



REPUBLIC OF KENYA



KENYA LAW
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Sikuku v Wekesa (Land Case E033 of 2025) [2026] KEELC 1958 (KLR) (23 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1958 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**

LAND CASE E033 OF 2025

AK BOR, J

MARCH 23, 2026

BETWEEN

BENARD WAFULA SIKUKU PLAINTIFF

AND

DUNCAN W WEKESA DEFENDANT

RULING

1. This ruling relates to both the Plaintiff's application dated 27/1/2026 seeking a temporary injunction to restrain the Defendant from dealing with the land known as Ndaluk/Kapchonge/Block 1/956 (the suit land) and the preliminary objection filed by the Defendant that this suit is res judicata. Through the application dated 27/1/2026, the Plaintiff sought to have the Defendant restrained from cutting down the trees on the suit land on the ground that the trees were being harvested to defeat the Plaintiff's claim and further, that the Plaintiff stood to suffer substantial loss if the harvesting of the trees continued.
2. The application was supported by the Plaintiff's affidavit sworn at Bungoma on 27/1/2026. Paragraph 4 of that affidavit indicated that the Plaintiff was out of the country and would suffer enormous loss if the respondent harvested the trees. The Plaintiff exhibited a copy of the search dated 14/6/2023 showing that he was the registered owner of the land.
3. In his replying affidavit, the Defendant averred that the Plaintiff was guilty of material non-disclosure. He averred that the Plaintiff was the son of the late Anne Naliaka Sikuku who died on 1/8/2021. He elaborated that there was a suit between him and Anne Sikuku as well as the Plaintiff's brother, Patrick Wanjala Sikuku. Following the death of Anne Naliaka Sikuku, the suit abated when no application was made to substitute her in the proceedings.
4. The Defendant gave details of previous suits filed over the subject matter of this case including the verdict of the Land Disputes Tribunal Appeal Committee which was adopted as a judgment of the court in Bungoma SPMCC *vide LTD No. 2 of 2004* pursuant to which a decree dated 15/7/2005 was issued by the court.



5. The Defendant argued that the Executive Officer of the court was authorized to execute transfer documents which he did on 18/4/2025 and that he was forced to go to court and seek additional orders because the Plaintiff and his mother defied the vesting and transfer orders issued by the court on 15/7/2004. He elaborated that by dint of the vesting order, the suit land was not available to the Plaintiff and that the title which the Plaintiff is relying on was cancelled by the Land Registrar and the suit land reverted back to Ndalukapchonge/Block 1/Misanga/663 which was subdivided to create Ndalukapchonge/Block 1/Misanga/958, which belongs to the Defendant.
6. The Defendant annexed copies of the decree issued in *Bungoma SPM Land Dispute No. 2 of 2004*, court order issued on 26/11/2004 and the transfer for Tongaren/Ndalukapchonge/Block 1/Misanga/2191. He also annexed copies of the order made in Bungoma Misc. Application No. 24 of 2019 and search showing that he was registered as the owner of parcel no. 958.
7. The Defendant exhibited a copy of the ruling given by Judge Cheronon on 11/12/2025 where the court dealt with a preliminary objection regarding the suit and found that the suit was vexatious as it sought to reopen and re-litigate matters already decided and settled. The court notes that the suit land in the ruling is given as Ndalukapchonge/Block 1/956.
8. The Plaintiff swore the supplementary affidavit and gave his address as P.O. Box 287, Kitengela. He averred that ownership of Ndalukapchonge/Block 1/955 was the subject of succession. He maintained that parcel no. Ndalukapchonge/Block 1/955 was different from Tongaren/Ndalukapchonge/Block 1/2191, which is the subject of this suit. He added that Anne Naliaka Sikuku and Anna Naliaka Wanyonyi were different persons. He exhibited a copy of certificate of death for Anne Naliaka Sikuku who died on 1/8/2021.
9. The court directed parties to file and serve written submissions, which it duly read and considered. The preliminary objection dated 17/12/2025 raised various grounds in support of the contention that the court lacks jurisdiction to hear this suit based on Section 7 of the *Civil Procedure Act*. He gave details of other suits between the parties over the subject matter of this suit. He pointed out that the Plaintiff's brother, Patrick Sikuku instituted *Bungoma CMCC ELC No. 6 of 2019*, where the court upheld the preliminary objection. *Kakamega High Court Misc. Application No. 239 of 1999* was between the Defendant and Anne Naliaka Sikuku over the suit land.
10. The appellant submitted that the Plaintiff had filed several suits over the same parcel of land. He pointed out that the magistrate's court in its ruling dated 7/10/2024 found that the matter was res judicata as did the ELC. He gave a chronology of the suits that have been determined over the suit land.
11. The Plaintiff submitted that the suit was not res judicata because the suit land is different. He conceded that the suit which Ann Naliaka Sikuku filed abated before it was heard and determined. Although he indicated that it abated on 20/3/2025, the correct position is that it abated a year after the death of Anne Naliaka Sikuku. He urged that there had been no litigation over the parcels of land known as Ndalukapchonge/Block 1/Misanga/955 to 959. Further, that the Defendant had failed to demonstrate that there was a former judgment which was final over these parcels of land.
12. The court notes that in the ruling in *Bungoma CM ELC Case No. 6 of 2019*, the court sustained the preliminary objection that the suit was res judicata. The land reference number in that ruling is given as Ndalukapchonge/Block 1/956. Similarly, in the ruling of 11/12/2025 this court found the suit to be res judicata. The suit land was given as plot No. 1921 Ndalukapchonge/Bungoma (part of Ndalukapchonge/Block 1/956).



13. Looking at these previous decisions, it is evident that the present suit is res judicata and an abuse of the court process. Litigation must come to an end. The suit is struck out for being res judicata. The Defendant is awarded the costs of the suit.

DELIVERED VIRTUALLY AT BUNGOMA THIS 23RD DAY OF MARCH 2026.

K. BOR

JUDGE

In the presence of: -

Mr. Ivan Oira for the Plaintiff

Mr. Duncan Wekesa- the Defendant

