

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET
ELC CASE No. 13 OF 2021
(CONSOLIDATED WITH ELC CASE NO. E007 OF 2021)

ALIMA
RAMADHAN.....PLAINTIFF

CHERONO

-VERSUS-

DONALD GIRO AENG & DAVID KORIR
T/A UASIN GISHU REAL ESTATE &
PROPERTY MANAGEMENT.....1ST
DEFENDANT

JACKLINE NYAWIRA NJIRU.....2ND
DEFENDANT

CELLY NEKESA NYONGESA.....3RD
DEFENDANT

PHILIP ISAAC ODERA OMOLLO.....4TH
DEFENDANT

ROSE NDUNGE KIOKO.....5TH
DEFENDANT

PHYBIAN CHEPKORIR TANUI.....6TH
DEFENDANT

ROBERT NYANGAU.....7TH
DEFENDANT

GRACE CHELIMO SUGE.....8TH
DEFENDANT

JAPHETH SETH OITO OCHOLA.....9TH
DEFENDANT

CHIRCHIR PAUL KIPKOECH.....10TH
DEFENDANT

GOLLAN KIPKOECH BITOK.....11TH
DEFENDANT

KIPSANG CHEMENGICH KALIWAI.....12TH
DEFENDANT

ESTHER SUNGU AMWAYA.....13TH
DEFENDANT

SAMWEL DEFENDANT	KIBARU.....	14TH
LEVIN DEFENDANT	KIPKORIR LIMO.....	15TH
BENSON DEFENDANT	GWAYUMBA MAHANJI.....	16TH
GEOFFREY DEFENDANT	EMOJA ANGALUKI KABOGOI.....	17TH
EDWIN DEFENDANT	KIPKEMBOI YEGO.....	18TH
LAURA DEFENDANT	IMUNGU KEDODE.....	19TH
ALFRED DEFENDANT	WANDERA WANYONYI.....	20TH
JOSEPH DEFENDANT	KIPTOO KEMBOI.....	21ST
JULIUS DEFENDANT	RUTTO.....	22ND

RULING:

1. This ruling is in respect to the Notice of Motion dated 17.11.2025 by the 1st Defendant and the Notice of motion dated 3.12.2025 by the 2nd to 17th Defendants.

Notice of Motion Dated 17.11.2025;

2. In the application dated 17.11.2025, the two 1st Defendants seek the following orders:-
 1. Spent
 2. Spent
 3. That the court be pleased to set aside the ex-parte default judgment entered against the 1st defendant on the 23rd November, 2022.

4. That the court be pleased to review and set aside the order made on 21st September, 2022 granting the plaintiff leave to effect service through substituted service by way of advertisement in a daily newspaper.
 5. That the suit against the 1st Defendant joined as DONALD GIRO AENG and DAVID KORIR t/a UASIN GISHU REAL ESTATE AND PROPERTY MANAGEMENT be dismissed for failure to renew the summons upon expiry.
 6. That the suit against the 1st Defendant joined as DONALD GIRO AENG and DAVID KORIR t/a UASIN GISHU REAL ESTATE AND PROPERTY MANAGEMENT be struck out for misjoinder of parties.
 7. That the two 1st defendants be granted leave to file a defence.
 8. That the costs of this application be awarded to the two 1st Defendants.
3. The application is based on the 9 grounds set out thereunder and is supported by the affidavit of DONALD GIRO AENG sworn on 17.11.2025 on his own behalf and that of his co-defendant.
 4. Alima Cherono Ramadhan, the Plaintiff in ELC No. E007 of 2021 and Defendants in ELC No. 13 of 2021 (Formerly HCCC No. 29 of 2018(O.S), filed a Replying Affidavit dated 2.2.2026 in response to the application dated 17.11.2025. However, by a consent dated 17.2.2026 and filed in court on 24.2.2026 signed by the firm of C. D. Nyamweya & CO. Advocates and

the firm of Mukabane & Kagunza Advocates, they compromised the said application dated 17.11.2025 only to the extent that the applicants be struck out of the proceedings as 1st Defendant with no order as to costs. That consent was adopted by the court on 25.2.2026 as an order of the court.

5. I have perused the court record, including the CTS platform and I have not seen any other response in opposition to the application dated 17.11.2025. Accordingly, the same is deemed as settled in terms of the aforesaid consent.

NOTICE OF MOTION DATED 3.12.2025;

6. In the application dated 3.12.2025, the 2nd and 4th to 17th Defendants are seeking the following orders: -
 1. Spent
 2. Spent
 3. That the court be pleased to grant an enlargement of time to the applicants to file a defence and counter-claim to the consolidated suit.
 4. That the court be pleased to grant an enlargement of time to the applicants to file a list of document, witness statements and a list of witnesses.
 5. That the costs of this application be provided for.
7. The application is based on the 4 grounds set out thereon and is supported by the affidavit of Grace Chelimo Suge the 8th Defendant, sworn on 3.3.2025 and a supplementary affidavit

dated 2.2.2026 on her own behalf and on behalf of her co-defendants. It is their contention that the court is bestowed with the discretion and jurisdiction to enlarge time to an act upon such terms as the justice of the case may require even though the period originally fixed or granted may have expired. That any prejudice to the respondent can be mollified by an order for costs.

