, 2467, 2441, 2469, 5259, 3018, all measured 0.28 acres, while 7442, 3022, 4876, 5434, 7443, 3032 & 3033 (Ol Burgel) & Gilgil Ol-Begi Centre Plot Nos. 3, 4 & 5 were of unknown sizes.
27. He reiterated that the issues being raised in the instant suit and the said application could only be raised in Nakuru ELC 225 of 2012 or the Court of Appeal Civil Appeal Number 118 of 2023. That the Plaintiffs had filed an application in Nakuru ELC 225 of 2012 seeking to bar the 1st Defendant from fencing the suit properties, which Application was heard and dismissed. That the premises that were demolished had been constructed in the year 2025, way after the Court had rendered Judgement in their favor and despite the parties having been notified by the 1st Defendant's Managing Agents that the Court had already decreed that the property belonged to it (1st Defendant), on October 2025, one of the strangers had proceeded to physically sub-divide the 1st Defendant's property, placed beacons and was offering the sub-divisions for sale.
28. He deponed that had the Honourable Court been aware that the suit properties were already the subject of another suit that had been heard and determined by a Court of equal jurisdiction, it would not granted the ex parte orders which the Plaintiffs obtained through deceit and non-disclosure of material facts.
29. That the titles relied upon by the Plaintiffs had already been cancelled by the Court of law of competent jurisdiction, and that the Honourable

Court was not made aware of this fact. A party that approaches a Court of law with unclean conduct and hands cannot seek to benefit from orders obtained through deliberate non-disclosure of the true state of the dispute.

30. That subsequently, the Application for contempt had no foundation in law or legal basis, hence the same should be dismissed with costs.
31. In a rejoinder, the Plaintiffs, through their Supplementary Affidavit dated 28th January, 2026 sworn by William Mburu Njoroge the 1st Plaintiff herein, deponed that the contents of the 1st Defendant/Respondent's Replying Affidavit dated 10th January 2026 in response to their Application dated 15th December 2025 were misleading, evasive and a deliberate attempt to avoid addressing the gravamen of the application dated 15th December 2025, namely, the willful disobedience of the orders issued by the Honourable Court on the 27th November 2025.
32. That indeed, the 1st Defendant had completely failed to deny, explain or justify the acts complained of in their application for contempt and had instead chosen to raise extraneous matters unrelated to the issue of compliance with court orders. Contrary to the 1st Defendant's allegations, the Plaintiffs had at all material times been in actual, open and uninterrupted possession of the suit lands, having resided, operated business premises and undertaken farming activities thereon, during the pendency of Nakuru ELC Case No. 225 of 2012 and Nakuru Court of Appeal Civil Appeal No. E118 of 2023.
33. That their actual possession of the suit lands had thus driven the 1st Defendant to fraudulently file BPRT Case No. E29 OF 2025 and use the resultant orders to harass, intimidate, destroy and evict them from the suit lands and thereafter erect the perimeter fence, against the orders of the court and the stay orders by the Court of Appeal.
34. That the issues raised in the present suit and in the Application dated 15th December 2025 were fresh and independent based on the unlawful acts of violent and unwarranted demolitions, destruction of their homes

and business premises, vandalism and destruction of utility infrastructure and unlawful interference with possession and access to the suit properties, which were all undertaken under the direction and/or authority of the 1st Defendant and during subsistence of valid court orders, thus in open contempt of court orders.

