

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

ELC PETITION NO. E012 OF 2025

**JOHNAM MAGHANGHA NYAMBU (Suing as an administrator
of the Estate of the late KITUNGE MAGHANGA
MWASHIGHADI alias MWASHIGHADI KITUNGE)**
.....**PETITIONER**

-VERSUS-

EDWARD KWARU MJOMBA.....1ST

RESPONDENT

PATRICK NYALI KALELA.....2ND

RESPONDENT

FRANCISCAR CHAO KALELA.....3RD

RESPONDENT

**THE TRUSTEES OF THE ASSOCIATION OF
JEHOVAH WITNESS IN EAST AFRICA.....4TH**

RESPONDENT

RULING

1. This Ruling is in respect to the 4th Respondent's Preliminary Objection dated 19th February 2026. The Preliminary Objection was based on the following grounds:-

(i) THAT this matter is Res Judicata pursuant to the Judgment in Chief Magistrate's Court at Voi High Court ELC Case No. 12 of 2019. The Trustees of the Association of Jehova Witnesses in East Africa =Versus= Mwangima Maghanga and Jonam Maghanga and Environment and Land Court Voi ELCA No. 22 of 2023 Maghanga Mwangima =Versus= The Trustees of Association of Jehova's Witnesses in East Africa.

(ii) THAT this Honourable Court lacks jurisdiction to hear and determine this suit because the orders sought by the Petitioner regarding the ownership of the suit property owned by the 4th Respondent's Land Parcel No. Mgange/Nyika/1822 has been determined in Chief Magistrate's Court at Voi High Court, ELC Case No. 12 of 2019. The Trustees of the Association of Jehovah's Witnesses in East

***Africa =Versus= Mwangima Maghanga and Jonam
Maghama and Voi ELCA No. 22 of 23 Maghanga
Mwangima =Versus= The Trustees of Association
of Jehovah's Witnesses in East Africa.***

***(iii) THAT this suit is fatally and incurably defective
and the same should be dismissed with costs to
the 4th Respondent.***

2. The Preliminary Objection was contested by the Petitioner. **Learned Counsel Mr. Mosioma** made oral submissions on behalf of the Petitioner while **Learned Counsel Mr. Anami, Mrs. Gichana and Mr. Weramondi** appeared for the 4th Respondent while **Ms. Wambura** appeared for the 3rd Respondent.

3. It was the 4th Respondent's contention that the objection is founded on **Section 7 of the Civil Procedure Act and Section 3 of the Environment and Land Court Act.** There have been 2 cases that have resolved the matter. There was no fraud, mistake or lack of jurisdiction in those matters and hence the issues have been litigated in finality. The Petitioner was a party in those matters, the suit parcel

was the same, the Petitioner had the same interest in those previous matters. There was a determination on merit and the Petition should be struck out with costs. Reliance was placed to the Supreme Court case of **John Florence Maritime Services Ltd & Another =Versus= Cabinet Secretary Transport & Infrastructure & 3 Others (Petition 17 of 2015) (2021) KESC 39 (KLR) (Civ) (6 August 2021) (Judgment).**

4. The Petitioner argued that Preliminary Objection should be based on pure points of law as set out in the case of **Mukisa Biscuit Manufacturing Co. Ltd =Versus= West End Distributors Ltd (1969) EA 696.**
5. It was argued that the issue of fraud, mistake and jurisdiction is what has been raised in the Petition. The property was intermeddled with. The proceedings are null and void. The Petition emanates from a suit filed in 2001 where the suit property was sold to the 3rd Respondent. The Petitioner had already died at that time. The Petitioner seeks to annul all those previous proceedings and that the law is clear on aspects of illegality and injustice.

6. It was further submitted that the facts are disputed yet the Preliminary Objection can only be raised where facts are not disputed. The matters are not similar. The Petitioner is alleging issues of fraud, misrepresentation, mistake and lack of jurisdiction. The objection ought to be dismissed.

7. The doctrine of ***“res judicata”*** is provided for under **section 7 of the Civil Procedure Act** in 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 issue in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

8. As stated the elements that must be proved before a court may arrive at the conclusion that a matter is res judicata include the following:-

- (a) There is a former judgment or order which was final.**
- (b) The judgment or order was on merit.**
- (c) The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties.**
- (d) There must be between the first and the second action identical parties, subject matter and cause of action.**

9. In considering the objection, the Respondents urged the Court to refer to this previous cases **Chief Magistrate Court at Voi ELC Case No. 12 of 2019, The Trustees of the Association of Jehova Witnesses in East Africa =Vesus= Mwangima Maghanga and Jonam Maghanga and Voi ELCLA No. 22 of 2023 Maghanga Mwangima =Versus= The Trustees of Association of Jehova's Witnesses in East Africa.** A perusal of the parties therein confirm that the parties were essentially similar in the previous cases and this Petition.