8. The deponent averred that the court on 5th February, 2025 granted the applicants 14 days leave to file defence and documents in this matter and communication was made by their advocate vide the emails given to him. She deponed that the applicants were unable to comply with the order of court on time for the reasons that: the defendants who had retained the firm of Wambua Kigamwa & Company Advocates in the matter were initially 17 who are in various parts of the Diaspora and challenges of convening them to give instructions for purposes of filing the defence and compiling witness statements took a while; that collection of documents for purposes of filing the defence and counter-claim took a while as the matters raised in the suit involve allegations of fraud and illegality that have a high standard of proof which required the applicants to proceed with caution in gathering material; that there were challenges of communication to all the applicants as some do not have email addresses and telephones; that the email addresses of some of the applicants herein could not be accessed; challenges of

collection of legal fees for purposes of retainer of the advocate due to financial constraint; and that the advocate was ready with the documentation which were sent to the applicants who due to the magnitude and gravity of the matter, it took a while to engage in group consultations and give feed back to the advocate on the changes and modifications to the draft.

9. The deponent stated that on 22.9.2025, the court expunged the applicants' documents which were filed out of time and this court has been moved as a matter of necessity seeking enlargement of time. That the matters raised in the defence and counter-claim are weighty and warrant interrogation by according the applicants an opportunity to ventilate the same through the filed pleadings. That the applicants are in occupation of the land and have developed the same substantially to a value of over Kshs. 100,000,000/= and the dictates of justice tilts towards the applicants being accorded a hearing adding that the respondent will not suffer prejudice as she would be mollified with costs.
10. In opposing the application, the respondent filed a replying affidavit dated 8.12.2025 sworn by Charles Duke Nyamweya Advocate for the respondent. He deponed that the application is frivolous, vexatious and an abuse of the process of Court and whose intention is to scuttle the hearing of this case that was scheduled for 15.12.2025. The respondent's

counsel pointed out that a similar application was made orally to the court on 22.9.2025, which application was rejected and dismissed by the court and argued that this application is therefore *res judicata*.

11. It was further deponed that the applicants case has been heard and one witness has testified fully, and that the application herein is an attempt to fill gaps which were exposed when PW1 was cross-examined, a situation which is unacceptable in law. That the only recourse for the applicants is to withdraw their suit and allow the respondent to proceed with her suit.
12. It was also averred that the issue of the applicants' failure to file defence in relation to ELC No. 7 of 2021 herein has been raised severally before court and that Mr. Mogambi, the applicant's counsel always indicated that they would rely on the pleadings in ELC No. 13 of 2021 (OS) as their defence, and it is therefore surprising that the applicants are now changing tune and in the middle of a trial are seeking to introduce a defence and a counter-claim. That the application has been made after an inordinate and unexplained delay of 4 years after the applicants filed their memorandum of appearance on 10.6.2021. That even on 5.2.2025, the applicants sought for an adjournment to inter alia, file compliance documents and the court granted them 14 days to do so, but the applicants still did not comply with the court's order, and only filed documents two days to the hearing date on 22.9.2025, and

which documents the court rightly expunged from the record. That on 5.2.2025, the applicants were given a last adjournment and on 22.9.2025 after presenting one witness, they again sought for an adjournment which was granted, and the respondent argued that this application is another attempt to adjourn the matter.

13. In the supplementary affidavit, the applicants reiterated the contents of the supporting affidavit and denied the contention that the application is res judicata as the court never considered and pronounced itself on the issue of extension of time to file pleadings upon expunging of the documents on 22.9.2025. That the commencement of a trial is not a bar to making an application to file additional documents. That the delay is not 4 years as alleged by the respondent as in the course of trial, a large amount of time was spent on interlocutory applications; including some brought at the defendant's behest whose documents were also struck out and were granted leave to file by the court. That in the interest of justice and considering that land is an emotive subject, the application be allowed.

Submissions;

14. The application was canvassed by way of written submissions. The 2nd and 4th to 17th Defendants/Applicants filed their submissions dated 2.2.2026 while the Respondent filed

submissions dated 16.2.2026 which I have read and considered, and I need not reproduce the same in this ruling.

Analysis and determination;

15. I have considered the application, the response as well as the submissions filed together with the authorities cited. The issues that arise for determination are:-

- i. Whether the application is *res judicata*,
- ii. Whether the applicants should be granted an enlargement of time to file pleadings and additional documents.

i. Whether the application is *res judicata*;

16. Learned counsel for the respondent submitted that on 22.9.2025, counsel for the applicants made an oral application in court for enlargement of time to admit additional documents filed on 19.9.2025. That that application was opposed and the court having heard both sides dismissed that application and expunged from the record the documents that had been filed without leave. That this court having made a lengthy ruling, the present application is similar to the earlier one hence *res judicata*. That the only difference is that the application made on 22.9.2025 was made orally and the one of 3.12.2025 is formal.