35. With regard to the business licenses annexed to the Supplementary Affidavit sworn on 17th November 2025, he deponed that the said licenses had been issued to him and his wife and that the same related to their businesses operating on the suit lands and were clear evidence of actual possession, occupation and use of the suit lands by ourselves.
36. That the 1st Defendant's allegation that the issue of fencing had previously been canvassed and determined was deliberately misleading, as the only fencing that had been sanctioned by the court was pursuant to a consent order dated 25th November 2024, which had allowed the fencing of a specific and limited portion (Oxidation area) of the suit properties. That the said fencing was installed in December 2024 solely to prevent the dumping of hazardous waste at the identified portion of the suit properties.
37. The Plaintiffs also filed a further Supplementary Affidavit dated 3rd February, 2026 sworn by William Mburu Njoroge, the 1st Plaintiff herein who deponed that despite the subsisting orders of the Honourable Court issued on 27th November 2025 directing the maintenance of the status quo, the 1st Defendant had continued to willfully and deliberately disobey the said orders. That on or about 31st January, 2026, officers, agents and/or persons acting under the authority of the 1st Defendant, under the security provided by officers from Gilgil Police Station, had destroyed the remaining fences that had been erected by the Plaintiffs on the suit properties, thereby emboldening the 1st Defendant in its contemptuous conduct.
38. That further, on the night of 1st February 2025 at around 2:00 am, the 1st Defendant had, through its agents and/ or persons acting on its behalf,

demolished and destroyed all the subsisting structures on the suit properties, thus the said suit properties were now completely bare, the Plaintiffs' homes and business structures having been unlawfully and violently destroyed. That the said actions had been undertaken during the subsistence of valid court orders, after service and with full knowledge thereof, hence the same had constituted aggravated and continuing contempt of court.

39. That the foregoing acts demonstrate beyond doubt that the 1st Defendant had no intention whatsoever of purging the contempt and was instead determined to defeat, undermine and render nugatory the orders of this Honourable Court.
40. Both the Interested Party and the 2nd Defendant did not participate in the two Applications, which were canvassed by way of written submissions herein, as summarised.

1st Defendant's Submissions.

41. The 1st Defendant's submissions, dated 30th January 2026, and 4th February 2026, focus on two primary legal arguments: that the entire suit is an illegal attempt to re-litigate a decided matter (*res judicata*) and that the contempt application is procedurally fatal.
42. On the Application to Strike Out the suit for being *Res Judicata*, the 1st Defendant frames the core issue as whether the suit is barred by the judgment in Nakuru ELC Case No. 225 of 2012, consolidated with ELC 153/2014, 226/2012, and 75/2015, where Joseph Mwaura, the 5th Plaintiff, Mary Wamucii Muiruri, the 6th Plaintiff, Derick Kibe, the 7th Plaintiff and Alice Wanjiku Kariuki, the 12th Plaintiff, were litigants in the said suits.
43. That one of the reliefs that had been sought in ELC 226 of 2012, as evidenced by the decree that had been tendered as exhibit "PKR2", was an order directing the District Land Registrar and District surveyor to show the boundaries of Gilgil/ Township Block 4 and Gilgil/ Karunga Block

9. Furthermore, Plot number 5 Gilgil Olbegi Centre, which is pleaded in the current suit, is also pleaded in ELC 226 of 2012.
44. That in the Judgement that had been delivered in ELC 225 of 2012, the Court had made an order directing the Director of Surveys to nullify the Registry Index Map bearing the prefix Gilgil/ Karunga(Ol Burgel) so long as it fell within the land occupied by the titles Gilgil/ Township Block 4/82 and 83.
45. The 1st Defendant submitted on the identity of the Parties and subject matter by pointing out that several Plaintiffs, being the 5th, 6th, 7th, and 12th Plaintiffs, were active litigants in the previous suits. They argued that the parcels now claimed, namely Gilgil/Karunga Block 9 and Ol-Begi Centre, were the exact same properties for which the court had previously ordered that the titles be cancelled in favour of its (the Defendant's) titles No. Gilgil/Township Block 4/82 and 83.
46. The 1st Defendant highlighted the Plaintiffs' admission in their own pleadings, where they admitted that there was a pending Civil Appeal No. E118 of 2023 arising from the 2012 case. The Defendant argues that by asserting ownership again in this new suit, the Plaintiffs are directly defying the 2012 judgment.
47. The Defendant rejected the notion that the demolitions gave rise to a new cause of action and contended that the right to claim damages for demolition was solely dependent on the right of ownership, an issue previously decided against the Plaintiffs and therefore, the suit offended Section 7 of the Civil Procedure Act.
48. On the matter of the Contempt Application, the 1st Defendant opposed the Plaintiffs' attempt to cite its officers for contempt regarding the status quo order of 27th November 2025. The Defendant argued that the application was superfluous because the Plaintiffs had failed to specify the individuals—such as CEOs, Directors, or Managers—to be cited. Additionally, the Affidavit of Service did not identify a specific person served. Lastly, there was no evidence that a Penal Notice (warning of

