



**Masha v Kenya Pipeline Company Limited (Environment and Land Case  
E012 of 2025) [2026] KEELC 1910 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1910 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE E012 OF 2025**

**A OMBWAYO, J  
MARCH 12, 2026**

**BETWEEN**

**SIDI KARISA MASHA ..... PLAINTIFF**

**AND**

**KENYA PIPELINE COMPANY LIMITED ..... DEFENDANT**

**RULING**

1. This ruling is in respect of two applications. The first is the Defendant's Notice of Motion application dated 20th June, 2025 and the second one is the Plaintiff's Notice of Motion application dated 5th September, 2025.
2. The Defendant's Notice of Motion application dated 20th June, 2025 seeks the following orders:
  - a. THAT this honourable court be pleased to strike out the Plaintiff's entire suit for abuse of court process.
  - b. THAT this honourable court be pleased to strike out the Plaintiff's Plaint and the entire suit for being res judicata.
  - c. THAT the Applicants be awarded costs of this Application.
3. The application is supported by the annexed affidavit of Stanley K. Manduku, the Defendant's Wayleaves manager, sworn on 20th June, 2025. He deponed that the Plaintiff failed to disclose that the matter in issue was deliberated upon in ELC No 281 of 2018. He deponed that the Plaintiff has failed to annex any consent/authorization from the alleged fifty-five other residents on Migadini Chaani area who it alleges it represents. It was his deposition that the Plaintiffs have no proprietary rights over the suit property and the Defendants being owners of the suit property have the right to enjoy its proprietary rights.



4. Sidi Karisa Masha, the Plaintiff, filed a Replying Affidavit sworn on 5th September, 2025. She deponed that there is no decree of court attached to prove that the matter is res judicata. She asked the court to dismiss the Defendant's Notice of Motion application with costs.
5. The Plaintiff filed a Notice of Motion application dated 5th September, 2025 seeking the following orders:
  1. The court be pleased to grant leave to the Plaintiffs to file an amended Plaintiff and all compliance documents including addition of any parties that may be necessary to the suit full and final determination of this suit. (sic)
  2. In alternative, to prayer (1), court be pleased to order the Plaintiff to file the attached draft amended Plaintiff and all other compliance documents within seven days of the order.
  3. The costs of this application be provided for.
6. The application is supported by the annexed affidavit of Sidi Karisa Masha, the Plaintiff, sworn on 5th September, 2025. She deponed that the suit is still in its primary stages and there is no prejudice that will be suffered by the Defendants if leave is granted for the amendment at this stage. She deponed that the parties to be joined are critical for the final determination of the suit and the intended Plaintiffs are parties affected and they were inadvertently left out when the suit was hurriedly instituted due to the danger of evictions that were then looming. She asked the court to allow the application.
7. Nyaduwa Nelson Odongo, the Chief Legal Officer of the Defendant, filed a Replying Affidavit sworn on 9th February, 2026. He deponed that the application is bad in law as an amendment of pleadings cannot be used to introduce entirely new parties. It was his deposition that the instant application has been brought under Order 8 Rules 1,3 and 5 of the Civil Procedure Rules which deals with amendment of pleadings and not joinder of parties. It was his deposition that the instant application does not meet the threshold for grant of the orders sought.

### **Defendant's Submissions**

8. Counsel for the Defendant filed submissions dated 16th February, 2026 and identified the following issues for determination:
  - a. Whether the entire suit is an abuse of court process?
  - b. Whether the entire suit is res-judicata?
  - c. Whether the Plaintiffs have locus standi to file and sustain the suit?
  - d. Whether the Plaintiff has reasonable grounds for grant of leave to amend their Plaintiff?
9. On the first issue counsel submitted that the entire suit is an abuse of court process as the Plaintiffs are attempting to re-litigate the same issue that was previously dismissed due to their own inaction. Counsel relied on the cases of Muchanga Investments Limited vs Safaris Unlimited (Africa) Ltd & 2 others Civil Appeal No 25 of 2002 {2009} eKLR 229, Bore vs Spire Bank Limited & another (Civil Case 8 of 2020) [2024] KEHC 1034 (KLR), JWK vs IKE (Civil Appeal EO56 of 2023 [2024] KEHC 11647 (KLR), Masha vs Kenya Pipeline Company Limited [2025] KEELC 1342 (KLR) and Marisia & 2 others vs Kalungokor [2025] KEELC 564 (KLR). Counsel submitted that this court is not functus-officio with regards to the application dated 20th June, 2025.
10. On the second issue, counsel submitted that whereas ELC 281 of 2018 was dismissed for want of prosecution, the court had already made a determination on the issue of the ownership of the subject



property. Counsel submitted that the issue is therefore res-judicata pursuant to provisions of Section 7 of the *Civil Procedure Act*. Reliance was placed on the case of John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 others [2015] eKLR.