The respondent's counsel submitted that all the documents that were expunged and the documents annexed to the affidavit in support of the application herein are the same.

17. The applicants counsel on the other hand, submitted that when the court decided to expunge the documents previously filed, it did not address an application for enlargement of time. That the bar on *res judicata* cannot apply where a matter was not before the court for its determination. It is submitted that the decision expunging the documents did not conclusively adjudicate on the rights of the parties as regards moving the court to seek an enlargement of time to file documents. That enlargement of time and according the applicants an opportunity to file the pleadings together with the accompanying documentation will accord the court and the defendant in the suit an insight into the fact that the pleaded reliefs sought by her cannot be granted as the land parcel known as PIONEER/LANGAS BLOCK 1 (MALEL)/379 for which she seeks an injunction and eviction orders does not exist having been sub-divided and closed, and the court will be acting in vain in granting relief that is incapable of execution.
18. The law pertaining to the doctrine of *res judicata* is in section 7 of the Civil Procedure Act which provides as follows: -
- “7. No court shall try any suit in which the matter 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.”

19. In the case of **Suleiman Said Shabhal -Vs- Independent Electoral and Boundaries Commission 3 others (2024)** which was cited by both the advocate for the applicants and advocate for the respondent in their submissions, it was held as follows:-

“To constitute res-judicata, there must be adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy.”

20. In the case of **Attorney General & Another -vs- ET (2012) eKLR**, it was held as follows:-

“The courts must always be vigilant to guard litigants against the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi -Vs- NBK & others (2001) EA 117, 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 Njanju -Vs- Wambugu & 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 court of competent jurisdiction merely because he gives his case cosmetic lift in every occasion he comes to court, then I do not see the use of the doctrine of res-judicata...”

21. There is no doubt that the principle applies to applications with the same force whether the application be final or interlocutory. In this case, there is no dispute that the parties are the same in all these proceedings.
22. I have perused the court record. On 5.2.2025 when these consolidated matters came up for hearing, Mr. Mogambi advocate for the plaintiffs (who are now the applicants herein) applied for an adjournment for the reason that he had not filed a defence in ELC No. E007 of 2021. Although that application was strongly opposed by Mr. Nyamweya for the defendant, this court, in the interests of justice, allowed the adjournment and gave the plaintiffs a last adjournment. The matter was then fixed for hearing on 22.9.2025 and the plaintiffs were granted 14 days to file and serve their

compliance documents. However, the applicants herein did not file their pleadings and documents within the period granted by the court. Instead, they filed the said documents on 19.9.2025.

23. When the matter came up for hearing on 22.9.2025, Mr. Mogambi applied to have the documents filed on 19.9.2025 admitted and deemed duly filed and served. Again, that application was strongly opposed by Mr. Nyamweya. Upon hearing and considering the application and the submissions made by counsel for both parties, as well as perusing the record, this court disallowed the applicants' application and expunged the documents filed outside time and without leave of the court. Subsequently, the hearing proceeded and PW1 testified, and was cross-examined and re-examined. At the request of Mr. Mogambi who stated that he was not able to secure his other two witnesses, the matter was adjourned to 15.12.2025 for further hearing. However, before that date the applicants filed the present application dated 3.12.2025.

24. There is no dispute that the parties are the same in all these proceedings. In both the earlier application made on 22.9.2025 and the present one, the applicants mainly sought leave to file pleadings and documents out of time. These issues are similar in all forms and this court has already determined them in the earlier decision. I do agree with the submission by the respondent that it does that matter that

the earlier application was oral while the present one is formal. The two applications basically seek the same orders, and if the applicants were dissatisfied with the earlier decision of the court, their recourse was either to appeal or make an application for review, but not to file another application seeking more or less the same orders as the earlier ones. The statutory provision under section 7 of the Civil Procedure Act is clear and bars a court from hearing a suit, application or issue if the same was substantially in issue in a former suit or application between the same parties, if the issue was determined in the former application after a hearing. By virtue of section 7 of the Civil Procedure Act, it is clear to me that the application herein is barred by the doctrine of res judicata.

25. By reason of the foregoing, I find that the Notice of motion dated 3rd December, 2025 is *res judicata* and is an abuse of the court process as it raises issues which have been substantially litigated and adjudicated upon or which ought to have been raised in the earlier application.
26. In the result, the application dated 3.12.2025 is struck out with costs to the Respondent.
27. It is so ordered.

DATED, SIGNED and DELIVERED at **ELDORET** this **19TH** day of **MARCH, 2026.**

C. K. YANO

JUDGE

Ruling delivered in the virtual presence of: -

Mr. Mogambi for Plaintiff.

Mr. Nyamweya for Defendants.

Court Assistant - Laban

ORIGINAL