imprisonment) had been served alongside the order, which is a mandatory requirement for contempt proceedings.

49. The Defendant asserted that a similar application to stop them from fencing the land had already been heard and dismissed in the 2012 case, where the court in that instance had affirmed the Defendant's right to fence its property.
50. Their conclusion was that since the main suit is *res judicata*, there could be no claim for contempt that can legally spring from it.

Plaintiffs' Submissions

51. In their submissions, dated 23rd January 2026 in opposition to the 1st Defendant's Application dated 8th December 2025, the Plaintiffs raised robust arguments against the 1st Defendant's attempt to strike out the suit, seeking that the 1st Defendant instead be found in contempt.
52. They submitted that the 1st Defendant's application to strike out the suit was misconceived because the mandatory elements of *res judicata* were not met. That the suit was not about land ownership (which is currently at the Court of Appeal) but about the unlawful conduct of the 1st Defendant—specifically the violent night-time demolitions and evictions that had been done in November 2025. These were supervening facts that arose after the previous judgment, in which the Court was now being asked to determine the legality of the Business Premises Rent Tribunal (BPRT) orders and the violation of constitutional rights, which were never in issue in the 2012 land case.
53. That not all Plaintiffs in the current suit were parties to the previous litigation, and therefore, the doctrine cannot bar individuals who have never been heard. That the damages and injunctive relief sought now could not have been claimed in the previous suit because the injury (the demolitions) had not yet occurred.

54. They [laced reliance on the decision in **John Florence Maritime Services Ltd & Another v Cabinet Secretary Transport and Infrastructure & 3 Others, Petition 17 of 2015 (2021) KESC 39 KLR (Civ) 6 August 2021 (Judgement)** which established the five conjunctive elements that must be satisfied for *res judicata* to apply, warning that striking out of a suit was a "draconian" remedy which had to be used sparingly.
55. The Plaintiffs also relied on the decision in **E.T v Attorney General & Another [2012] eKLR** to submit that although Courts needed to be vigilant of parties trying to bring in a second suit in the form of a new cause of action which had already been resolved by a court of competent jurisdiction, their case was distinct. Lastly, on this issue, they submitted that *res judicata* cannot be invoked against parties who were not heard in earlier proceedings and placed reliance on the decision in the Irish case of **Foley v Smith [2004] IEHC 299 (16 July 2004)**.
56. In regard to their Application for Contempt, the Plaintiffs contended that the 1st Defendant had engaged in a "wilful and aggravated" defiance of the Court's status quo order issued on 27th November 2025. That the said order was plain and unequivocal, where they had effected service both electronically on the 17th November 2025 and personally on 11th December 2025, service which the 1st Defendant did not deny knowledge of the order.
57. They submitted that it had been during the existence of the order that the 1st Defendant began fencing off the property on 10th December 2025, thus blocking their access to their homes and businesses.
58. The Plaintiffs argue that the 1st Defendant's focus on "ownership" was a distraction. That contempt proceedings are solely about obedience to court orders, regardless of whether a party thought the order was wrong or irregular. They relied on the decision in **Hadkinson v Hadkinson (1952) 2 All E.R 567** where it had been established that a court order must be obeyed until it is set aside, even if it is believed to be irregular.

