



Everton Enterprises Limited & 2 others v Karanja and Karanja (As administrators of the Estate of Walter Karanja Muigai -Deceased) & another (Environment and Land Case Civil Suit E089 of 2024) [2026] KEELC 1880 (KLR) (6 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1880 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE CIVIL SUIT E089 OF 2024
JA MOGENI, J
MARCH 6, 2026**

BETWEEN

**EVERTON ENTERPRISES LIMITED 1ST PLAINTIFF
GEOFFREY CHEGE KIRUNDI 2ND PLAINTIFF
LUCY WAMAITHA CHEGE 3RD PLAINTIFF**

AND

**KENNETH NDICHU KARANJA AND WILLIAM MUIGAI KARANJA (AS ADMINISTRATORS OF THE ESTATE OF WALTER KARANJA MUIGAI - DECEASED) 1ST DEFENDANT
THE CHIEF LAND REGISTRAR 2ND DEFENDANT**

RULING

1. The preliminary objection dated 20/01/2025 subject of this Ruling has been raised in response to the petitioner's application dated 25/11/2024. The objection is raised upon the grounds that;
 - a. The Honourable Court has no jurisdiction to hear this suit as it is res judicata as per Section 7 of the Civil Procedure Act. This suit seeks to address ownership of the suit property which matter was determined by the Court Of Appeal in Civil Appeal Number 172 of 2010 Rose Wakanyi and others vs Geoffrey Chege Kirundi and another vide a Judgment delivered on 29th July 2016. This position was affirmed in Supreme Court Application Number E026 of 2023 Everton Coal Enterprises vs Rose Wakanyi Karanja and 5 Others in a Ruling delivered on 10th November 2023.



- b. The suit is statutory barred as the cause of action to which reference is made took place in 5th May 2009 a period that spans more than 15 years which is beyond the statutory time of 12 years provided under Section 7 of the *Limitation of Actions Act*.
 - c. The suit is scandalous, frivolous and vexatious as it seeks to appeal the decision of the Court Of Appeal and the Supreme Court which is unconstitutional, and thus any orders issued therein will be in vain and prejudicial to the 1st Defendant.
 - d. The suit and this application seeks to defeat the principle of finality in law.
 - e. The application is bad in law, vexatious and an abuse of Court process as it is founded on a suit that is res judicata, statutorily barred, scandalous, frivolous and vexatious.
2. On their part, the plaintiffs/Applicants had filed a Notice of Motion Application dated 4/06/2024 for orders that:
1. Spent
 2. That pending the inter partes hearing of this Application, this Honorable Court be pleased to grant an order of temporary injunction restraining the 1st Defendants their agents, employees, assigns and/or any person claiming through them from trespassing, selling transferring, disposing, occupying, digging up murrum and interfering with the 1st plaintiff's quiet possession, use and occupation and/or dealing in any way with the parcel of land known as LR No. 10090/23 No. IR 23757
 3. That pending the inter partes hearing of this Application, this Honorable Court be pleased to grant an order of temporary injunction restraining the 1st Defendants their agents, employees, assigns and/or any person claiming through them from trespassing, selling transferring, disposing, occupying, digging up murrum and interfering with the 1st plaintiff's quiet possession, use and occupation and/or dealing in any way with the parcel of land known as LR No. 10090/23 No. IR 23757
 4. That pending the hearing and determination of this suit, this Honorable Court be pleased to grant an order of temporary injunction restraining the 1st Defendants their agents, employees, assigns and/or any person claiming through them from trespassing, selling transferring, disposing, occupying, digging up murrum and interfering with the 1st plaintiff's quiet possession, use and occupation and/or dealing in any way with the parcel of land known as LR No. 10090/23 No. IR 23757
 5. That this Honorable Court do direct the Officer Commanding Police Station (OCS) Juja Police Station and/or the Sub-County Police Commander, Thika, to ensure enforcement and compliance of the Orders herein
 6. That this Honorable Court do issue any other or further orders that it may deem just and fit to secure compliance with its orders
3. The 1st Defendant/Respondent's William Muigai Karanja on behalf of Kenneth Ndichu Karanja swore a Replying Affidavit in opposition to the said Application. For clarity, the Replying Affidavit herein highlighted the chronology of events that led to the Supreme Court decision. It was his contention that the sale of the suit property by 2nd the 3rd plaintiff was invalidated in Civil Appeal No. 172 of 2018 Supreme Court decision where the Application for extension of time to file appeal by the 1st plaintiff was declined.