11. On the third issue, counsel submitted that the Plaintiff alongside the fifty-five other individuals lack the requisite locus-standi to file and sustain this instant suit. Counsel submitted that the Plaintiffs are not sure whether they need to lay claim over the suit property as beneficial owners or as legal owners. Counsel relied on the following cases: Ndungu Mugoya & 473 others vs Stephen Wangombe & 9 others [2005] eKLR and Christopher Mutiembu Machimbo & 3 others vs County Surveyor, Trans-Nzoia & 4 others [2022] eKLR.
12. On the fourth issue, counsel submitted that the application for amendment seeks to introduce new parties without following proper procedure and it is aimed at defeating the Respondent's application on res-judicata. Counsel relied on the case of Joseph Njau Kingori vs Robert Maina Chege & 3 others [2002] KEHC 1192 KLR. Counsel asked the court to strike out the suit and the Plaintiff's Notice of Motion dated 5th September, 2025 with costs to the Defendant.

### **Plaintiffs' Submissions**

13. Counsel for the Plaintiffs filed submissions dated 5th February, 2026. Counsel submitted that where a party files an application under a wrong law, then such an application becomes incompetent for want of proper law supporting it. Counsel relied on Order 1 Rule 10 (2), (4), Rule 14 and Rule 25 of the Civil Procedure Rules and the case of Mariga & 2 others vs Mariga & another [2024] KECA 470 (KLR).
14. Counsel submitted that in absence of a judgment of court that determines the disputes between the parties herein, this suit does not pass the test of the doctrine of res judicata. Counsel asked the court to dismiss the Defendant's application. Reliance was placed on Section 7 of the *Civil Procedure Act* and the cases of Justine Masolo Nyakundi vs Attorney General & another [2022] eKLR and Mumbu Holdings Ltd vs Spire Bank Ltd & 5 others [2021] KEHC 15 (KLR).
15. Counsel submitted that allowing the Plaintiffs to amend their Complaint will accord them an opportunity to present their case fully before the court and corresponding leave can be accorded to the Defendants.

### **Analysis And Determination**

16. The issues for determination are:
  - a. Whether the Plaintiff's Complaint and the entire suit is Res judicata?
  - b. Whether the court should grant leave to the Plaintiffs to file an amended Complaint and all compliance documents including addition of any parties to the suit?
17. The legal doctrine of Res judicata is enunciated in Section 7 of the *Civil Procedure Act*. It is as follows:

#### **7. Res judicata**

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.

Explanation. — (1) The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it. Explanation. — (2) For the



purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. — (3) The matter above referred to must in the former suit have been alleged by one

party and either denied or admitted, expressly or impliedly, by the other.

Explanation. — (4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation. — (5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. — (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

18. The Defendant contends that the matter in issue was deliberated upon in ELC No 281 of 2018. Counsel for the Defendant in his submissions informed the court that ELC 281 of 2018 was dismissed for want of prosecution and the court had already made a determination on the issue of the ownership of the subject property. The court has looked at the application dated 20th June, 2025 and notes that the Defendant has attached the following annexures: a ruling in respect of ELC No 281 of 2018 where a temporary injunction was being sought, a plaint in respect of ELC CASE NO 281 OF 2018 and lastly, the Defendant's Notice to vacate dated 28th November, 2018. The Plaintiff annexed in respect of ELC 281 of 2018 sought a permanent injunction whereas the subject matter of the ruling was on a temporary injunction. The Defendant has not demonstrated that the issues raised in the annexed Plaintiff dated 4th December, 2018 were decided on merit.
19. In the case of Tee Gee Electrics and Plastics Company Ltd vs. Kenya Industrial Estates Limited [2005] KLR 97 the Court stated:

“Both the policy rationale as well as our case law lean in the direction that a suit will only be deemed to be barred by res judicata when it was heard and determined on the substantive merits of the case as opposed to suits that are dismissed on preliminary technical points. Res Judicata bars a future suit only when the case is resolved based on the facts and evidence of the case or when the final judgment concerned the actual facts giving rise to the claim. For example, dismissal of a case for lack of subject matter or because the service was improper or even for want of prosecution does not give rise to judgments on the merits and therefore do not trigger the plea of res judicata. The last issue (dismissal for want of prosecution) was the issue in The Tee Gee Electrics and Plastics Company Ltd v Kenya Industrial Estates Ltd [2005] KLR 97; LLR CAK 6880. Here the Court of Appeal was explicit that res judicata does not apply if the earlier suit was dismissed for want of prosecution as the same was not heard on merits”. [Emphasis mine]

20. The Plaintiff has also sought leave to file an amended Plaintiff and all compliance documents including addition of any parties to the suit. In the case of Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited [2013] KECA 345 (KLR), the Court of Appeal considered the case of Joseph Ochieng & 2 others vs. First National Bank of Chicago, Civil Appeal No. 149 of 1991 as which held follows:-

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true substantive merits of the case; amendments



should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduced a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which would more conveniently be made the subject of a fresh action; that the Plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the Defendant would be deprived of his right to rely on Limitation Acts”.

21. Counsel for the Plaintiffs informed the court that allowing the Plaintiffs to amend their Plaintiff will accord them an opportunity to present their case fully. I have looked at the intended amendments and they are not likely to prejudice any party. I therefore issue the following orders:
1. The Defendant’s Notice of Motion application dated 20th June, 2025 is hereby dismissed with costs.
  2. The Plaintiff shall file and serve the amended Plaintiff and all other compliance documents within seven days from the date hereof.
  3. The costs of the Notice of Motion application dated 5th September, 2025 shall be in the cause. Mention on 16th April 2026 for directions.

**SIGNED BY/FOR:**

**HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA. MOMBASA ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT**

**DATE: 2026-03-12 11:19:02**