59. They also placed reliance on the Supreme Court's decision in the case of **Republic v Ahmad Abolfathi Mohammed & Another [2018] eKLR**, where it had been affirmed that the jurisdiction to punish for contempt was essential to preserve the authority and dignity of the court and must be exercised whenever judicial authority is defied. The Plaintiffs complained that the OCPD and OCS Gilgil failed to enforce the order, which emboldened the 1st Defendant's "impunity."
60. They submitted that the 1st Defendant's reliance on the proceedings from BPRT in Case No. E129 of 2025 had been misplaced since the said proceedings did not involve the Plaintiffs herein as parties, were founded on a landlord-tenant relationship that did not exist at all and which had culminated in orders that could not lawfully authorise demolitions. That subsequently, the use of the said proceedings as a basis for execution against the Plaintiffs had created an independent and actionable grievance, distinct from the earlier land dispute necessitating the filing of the present suit.
61. That there was in existence a clear court order which the 1st Defendant had full knowledge of, yet its Chief Executive Officer, Directors, Managers, Agents, Employees and/or Responsible Officers had deliberately and willfully disobeyed the same. That the continued barricading and fencing of the suit properties was not accidental, incidental or justified but calculated to defeat the authority of the Honourable Court and to render its orders nugatory and which had caused continuous breach of the Applicants' rights. They relied on the decision in **Omboto & Kenya Railways Corporation & 4 others [2022] KEELC 15007 (KLR)**, which reaffirmed that a party cannot ignore a court order by attempting to re-litigate the merits of the case during contempt proceedings.
62. In conclusion, the Plaintiffs maintained that the 1st Defendant was attempting to use the BPRT (a tribunal for landlord-tenant disputes) to bypass the Court of Appeal's stay orders. They urge the Court to dismiss the application to strike out the suit, punish the 1st Defendant's officers for

contempt and thereafter order the restoration of the status quo as it existed on 27th November 2025.

Determination.

63. I have considered the two applications herein, the replying affidavits in opposition, the applicable law and the authorities cited by the parties herein. Briefly, the Plaintiffs filed suit vide a Plaint dated 27th November 2025, following what they described as violent, night-time demolitions on the 3rd and 11th of November 2025. They alleged that the 1st Defendant, using police and private agents, had invaded and destroyed their homes and businesses, thereby violating their constitutional rights as enshrined under Articles 28, 29, 31, 39, 40, 43, and 47 of the Constitution. They thus sought declaratory orders of illegality, general and special damages, and a permanent injunction against further interference.
64. That despite the court having directed the parties to maintain the *status quo* vide its order of 27th November 2025, on 10th December 2025 and 1st February 2026, the 1st Defendant had wilfully violated this order by erecting perimeter fences and completing the demolition of all remaining structures on the suit parcel of land.
65. The Plaintiffs acknowledge that there is an ongoing matter in the Court of Appeal, being Civil Appeal No. E118 of 2023 regarding land ownership, and contend that the current suit was a new cause of action that focuses on the illegal use of force, destruction of property, and the fraudulent use of a Business Premises Rent Tribunal (BPRT) order to evict them. That the same was therefore not *Res judicata*, the pending Court of Appeal matter.
66. In response, the 1st Defendant moved the Court on 8th December 2025 to have the Plaintiff's suit struck out, arguing that the matter is already settled law between the parties. They asserted that the Environment and Land Court (ELC) in Nakuru Case No. 225 of 2012, and its consolidated files, had already determined that the 1st Defendant was the lawful owner and ordered the cancellation of the Plaintiffs' titles. That since the matter

was currently before the Court of Appeal, this Court lacked the jurisdiction to entertain a fresh suit on the same property.

67. The 1st Defendant claimed that the Plaintiffs provided business licenses belonging to third-party limited companies, not themselves personally, and that many structures were erected illegally after the 2020 judgment to frustrate its rights.