10. Was there a judgment on merit in the referenced matters? Parties litigated in respect to Chief Magistrate's Court ELC Case No. 12 of 2019 which had been transferred from Mombasa to Voi and later an appeal filed as Voi ELCA No. 22 of 2023 upon which the said appeal was dismissed. In dismissing the Appeal, **Justice Nelly Matheka** held as follows;

“8. The appellant did not contest the process of execution by way of attachment and sale of property. The validity of the Certificate of Sale of Land issued in Mombasa RMCS No. 3045 of 2001 nor the Vesting Order issued on Mombasa HCMC No. 172 of 2004 have been challenged by the appellant. From the green card, its Mwashighadi Kitunge who is registered as the proprietor of Parcel No. 241 and not Kitunge Maghanga Mwashigadi as insisted by the appellant. The claims that it's the Land Registrar who referred to registering him as Mwashighadi Kitunge and not Kitunge Maghanga Mwashigadi

have not been substantiated. From the evidence before the court it is Mwashighadi Kitunge who was the registered proprietor and also the judgement debtor in Mombasa RMCS No. 3045 of 2001.

9. The appellant disputed ownership of Parcel No. 241 on the basis that the name shown on the land register, Mwashighadi Kitunge was different from the names alleged by the respondent. This discrepancy was material and the appellant failed to go further and demonstrate to the court that the names referred to different individuals. The appellant wanted the court to believe that Mwashighadi Kitunge the registered owner was his late grandfather Kitunge Maghanga Mwashigadi. I would have expected the appellant to provide identity cards of the two, his grandfather and uncle and this would have confirmed their identity, bearing in mind that identity cards were used in the registration of

land. If the details of their names had turned out different, then the appellant would have made out a case of mistaken or different identity.

10. In the absence of the above, this court cannot find any different from what the subordinate court found; that the respondent had demonstrated that it had acquired the suit property legally and procedurally. The respondent has established that it became the registered owner following the transfer of the same from Francisca Chao Kalela and issued with a certificate of title on June 20, 2007. The respondent alleged trespass, the appellant is said to have fenced off the suit property denying them access to the same. The respondent demonstrated by way of both oral and documentary evidence of the appellant's presence and activities on the suit property. Such presence and activities are not justified and the same amount to trespass. According to Sections 24 and 25 of the Land Registration Act, the respondent as

the registered owner is entitled to a quiet possession of the suit property which meant that the appellant ought to be evicted from the same.

11. In conclusion, I find that the trial court did not err in finding that the respondent proved its case on a balance of probability and that it was entitled to the orders sought in its plaint dated July 15, 2019. I find no reason to disturb the judgement of the learned magistrate that was delivered on April 6, 2023. Consequently, the Amended Memorandum of Appeal dated November 20, 2023 is dismissed with no order as to costs.”

11. Applying the outcome of the said judgment to this matter, it is the finding of this Court that indeed there was a judgment on merit on the same cause of action and suit property in respect to this instant Petition.

12. It is noteworthy that the Petitioner has sought inter alia in his Petition to the proceedings in Mombasa RMCC No. 3045 of 2001 and all the consequential orders including the auction and sale conducted on the 5th June 2003. However, the

Petitioner has not sought to annul the proceeding in the subsequent suit being Voi Chief Magistrate ELC No. 12 of 2019 and its subsequent appeal being Voi ELCLA No. 22 of 2023 in which the same issues and the acquisition and ownership of the suit parcel were extensively adjudicated upon. The Petitioner is legally bound by the said decision since litigation must come to an end.

13. The issues raised in this Petition even though framed as a Constitutional Petition will still be barred by the doctrine of res judicata. Since Res Judicata applies to all categories of cases including Constitutional Petitions as was held in the cases of **Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another (Motion No 42 of 2014) [2016] eKLR and Mweresa & 3 others v Social Health Authority & another; Law Society Of Kenya & 3 others (Interested Parties) (Petition E524 of 2024) [2025] KEHC 8365 (KLR) (Constitutional and Human Rights) (13 June 2025) (Judgment)** where it was held that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights.

14. This Court in determining this Petition will still be required to determine the same issues that had already been settled in the previous cases.

15. In view of the foregoing, it is the finding of this Court that the issues raised in the instant petition are res judicata in view of **Voi Chief Magistrate ELC Case No. 12 of 2018 The Trustees of the Association of Jehovah's Witnesses in East Africa =Versus= Mwangima Maghanga and Jonam Maghanga and Voi ELCLA No. 22 of 2023, Maghanga Mwangima =Versus= The Trustees of Association of Jehovah's Witnesses in East Africa.**

16. In conclusion, the 4th Respondent's Preliminary Objection dated 19th February 2026 is merited and the same is upheld. The Court proceeds to issue the following orders; -

- (i) The Petition filed herein is hereby struck out.**
- (ii) Each party to bear own costs.**

Dated, Signed and Delivered Virtually at Voi this 25th day of March 2026.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Mosioma for the Petitioner.

Ms. Wambura for the 3rd Respondent.

N/A for the other Respondents.

Court Assistants: Mary Ngoira and David Ngoosa.

ORIGINAL