

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KAJIADO**  
**ELCL E015 OF 2021**

**JOSEPH KELOI PARSAYIATO.....1<sup>ST</sup>**

**PLAINTIFF**

**DAVID SERERE PARSAYIATO.....2<sup>ND</sup>**

**PLAINTIFF**

**VERSUS**

**EZEKIEL NGARE SOIPEI.....1<sup>ST</sup>**

**DEFENDANT**

**DISTRICT LAND REGISTRAR KAJIADO..... 2<sup>ND</sup>**

**DEFENDANT**

**LAND COUNTY SURVEYOR KAJIADO.....3<sup>RD</sup>**

**DEFENDANT**

**HON.ATTORNEY GENERAL.....4<sup>TH</sup>**

**DEFENDANT**

**MARK MUNASIA MUHANJI.....**

**INTERESTED PARTY**

**RULING**

***{On the consequences of the discovery that the Plaintiff had filed another suit which was dismissed for want of prosecution}***

**Background**

1. The hearing of this case had commenced on 11<sup>th</sup> November 2025. It was in the course of the hearing of the 1<sup>st</sup> Plaintiff's

testimony that it became apparent that the Plaintiffs had filed a different case in respect of the subject matter of the current suit in the ELC at Machakos. The court then stood down the witness awaiting further directions upon perusal of the proceedings and the pleadings in the other case.

2. The prior suit was ELC 421 of 2017 (formerly Machakos ELC 152 of 2014) filed in court on 1<sup>st</sup> December 2014 by the Plaintiffs in this case, David Serere Parsayiato and Kelo Parsayiato against Ezekiel Soipei and Kasoni Ketura as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively vide the plaint dated 27.10.2024. The subject matter of that suit was L.R. No. Kajiado/Kaputei-North/831 measuring approximately 49.40 Ha.
3. The Plaintiffs in the said case accused the 1<sup>st</sup> Defendant, Ezekiel Tuari Soipei of trespassing into the subject property sometimes in the year 2013. The Plaintiffs averred that the Defendants subsequently in the year 2014 went ahead to unlawfully bury the body of one of their relatives in the subject property. The Plaintiffs contended that the unlawful occupation of the subject property by the Defendants had

deprived them of the use and quiet enjoyment of their land causing them loss and damage.

4. The Plaintiffs sought various orders against the Defendants including a declaration that the Plaintiffs were entitled to exclusive and unimpeded right of possession and occupation of all that parcel of land known as L.R. No. Kajiado/Kaputei - North/831, an injunction restraining the Defendants from remaining on or continuing in occupation of the suit property, exhumation of the bodies buried in the disputed property and general damages for trespass.
5. The Defendants in the said case filed a statement of Defence dated 11<sup>th</sup> December 2014 whereby they denied moving into the Plaintiff's land and putting up structures therein as alleged in the plaint. They asserted that they reside on their own land known as L.R No. Kajiado/Kaputei-North 840. More particularly the Defendants averred that the Land Registrar had resolved the boundary dispute between them and the Plaintiffs over parcels of land L.R No. Kajiado/Kaputei-North/831 and L.R No. Kajiado/Kaputei-North 840 but the Plaintiffs had refused to adhere to the findings by the Land Registrar.

6. The record indicates that Lady Justice C. Ochieng dismissed the suit, ELC 421 of 2017 (formerly Machakos ELC 152 of 2014) for want of prosecution on 7<sup>th</sup> March 2018 after a notice to show cause had been issued.
7. The current suit, ELC E015 of 2021 was filed in court on 18<sup>th</sup> March 2021 by the same Plaintiffs in ELC 421 of 2017 against Ezekiel Soipei, as the 1<sup>st</sup> Defendant and the District Land Registrar Kajiado, Land Surveyor Kajiado and the Hon. Attorney General as the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants respectively.
8. In their undated plaint, the Plaintiffs assert that they are jointly the registered owners of the parcel of land, L.R No. Kajiado/Kaputei-North/831 which according to them has a peculiar feature in that it is enclosed by roads from all sides clearly separating it from the neighboring parcels being L.R No. Kajiado/Kaputei-North 840, 839, 848 and 850.
9. The Plaintiffs in their plaint assert that sometimes in the year 2013 they discovered an encroachment into their land parcel No. Kajiado/Kaputei-North/831 by the occupants of L.R No. Kajiado/Kaputei-North 840 which had then been subdivided

into several portions which were subsequently sold to various buyers.

10. The Plaintiffs in their plaint disclose that a boundary dispute had been preferred before the Land Registrar Kajiado by one J.K Leserei involving parcels of land Kajiado/Kaputei-North 840, 839, 848, 830 and 831, to avoid recurring conflicts amongst the registered proprietors. In the course of the hearing of the dispute, the Plaintiffs allegedly walked out of the meeting but a decision was nevertheless made by the Land Registrar dated 15<sup>th</sup> October 2014.
11. The Plaintiffs are aggrieved with the decision of the Land Registrar which according to them did not consider the original Emboloi Group Ranch RIM Map.
12. The Plaintiffs further assert that the proprietor of Kjd/Kaputei-North/840 buried the body of a close relative in the 1<sup>st</sup> Plaintiff's land Kajiado/Kaputei-North/830. The Plaintiffs have since realized that a total of five (5) more bodies have since been buried therein.
13. The Plaintiffs pray for a permanent injunction restraining the 1<sup>st</sup> Defendant from interfering with their quiet possession,

occupation and enjoyment of the Plaintiff's parcels of land Kajiado/Kaputei-North/830 and 831. They further pray for an eviction order against the 1<sup>st</sup> Defendant evicting him from the subject property, exhumation of the bodies buried in the Plaintiff's parcel of land by the 1<sup>st</sup> Defendant, mesne profits and order directing the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants to carry out and confirm on the ground the actual beacons as per the original Emboloi Group Ranch RIM survey map and the original mutation number 243/2.