4. It is the contention of the 1st defendant that the case was decided and sealed and the property reverted back to the estate of the deceased as per the Judgment dated 29/07/2019. It is his contention that the application is brought by bad faith. He chronicled the litigation history of the suit property starting with the sale to the Kirikas who were not able to pay the balance of the purchase price having paid Kesh 405,000.
5. This led to rescission of the agreement and that is the action that opened the floodgates of litigation starting with HCCC No. 3398 of 1988 culminating into the Supreme Court Application No. E026 OF 2023 seeking orders for extension of time to file a notice of Appeal against the Judgment of the Court of Appeal in Civil Appeal 172 of 2010, a review of the refusal to grant certification by the Court of appeal. The Supreme Court Ruling of 10/11/2023 dismissed the 1st plaintiff's application.
6. In a rejoinder, the Applicant filed a Supplementary Affidavit dated 4/10/2024. He stated that not having been a party to the earlier filed suits his issues were not litigated. Further that the 2nd plaintiff refunded the Kesh 405,000 that had been paid by the Kirikas and he also contents that the Court of Appeal decision in Appeal No. 140 OF 1994 paved way for transfer of the suit property to the plaintiffs by the 1st defendant failed refused and neglected.
7. That the 1st plaintiff claim of being an innocent purchaser for value has not been heard since he was not a party in Succ No. 3608 of 2003, Civil Appeal No. 172 of 2010 and SC Appeal No. E026 OF 2023. That the 1st defendant's trespass on the suit property is prejudicial to the 1st plaintiff. That 2nd and 3rd plaintiffs have been in occupation since 1990 and only as recent as 2024 is when the 1st defendant started dealing with the suit property by trespassing.
8. The Chief Land Registrar as 2nd Defendant/ Respondent did not participate in the application
9. The application was disposed by way of written submissions. On record are the Applicant's submissions dated 4/10/2024 and the Respondent's submissions dated 1/10/2024. I have considered the pleadings, authorities and rival submissions filed and they have been considered in the decision herewith. I will first examine the Preliminary Objection.

Determination

10. The issues for determination for me are;
 - i. Whether the preliminary objection is merited and
 - ii. Whether the Applicant's Notice of Motion Application is merited
11. To begin with, a preliminary objection is a specie of objection which, if sustained by a Court, will render further proceedings in a matter unnecessary, see *Abe v. UniIlorin* (2013) 16 NWLR (Pt. 1379) 183; *APC v. INEC* (2015) 8 NWLR (Pt. 1462) 531; *Jim – Jaja v. C.P, Rivers State* (2013) 6 NWLR (Pt. 1350) 225. For this reason, the law commands the Court to deal with a preliminary objection, when raised in any proceedings, first, see *APC v. INEC* (Supra); *Ogboru v. Uduaghan* (2013) 1 NWLR (Pt. 1311) 357; *Efet v. INEC* (2011) 7 NWLR (Pt. 1247) 423.
12. In the case of *Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Company Limited* (1969) EA 696; the Court held that 'A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does



nothing but unnecessarily increase costs and, on occasion, confuse the issues. This improper practice should stop.’

13. Further, in the case of Stephen Wanganga Njoroge Vs Stanley Ngugi Njoroge & Another (2017) eKLR referred to Uhuru Highway Development Ltd V Central Bank & Others, CA No. 36 of 1996 where the Court of Appeal stated that :-

“In order to rely on the defence of res judicata, there must be a previous suit in which the matter was in issue; the parties must have been the same or litigating under the same title; a competent Court must have heard the matter in issue and the issue is raised once again in the fresh suit.”

14. While in the case of Avtar Singh Bhamra & Another Vs Oriental Commercial Bank, Kisumu HCCC No.53 of 2004, the Court held that:

“ A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”

15. The Defendant has submitted and contended that the suit is res judicata as it offends the provisions of section 7 of the *Civil Procedure Act*. Section 7 of the *Civil Procedure Act*, stipulates 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.’

16. It is not in dispute that this matter started way back in 1988 with filing of the first suit by the Kirikas and ended at the Supreme Court as already stated. Both the plaintiffs and defendants do not dispute this fact. The parties who have litigated are also the same except for that when Walter Karanja passed on his estate was taken over for administration by the 1st and 2nd defendants. As such the suit property is the same, the parties are the same and the issues remain the same it is about proprietorship of the suit property.

17. Based on the facts as presented while relying on the legal provisions cited above as well as associating myself with the quoted decisions, I find that this suit is res judicata as claimed by the 1st and 2nd Defendants as there is are previous suits in which the matter was in issue between the same parties herein that a Court of competent Court had determined but which the 1st plaintiff seeks to raise once again in this instant suit.

18. Therefore I find that the Defendants’ averments in the Notice of Preliminary Objection merited.

19. In the circumstance, I find the Notice of Preliminary objection dated the 18/06/2024 merited and I will allow it.

20. Given this finding I will not address the other issue since it is moot the finding on the Preliminary Objection has settled the suit and the notice of Motion Application.

21. Orders accordingly

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DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 6TH DAY OF MARCH 2025

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MOGENI J

JUDGE

In presence of: -

.....for the 1st Plaintiff/Applicant.

.....for the 2nd and 3rd Plaintiffs

.....for the 1st & 2nd Administrators Respondents.

.....for the 2nd Respondent

Melita..... Court Assistant

