



REPUBLIC OF KENYA



**KENYA LAW**  
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**Iguru v Kajiado & another (Environment and Land Case  
E082 of 2024) [2026] KEELC 2292 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2292 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE E082 OF 2024**

**J OMANGE, J**

**APRIL 23, 2026**

**BETWEEN**

**NDEGWA MURANJA IGURU ..... PLAINTIFF**

**AND**

**LAND REGISTRAR KAJIADO ..... 1<sup>ST</sup> DEFENDANT**

**MUTEMBEI CHABARI & COMPANY ADVOCATES ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before this Court is the Application dated 1<sup>st</sup> April 2025 by the 2<sup>nd</sup> Defendant/Applicant seeking dismissal of the suit on grounds that it is res judicata having been dismissed at the Lower Court on 8<sup>th</sup> March 2023 for want of prosecution and that there was no cause of action against the 2<sup>nd</sup> Defendant.
2. The Applicant claimed that the Respondent should have sought reinstatement of the Magistrate's Civil Case No. 209 of 2018 which was dismissed for want of prosecution on 8<sup>th</sup> March 2023 but not file a fresh suit. And that this constituted an abuse of the court process. The Applicant further averred that the letter dated 11<sup>th</sup> April 2018 addressed to the 1<sup>st</sup> Defendant requesting for a restriction against LR No. Kajiado/Kaputiei North/1790 was done procedurally and in accordance with Section 76 of the *Land Registration Act*. As such, the Respondent do not have any cause of action as their actions were undertaken in their professional capacity without malice or bad faith.
3. The Plaintiff/Respondent opposed the Application. He contended that Magistrate's Court Civil Case No. 209 of 2018 was filed without his instructions and that he had no knowledge of the said proceedings.
4. He deposes that he did not instruct Lemayia S. Mbugua, Advocate, who had previously acted for him in the purchase of the suit property, to institute the suit on his behalf, nor was he made aware that such proceedings had been filed. The Respondent further contested the authenticity of the signatures appearing on the affidavits filed in the proceedings, asserting that they do not bear his



genuine signature. On the substantive question, he maintained that a dismissal for want of prosecution is not a determination on the merits and therefore cannot ground a plea of res judicata.

5. The Application was canvassed by way of written submissions.
6. The 2<sup>nd</sup> Defendant/ Applicant submitted the suit offends the doctrine of res judicata as set out under Section 7 of the *Civil procedure Act* as suit 209 of 2018 was heard and determined by a Court of competent jurisdiction and dismissed for want of prosecution arguing that this amounted to a judgement as was held by the Court of Appeal in *Njue Ngai v Ephantus Njiru Ngai & another* [2016] eKLR and *Cooperative Bank of Kenya vs Cosmas Mrombo Moka and another* (2019) eKLR.
7. It was also submitted that the 2<sup>nd</sup> Defendant was wrongly enjoined in the suit as his role in the transaction was that of an advocate and he could not thus be held liable for actions undertaken in professional duty without negligence citing *Champion Motor Spares Limited vs Phadke & others* (1969) E.A. 42 and *Moses Kipkolum Kogo vs Nyamogo & Nyamogo Advocates* [2004] eKLR among others.
8. The Plaintiff on his part argued that the dismissed suit was not heard on merit as it was dismissed for non attendance by both parties under Order 12 of the Civil procedure Rules and not for want of prosecution. And that Order 12 Rule 6 provided that where a suit is dismissed under that Order, the Plaintiff could bring a fresh suit or apply for reinstatement. That a fresh suit could only not be filed in circumstances where the Defendant appeared for hearing but the Plaintiff failed to. Reference was made to *Njue Ngai v Ephantus Njiru Ngai & another* [2016] eKLR. It was also submitted that the 2<sup>nd</sup> Defendant was a necessary party to the suit because the restriction was placed by them and the entry did not indicate who the client was or why the restriction was placed. The 2<sup>nd</sup> Defendant was therefore a necessary party to the suit.
9. Having considered the Application, the affidavit evidence on record, and the rival submissions, the Court finds that the issues for determination are: whether the instant suit is barred by the doctrine of res judicata and whether the 2<sup>nd</sup> Defendant is properly joined as a party.
10. The doctrine of res judicata is codified under Section 7 of the *Civil Procedure Act*, which bars courts from trying a matter that has been directly and substantially in issue in a former suit between the same parties and determined by a competent court. The Supreme Court in *Independent Electoral and Boundaries Commission v Kiai & 5 others* [2017] KECA 477 (KLR) outlined that:

“... for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms:

  - (a) The suit or issue was directly and substantially in issue in the former suit.
  - (b) That former suit was between the same parties or parties under whom they or any of them claim.
  - (c) Those parties were litigating under the same title.
  - (d) The issue was heard and finally determined in the former suit.
  - (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised...”
11. A perusal of the suit at lower Court Kajiado Magistrates Court ELC case No. 209 of 2018 confirms that the suit is between the Plaintiff and the 1<sup>st</sup> defendant herein. The suit sought the lifting of the restriction



placed by the 1<sup>st</sup> defendant on land LR No. Kajiado/Kaputiei North/1790. This suit was dismissed for want of prosecution. It is clear that the parties, the subject matter and the prayers sought in the instant suit are the same as those sought at the lower court. However, the Plaintiff herein contends that he neither instructed the advocate nor signed pleadings in the dismissed suit at lower court.

12. This Court finds this argument unpersuasive because it is not disputed that the advocate who filed the lower court suit was the same advocate who acted for the Plaintiff in the transaction concerning the suit property. The Plaintiff cannot, without cogent evidence, disown proceedings undertaken by an advocate who was admittedly acting for him in the same transaction. Secondly, mere denial of signature, is insufficient to impeach prior proceedings at a preliminary stage.
13. If indeed the Plaintiff disputes the authority of the advocate, or authenticity of signatures, there are alternatives for challenging the validity of the suit at the lower court but not indirectly through filing a fresh suit. The filing of a fresh suit in a different court, on identical facts, is an attempt to circumvent the consequences of the earlier dismissal, and constitutes an abuse of the court process.
14. Accordingly, the Court finds that this suit is res judicata and an abuse of the Court process.
15. Having determined that the suit is barred as res judicata, it would be improper for this Court to proceed to examine the merits of the second ground on whether the Plaintiff discloses a cause of action against the 2<sup>nd</sup> Defendant. To do so would be to delve into the substantive merits of a suit that this Court has already found to be improperly before it. The second ground for determination is therefore rendered moot.
16. The Application dated 1<sup>st</sup> April 2025 is hereby allowed and the suit is thus struck out with costs for being res judicata.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 23<sup>RD</sup> DAY OF APRIL 2026.**

**JUDY OMANGE**

**JUDGE.**

In The Presence Of:

N/A for Plaintiff.

N/A for Defendants.

Peter – Court Assistant.