**Issues for determination.**

14. The sole issue for this court to determine is whether the Plaintiffs in this case and who were in the Plaintiffs in ELC 421 of 2017 (formerly Machakos ELC 152 of 2014) which was dismissed for want of prosecution could lawfully file a new suit in respect of the same subject matter.

**Determination.**

15. The subject matter of the suit ELC 421/2017 (formerly Machakos ELC 152 of 2014) was Kajiado/Kaputei-North/831. It

is still the subject matter of the current suit, ELC E015 of 2021.

16. At paragraph 8 of their plaint, the Plaintiffs assert that they became the registered owners of parcels No. Kajiado/Kaputei-North/831 for the 1<sup>st</sup> Plaintiff and Kajiado/Kaputei-North/831 for the 2<sup>nd</sup> Plaintiff jointly with the 1<sup>st</sup> Plaintiff respectively.
17. At paragraph 9, the Plaintiffs assert that, “a survey exercise was carried out and they were allocated the above indicated parcel of land herein referred to as the substratum of this suit and survey map (RIM) and mutation form produced and the beacons put in place and they took possession of the respective parcels of land (the substratum of this suit.)”
18. It is certainly not in dispute that the prior suit, ELC 421 of 2017 (formerly Machakos ELC 152 of 2014) was dismissed for want of prosecution on 7<sup>th</sup> March 2018. The current suit was filed three (3) years after the dismissal of the former suit on 18<sup>th</sup> March 2021.

19. The Plaintiffs at paragraph 22 of the plaint in this case assert that **there is no suit filed nor determined in court over the same cause of action.**

20. In the case of **Ndirangu vs Oyaro (2023) KEELC 283 (KLR)**, the court, confronted with a similar situation as in this case made reference to a decision by Mativo J ( as he then was) in the case of **Mumira vs Attorney General (Constitutional Petition E007 of 2020 [2022] KEHC 271 (KLR)** where the learned Judge had in turn cited with approval the decision in **Benjamin Koech vs Baringo County Government & 2 others**, where the court has stated as follows;

***“The issue here is whether res judication applies after a case is dismissed for want of prosecution. Whereas I agree with the reasoning Cosmas Mrombo vs Co-operative Bank of Kenya Ltd & another (supra) and Moses Mbatia vs Joseph Wamburu Kihara (supra) that a suit dismissed or struck out for non-attendance or want of prosecution is not synonymous with a suit that has been heard and determined on merits, there is yet***

***another important issue which was not addressed in the said cases, which is whether it is open for a party to file a fresh suit based on the same facts and circumstances after the earlier suit is dismissed for want of prosecution. My view is that it is not open for a party to file a fresh suit after the earlier suit is dismissed for want of prosecution. In my view, the proper cause of action for the petitioner was to either apply to set aside the order dismissing the petition for want of prosecution or to apply for review of the order or prefer an appeal against the dismissal. It is not open for the petitioner to institute a fresh suit disguised as a constitutional petition replicating the same issues now camouflaged as breach of constitutional rights. Such an approach is impermissible and if allowed, would create endless litigation and open a window for parties to evade orders dismissing suits for want of prosecution or for non-attendance and then file fresh suits vexing Respondents twice with the same suit.”***

21. As I stated in the case of **Ndirangu Vs Oyaro case** (**supra**), I strongly associate myself with the above sentiments. It is an abuse of the process of court for the Plaintiffs whose suit has been dismissed for want of prosecution to file a fresh suit based on the same set of facts and circumstances.
22. I note that in a bid to give their new suit a semblance of freshness, the Plaintiffs introduced parcel No. Kajiado/Kaputei-North/830 and removed the 2<sup>nd</sup> Defendant in the previous suit, Kasoni Katura, replacing her with the Land Registrar Kajiado, Land County Surveyor Kajiado and the Hon. Attorney General as the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants respectively. This scheme however does not change the fact that this suit is substantially and directly related to the previous suit and is in respect of the same subject matter. It does not in any sense sanitize the current suit. It amounts to the abuse of the court process.
23. The assertion that there is no other suit filed over the same cause of action is outrightly misleading.

24. There is another pertinent issue in this matter. The Plaintiffs in their plaint disclose that a boundary dispute had been preferred before the Land Registrar Kajiado involving parcels of land Kajiado/Kaputei-North 840, 839, 848, 830 and 831 and a decision was ultimately made which they disagree with. A party aggrieved with a decision of the Land Registrar has a right of appeal to this court. Such a grievance cannot therefore be presented in form of a suit as the Plaintiffs have attempted to. The Plaintiffs are well advised to reconsider their litigation strategy.

25. Consequently, the court has no option but to strike out the Plaintiff's suit with costs to the 1<sup>st</sup> Defendant.

It is so ordered.

**Dated Signed and Delivered at Kajiado Virtually this 24<sup>th</sup>  
Day of March 2026.**

**M.D. MWANGI**  
**JUDGE**

**In the virtual presence of:**

Mr. Ochieng for the 1<sup>st</sup> Defendant

Mr. Mark Munasia, the Interested Party in person

N/A by the Plaintiffs and the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants

Court Assistant: Mercy

**M.D. MWANGI**  
**JUDGE**

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