68. In response to the contempt claim levelled against them, the 1st Defendant denied being in contempt, arguing that the Plaintiffs had obtained the *ex parte* status quo orders through "unclean hands" by failing to disclose that there had been a previous ELC judgment and the cancellation of their titles.

69. Having given a background summary of the issues in question, I find the matters arising for my determination to be as follows:

- i. Whether the current suit is Res judicata, Nakuru ELC Case No. 225 of 2012, and its consolidated files, if not,
- ii. Whether the 1st Defendant is in contempt of the court orders of 27th November 2025.

70. The Supreme Court of Kenya in **Dina Management Limited vs County Government of Mombasa & 5 others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment)** held as follows:

"The doctrine of res judicata was founded on public policy and was aimed at achieving two objectives namely, that there must be finality to litigation and that the individual should not be harassed twice with the same account of litigation. The doctrine of res judicata may be pleaded by way of estoppel so that where a judgment had been delivered, subsequent proceedings were estopped. Where res judicata was pleaded by way of estoppel to an entire cause of action, rather than to a single matter in issue, it amounted to an allegation that all the legal rights and obligations of the parties were concluded by the earlier

judgment, which may have involved the determination of questions of law as well as findings of fact, that was a form of action estoppel. Res judicata, was embodied in section 7 of the Civil Procedure Act.

The elements to be proven before a court could arrive at the conclusion that a matter was res judicata were to be conjunctive rather than disjunctive before a suit or an issue was to be deemed res judicata on account of a former suit. It must be demonstrated that there was a former judgment which was final, it was on merit and by a court having jurisdiction and had identical parties, subject and cause of action.”

71. It must be noted, therefore, that the doctrine of res judicata is not a mere technicality that can be cured by invoking Article 159 (1)(d) of the Constitution, but is a matter of substantive law and jurisdiction. It is a pillar of the judicial system that serves the greater public interest in finality and the efficient use of judicial resources.
72. In order therefore to decide as to whether the Plaintiff’s current case is res judicata Nakuru ELC Case No. 225 of 2012, - Telposta Pension Scheme Registered Trustees vs John Mbugua Kenda & 5 Others), consolidated with ELC Case Number 226 of 2012, ELC 153 of 2014, and ELC No. 75 of 2015, the court of law, as is trite of me, should always look at the decision claimed to have been settled, the issues in question and the entire pleadings of the previous case and the instant case to ascertain;
- i. What issues were really determined in the previous case;
 - ii. Whether they are the same in the subsequent case and were covered by the decision of the earlier case.
 - iii. Whether the parties are the same or are litigating under the same title, and
 - iv. whether the previous case was determined by a court of competent jurisdiction.
73. In order to so determine, on the first issue, I have looked at the decision of the court in its judgment of the previous matter herein

reported as **Telposta Pension Scheme Registered Trustees v John Mbugua Kenda & others [2020] KEELC 3913 (KLR)**. The parties in the previous suits had been as follows:

- i. NAKURU ELC NO. 225 OF 2012 (FORMERLY NAIROBI HCCC NO. 1338 OF 2006 AND NAKURU HCCC NO. 351 OF 2008)-TELPOSTA PENSION SCHEME REGISTERED TRUSTEES vs JOHN MBUGUA KENDA & 5 OTHERS,
(In this matter, 38 persons as defendants collectively lay claim to ownership of various plots described by the prefix Gilgil/Karunga Block 9. On its part, Telposta asserted ownership of land registered as Gilgil/Township Block 4/82. This matter was consolidated with
- ii. NAKURU ELC NO. 226 OF 2012 (FORMERLY NAKURU HCCC NO. 112 OF 2011- AYUB NJUGUNA MWAURA & OTHERS vs TELPOSTA PENSION SCHEME (REGISTERED TRUSTEES)- (here, the Plaintiffs were 6 individuals who specifically lay claim to land parcels Gilgil/Karunga Block 9/2370 (Ol-Burgel), Gilgil/Karunga Block 9/2367, Gilgil/Karunga Block 9/2448 and various plots in Ol Begi Centre identified as Plots No. 2, 5, and 3.) This matter was consolidated with
- iii. NAKURU ELC NO. 153 OF 2014-ISAAC NJENGA KINYANJUI & OTHERS vs TELEPOSTA PENSION SCHEME TRUSTEES (in this matter the 10 Plaintiffs sued Teleposta Pension Scheme, contending that they were allottees of various plots in Gilgil, Ol-Begi Centre identified as Plots No. 7, 14, 6, 16, 55, 23, 4, 20, 48, and 52 and which plots did not fall within the land parcels Gilgil Township Block 4/82 and 83). This matter was also consolidated with
- iv. NAKURU ELC NO. 75 OF 2015- JOHN SALIMANAI OLOLMAITAI & ANOTHER vs TELPOSTA PENSION SCHEME

