



**Munyua v Mwangi; Mwangi (Applicant) (Environment and Land Case 248 of 2018) [2026] KEMC 30 (KLR) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEMC 30 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
ENVIRONMENT AND LAND CASE 248 OF 2018  
PA NDEGE, SPM  
FEBRUARY 19, 2026**

**BETWEEN**

**PATRICK NDEGWA MUNYUA ..... PLAINTIFF**

**AND**

**HANNAH NJERI MWANGI ..... DEFENDANT**

**AND**

**BENJAMIN KIIRU MWANGI ..... APPLICANT**

**RULING**

1. For my determination is the Notice of Motion by the Applicant dated 26/08/2025 seeking inter alia to set aside the judgment delivered by this honorable court on 29/03/2023 and the resultant decree issued on 30/10/2024. The application is premised on grounds on the face thereof supported by the affidavit of the Applicant, Benjamin Kiiru Mwangi sworn on 26/08/2025.
2. It is the Applicant’s case that he is the registered, lawful and sole proprietor of the parcel of land known as Bahati/Kabatini Block 1/9983 which was the subject matter of the suit herein. That the subject matter of the suit herein is therefore directly and substantially in issue and essentially the subject matter in *Nakuru CMELC No. 330 of 2018* pending full hearing in a court of coordinate jurisdiction in which the Applicant and the Plaintiff herein are parties. That the Applicant filed the suit on 19/11/2018 and the same were served upon the Plaintiff herein who entered appearance on 27/11/2018 and has since participated in the proceedings therein but has never disclosed of the proceedings before this Honorable Court the existence of the suit herein. That the plaintiff herein has been actively participating in the suit involving the Applicant during the pendency of the suit herein, but never raised the issue of sub-judice, as it has come to light that both suits proceeded concurrently despite having the same subject matter, thereby offending the provisions of Section 6 of the *Civil Procedure Act*. That the judgment and decree herein were issued without the knowledge of the Applicant, who was never made



aware of the proceedings before this Honorable Court. That the Plaintiff herein disclosed this crucial and material fact after the decree was issued in this matter, which may be construed as an attempt at forum shopping by the Plaintiff herein. That as it stands, the suit between the Applicant and the Plaintiff herein is res judicata, given that a decree exists essentially directing that the title to the suit property be transferred to the Plaintiff by the Defendant herein, who is not even the registered owner. That unless the judgment and resultant decree are set aside, any decision rendered in the pending suit would be a nullity, given the foregoing, and imminently there is a real risk of conflicting decisions over the same property, occasioning grave injustice and an abuse of the court process.

3. The Plaintiff (now respondent) filed a Notice of Preliminary Objection dated 12/09/2025 wherein he prayed that the application be struck out for being incompetent to the extent that it has been filed by a person who is not a party to the proceedings and it ought to be struck out.
4. I therefore find two issues for determination herein. First, is whether the application herein is incompetent for having been filed by an applicant who is not a party to the proceedings herein. Secondly, is whether the application herein, if competently filed herein, has merit.
5. I will begin with the first issue. The application herein is based on a claim or plea of res judicata/ sub-judice. The issue is whether a third party, such as the applicant herein, basically an outsider, can bring an application at this stage raising a plea of res-judicata or sub-judice, yet he has not been sued or joined as party to the proceedings herein.
6. I do hold that yes, an outsider (third party) can bring an application for res judicata or sub-judice, but he must demonstrate that he is in privity with a party to the original suit or that his rights are intimately connected to the subject matter of the previous litigation. While res judicata under Section 7 of the *Civil Procedure Act* generally bars the same parties from re-litigating a case, it also extends to parties 'under whom they or any of them claim'. The Applicant herein can therefore raise the plea as he has confirmed that he claims the same interest, title, or right as one of the plaintiff herein. He has also confirmed that he has a direct interest in the property or right that is under adjudication in *Nakuru ELC No. 330 of 2018*, he can thus bring an application to stop the current, repeat litigation. This application is thus competently before this court.
7. The next issue, is whether the application has merit. Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively. The test for whether a matter is res judicata is summarized in *Bernard Mugo Ndegwa v James Nderitu Gitbae & 2 Others*, (2010) eKLR, under five distinct heads:
  - (i) the matter in issue is identical in both suits;
  - (ii) the parties in the suit are the same;
  - (iii) sameness of the title/claim;
  - (iv) concurrence of jurisdiction; and
  - (v) finality of the previous decision.



8. The doctrine of sub judice prohibits courts from proceeding with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previous instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed. See the case of *Bundotich v Managing Director Kenya Airways Authority and Another* (2007)2 EA 90.
9. Having considered the pleadings and the records herein, it is clear that the Plaintiff's suit herein was filed before the Applicant's. If I was to treat the suits as sub-judice, then it is the Applicant's suit that is sub-judice the Plaintiff's suit herein, it having been filed after the present suit. Further, it is the applicant's suit that shall be res-judicata the Plaintiff's suit herein, given that the plaintiff's suit has been litigated with a final and conclusive determination rendered.
10. I have however looked at the effect of the decree herein. The judgment herein was delivered ex-parte. The defendant herein failed to defend the suit. The Court administrator has been directed to execute the transfer of the suit parcel herein to the Plaintiff and this will definitely affect the Applicant's claim against the Plaintiff herein as lodged in his suit which is still pending.
11. As correctly argued by the Applicant, the Applicant appears to be unaware of the present suit till recently when the decree herein was at the execution stage. This amounts to lack of good faith on the part of the Plaintiff herein. He ought to have at least raised the plea of res-judicata or sub-judice in the Applicants suit where he has directly been sued as a party. There is thus a real risk of conflicting decisions as regard the ownership of the parcel herein is concerned, and that shall occasion grave injustice and an abuse of the court process. Equitable remedies such as Specific Performance cannot be issued in vein. For that reason, I do hereby, in allowing the application herein, direct that the applicant herein apply formally, within 30 days, to be joined as an interested party herein. Thereafter directions shall be taken on how the claims in the two suits herein shall be handled, whether by one being stayed to await the outcome of the other, or them being consolidated.
12. Having agreed that the decree herein, will adversely affect the applicant's claim against the plaintiff herein, and in the interest of justice, I do hereby allow the application and set aside the judgment delivered by this Honorable Court on 29/03/2023 and the resultant decree issued on 30/10/2024, with costs to the Applicant.
13. Failure by the Applicant to comply with the directions given in Paragraph 11 hereinabove, then the ex parte judgment and consequential proceedings shall be reinstated and the Plaintiff shall be at liberty to proceed with the execution.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 19TH. DAY OF FEBRUARY. 2026.**

**HON.ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

1...Machoka..... for the Plaintiff

3 Plaintiff: n/a

Applicant: n/a

5...Wanyoike..... C/A

Machoka: Seeking for typed proceedings and copy of the ruling.



Odhiambo: We take a mention within 30 days to confirm compliance.

Machoka: Convenient.

CT: Mn on 23/06/26. Meanwhile typed proceedings and this ruling be supplied to the Applicant's counsel upon payment of the necessary fees.

