

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC CASE NO. 2 OF 2017**

**KENYA AFRICAN NATIONAL TRADERS AND FARMERS  
UNION:.....PLAINTIFF**

**VERSUS**

**FLORENCE MUOTI KIOKO & JAMES MULIKA MUINDI(Sued as the  
Administrators of the Estate of Agnes Mbithe  
Muindi):.....1<sup>ST</sup> DEFENDANT**

**LUKENYA RANCHING AND CO-OPERATIVE SOCIETY  
LIMITED:.....2<sup>ND</sup> DEFENDANT**

**MBUKONI HOLDINGS LIMITED:.....3<sup>RD</sup> DEFENDANT**

**JARED OTIENO NGOJE:.....4<sup>TH</sup> DEFENDANT**

**ROBERT NYABANDO NDUKO:.....5<sup>TH</sup> DEFENDANT**

**JOHN MUSEMBI MUTALA:.....6<sup>TH</sup> DEFENDANT**

**GEORGE MORARA MOMANYI:.....7<sup>TH</sup> DEFENDANT**

**MICHAEL NJAMA KAMAU:.....8<sup>TH</sup> DEFENDANT**

**SELINA NDUNGWA ISEVA:.....9<sup>TH</sup> DEFENDANT**

**ERICK MURITHI:.....10<sup>TH</sup> DEFENDANT**

**JENIFFER WAMBU:.....11<sup>TH</sup> DEFENDANT**

**SAMUEL MUNYIRI MUKWA:.....12<sup>TH</sup> DEFENDANT**

**DAVIS NYAGAKA NYAMWANGE:.....13<sup>TH</sup> DEFENDANT**

**HIRAM MAINA CHEGE:.....14<sup>TH</sup> DEFENDANT**

**DENNIS WANYONYI MASINDE:.....15<sup>TH</sup> DEFENDANT**

**REUBEN LAISA MURANGA:.....16<sup>TH</sup> DEFENDANT**

**ERNEST ACHUTI MUGAMBI:.....17<sup>TH</sup> DEFENDANT**

**PRISCILLA WAMAITHA MITHAMO:.....18<sup>TH</sup> DEFENDANT**  
**ERASTUS MUCHEMI EUSTACE:.....19<sup>TH</sup> DEFENDANT**

**RULING**

By a consent dated 4<sup>th</sup> June 2025 the Plaintiff and the 1<sup>st</sup> Defendant wished the court to adopt same as stated below;

1. THAT the Plaintiff is the lawful proprietor of Land Parcel Mavoko Town Block 3/54594, having been registered as the owner on or about 18<sup>th</sup> November 2016, and duly issued with title deed thereto, following the subdivision of Title No. Mavoko Town Block 3/2056.
2. THAT the Plaintiff and the 1<sup>st</sup> Defendant confirm that they have no further outstanding claims against each other in respect of Mavoko Town Block 3/2056 or its resultant subdivisions.
3. THAT the Plaintiff's claim against the 1<sup>st</sup> Defendant in this suit is hereby marked as fully settled.
4. THAT each party shall bear its own costs as between the Plaintiff and the 1<sup>st</sup> Defendant.

The 3<sup>rd</sup> to the 19<sup>th</sup> Defendants objected to the said consent and stated that the same is res judicata and had been rejected twice by the court. The Plaintiff initially sued the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in this matter, formerly Machakos ELC No. 78 of 2012,

whilst the 3<sup>rd</sup> to 19<sup>th</sup> Defendants had been joined as Interested Parties. On 19<sup>th</sup> December 2014, the Plaintiff and the 1<sup>st</sup> Defendant prevailed upon the Honourable Court, then presided over by Hon. Justice Kariuki, to adopt a purported consent dated 27<sup>th</sup> August 2014 as an order of the Court. That consent, if given effect, sought to dispossess the 3<sup>rd</sup> to 19<sup>th</sup> Interested Parties of their respective parcels of land. What was not disclosed to Hon. Justice Kariuki, however, was that the Plaintiff and the 1<sup>st</sup> Defendant were fully aware that the Interested Parties had, in Nairobi ELC No. 225 of 2014, obtained subsisting status quo orders against the 1<sup>st</sup> Defendant in respect of L.R. No. Mavoko Town Block 3/2056. It is thus evident that the purported consent was nothing more than a mischievous contrivance designed by the Plaintiff and the 1<sup>st</sup> Defendant to defeat both the proceedings in Nairobi ELC No. 225 of 2014 and the present suit. Pursuant to that irregular consent order, the suit property, L.R. No. Mavoko Town Block 3/2056, was unlawfully and irregularly subdivided into L.R. No. Mavoko Municipality Block 3/54594 and 54595. Upon learning of this mischief, the advocates acting for the 3<sup>rd</sup> to 19<sup>th</sup> Interested Parties filed an application dated 19<sup>th</sup> December 2016 seeking, inter alia, the setting aside of the irregular consent and the joinder of the 3<sup>rd</sup> to 19<sup>th</sup> Interested Parties as Defendants in this suit. That application was duly allowed by Hon. Justice O. Angote by his ruling delivered on 22<sup>nd</sup> September 2017. Again on the 20<sup>th</sup> November 2023 when the matter came up for hearing the Plaintiff and the

1<sup>st</sup> Defendant wanted to record a consent which was opposed and Justice Christine Ochieng upheld their objection and stated that the matter proceeds to trial.

This court has considered the objection by the 3<sup>rd</sup> to 19<sup>th</sup> Defendants to the consent herein being adopted in that it is *res judicata* to ruling of this court dated 22<sup>nd</sup> September 2017 and 20<sup>th</sup> November 2023. Section 7 of the Civil Procedure Act Provides

*"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."*

Expounding further on the essence of the doctrine this Court in John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others (2015) eKLR pronounced itself as follows;

*"The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the*

*economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably.”*

I have perused the court proceedings and find that by a ruling dated 22<sup>nd</sup> September 2017 by Justice Oscar Angote and the one dated 20<sup>th</sup> November 2023 by Justice Christine Ochieng found that this consent is res judicata as the same had already been determined and the court declined to adopt the same. I concur with the 3<sup>rd</sup> to 19<sup>th</sup> Defendants and find that the Plaintiff and 1<sup>st</sup> Defendants are forum shopping and the same is an abuse of the court process. I hereby dismiss the said consent and order that the matter proceeds to full trial.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 29<sup>TH</sup> DAY OF  
APRIL 2026.**

**N.A. MATHEKA**

**JUDGE**

**ORIGINAL**