REGISTERED TRUSTEES (Here, the two Plaintiffs, John Salimanain Ololmaitai and Derek Kibe Githaiga Kioria, contend to be owners of the land parcels Gilgil/Karunga Block 9/5310 and 2451 (Ol Bergel).

74. Upon taking the evidence, the court held as follows:

“(i) That it is hereby declared that the titles Gilgil / Township Block 4/82 and 83 are genuine titles and the same are owned by Telposta Pension Scheme Registered Trustees. For the avoidance of doubt, this is the land falling between the old Nairobi-Nakuru Road and the Railway.

(ii) That any other title or plot allocation falling within the land occupied by the titles Gilgil /Township Block 4/82 and 83 is hereby nullified and this includes the titles of all the defendants in the suit Nakuru ELC No. 225 of 2012, and the plaintiffs in the suits Nakuru ELC No. 226 of 2012, Nakuru ELC No. 153 of 2014, and Nakuru ELC No. 75 of 2015. The said titles to be specified in the decree to be extracted.

(iii) That the Chief Land Registrar and the District Land Registrar, Nakuru, are hereby ordered to nullify and cancel the titles of the defendants in the suit ELC No. 225 of 2012, and the plaintiffs in the suits Nakuru ELC No. 226 of 2012, Nakuru ELC No. 153 of 2014, and Nakuru ELC No. 75 of 2015 as may be specified in the decree and to proceed and Gazette that the said titles are null and void.

(iv) That the Director of Surveys is hereby ordered to nullify the Registry Index Map bearing the prefix Gilgil/Karunga Block 9 (Ol Burgel) so long as it falls within the land occupied by the titles Gilgil/Township Block 4/82 and 83.

(v) That the defendants in the suit Nakuru ELC No.225 of 2012, and the plaintiffs in the suits Nakuru ELC No.226 of 2012, Nakuru ELC No.153 of 2014, and Nakuru ELC No. 75 of

2015 do forthwith vacate the land Gilgil Township Block 4/82 & 83 or they be forcefully evicted and are permanently restrained from the land.

(vi) That Telposta Pension Scheme Registered Trustees shall have the costs of the consolidated suits herein”.

75. In the present suit, the Plaintiffs have now sued Telposta Pension Scheme seeking the following orders:

- i. A declaration that the actions of the Defendant and their officers on the 3rd November 2025 and 11th November 2025, including the unlawful demolitions, destruction of property, harassment, intimidation and arbitrary use of force, were unconstitutional, illegal, high-handed, unreasonable and in violation of the Plaintiff’s right under Articles 28, 29, 31, 39, 40, 43, and 47 of the Constitution of Kenya.*
- ii. That each of the Plaintiffs further pray for an award of general damages for the unlawful demolitions, loss of property, interruption of livelihood, displacements, pain, suffering, mental anguish, emotional distress and psychological trauma occasioned by the Defendant’s conduct.*
- iii. An order for special damages and specifically pleaded and particularly proved by each and every of the Plaintiffs.*
- iv. The Plaintiffs also seek aggravated and exemplary damages in view of the oppressive, malicious, reckless and unconstitutional actions perpetrated by the Defendants’ officers.*
- v. The Plaintiffs further pray for a permanent order of injunction restraining the Defendants, whether by themselves or through their agents, officers, servants or*

any persons acting in their names or under their authority , from undertaking any further demolitions, harassment, threats, intimidation or any interference whatsoever with the Plaintiff's peaceful occupation of their homes and their respective business premises as particularly found on Title Numbers L.R. Gilgil/Karunga Block 9/2450, 2467, 2441, 2468, 5259, 3018, 7442, 3022, 4876, 5432, 5433, 5434, 2452, 7443, 3032 & 3033 (Ol Burgel) & Gil-Gil Ol-Begi Center Plot Nos. 3, 4 & 5 (hereinafter known as the Suit Properties)

vi. Cost of the suit and interest thereof.

76. There is no doubt that, indeed, some of the parties herein, as well as the subject suit, are similar in both cases, a fact that is not denied by the parties herein. The Plaintiffs' argument, however, is that whereas the Nakuru ELC Case No. 225 of 2012, and its consolidated files were founded purely on the ownership dispute, the instant case was for damages and costs for the loss they had incurred when the 1st Defendant and their officers on the 3rd November 2025 and 11th November 2025, committed unlawful demolitions, destruction of property, harassment, intimidation and arbitrary use of force, on their properties despite there having been an order of status quo in place.
77. In the 2020 Judgment in *Telposta Pension Scheme Registered Trustees v John Mbugua Kenda & others*, the previous suit, the court had determined the matter with finality, wherein it had explicitly nullified the "Gilgil/Karunga Block 9" titles (which the Plaintiffs still rely on) and declared Telposta the genuine owners of Block 4/82 and 83. The court further issued a permanent restraining order against the occupants and ordered their forcible eviction.
78. The Plaintiffs in the current suit are litigating under titles that a court of competent jurisdiction had already declared "null and void and therefore, once the root of their claim (the title) had been extinguished, any

subsequent claim based on that title was barred, save through an Appeal to the Court of Appeal.

79. In the case of **E.T. v Attorney General & another [2012] KEHC 5506 (KLR) (Persuasive)** the Court at Paragraphs 57 and 58 had observed as follows:

*“The courts must always be vigilant to guard against litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in a form a new cause of action which has been resolved by a court of competent jurisdiction. In the case of **Omondi v National Bank of Kenya Limited and Others [2001] EA 177** the court held that, ‘parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.’ In that case the court quoted Kuloba J., in the case of **Njangu v Wambugu and Another Nairobi HCCC No. 2340 of 1991 (Unreported)** where he stated, ‘If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata’*

80. Now keeping in mind that in the previous suit, a judgment had determined the matter wherein the Plaintiff had now been barred from filing a second suit for damages based on the same act, and further keeping in mind that the Plaintiffs have sued the same parties for damages arising from the same cause of action in the previous suit, and being mindful of attributes of the decisions in the above captioned cited

authorities which are binding to this court, and therefore borrowing a leaf from the already pronounced decisions on the mantra that a party cannot escape the doctrine of res judicata by simply undertaking a cosmetic surgery to his pleadings by merely adding other parties or causes of action in a subsequent suit, I find and hold that the Plaintiff herein cannot prosecute a fresh suit in respect of the same cause of action to which a matter is pending before a superior Court. The Plaint dated the 27th November 2025, alongside all the Applications herein, I find are incompetent and bad in law by virtue of being res judicata Nakuru ELCLC No. 225 of 2012, and I therefore need not make a determination of the other issue herein above stated but to strike out the suit with costs, which I now do, so that parties can ventilate their issue before the Court of Appeal where this matter is pending. The interim orders herein issued are set aside.

Dated and delivered via Microsoft Teams at Naivasha this 19th day of March 2026.



M.C. OUNDO

ENVIRONMENT & LAND COURT - JUDGE