



**Korofia & 4 others v Muniafu & another (Environmental and Land Originating Summons E023 of 2025) [2026] KEELC 2722 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2722 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E023 OF 2025**

**AK BOR, J**

**APRIL 24, 2026**

**BETWEEN**

**SOFFIC MUNIALO KOROFIA ..... 1<sup>ST</sup> PLAINTIFF  
JOSEPH WANJALA KOROFIA ..... 2<sup>ND</sup> PLAINTIFF  
ROBERT JUMA KOROFIA ..... 3<sup>RD</sup> PLAINTIFF  
CONSTANT WANJALA KHUTEKA ..... 4<sup>TH</sup> PLAINTIFF  
ISMAEL OMINA OTITIRO ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**PATRICK KISAKA MUNIAFU ..... 1<sup>ST</sup> DEFENDANT  
MOSES WALUBENGO MUNIAFU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiffs filed the application dated 24/9/2025 seeking an order of injunction to restrain the Defendants, their agents or other persons acting through them from interfering with the Plaintiffs' occupation for the land known as Ndivisi/Muchi/661 (the suit land) pending hearing and determination of the Originating Summons. The application was made on the grounds that the Plaintiffs have been in occupation of various portions of the suit land which belonged to the late Muniafu Kisaka. They claimed that the Defendants had not interrupted their occupation of the suit land and that they executed land agreements when they purchased portions of the land from Muniafu Kisaka. They added that they had developed permanent structures since occupying the land in 1969 and that the Defendant had not disturbed their peaceful occupation.
2. The Plaintiffs swore the affidavit in support of the application and exhibited copies of the register for the suit land and the sale agreement.



3. Patrick Kisaka Muniafu, the 2<sup>nd</sup> Defendant swore a replying affidavit in opposition to the application. He deponed that the whole suit was res judicata, statute barred and a nonstarter. He deponed that the Plaintiffs were to be evicted from the suit land following the decree issued in Bungoma CMCC No. 57 of 2010. Further, that their appeal was similarly dismissed by this court. Undeterred, the Plaintiffs filed Bungoma ELC OS No. 137 of 2017 which was transferred and became Webuye SPM ELC No. 8 of 2020 which was heard and a judgment delivered on 24/8/2022. He added that the Plaintiffs' appeal being Bungoma ELC Appeal No. 2 of 2017 was similarly dismissed.
4. The 2<sup>nd</sup> Defendant exhibited copies of the pleadings in ELC No. 137 of 2017, judgment in ELC No. 44 of 2014 and the proceedings in Webuye SPM ELC Case No. 8 of 2020. He also attached a copy of the application for the transfer of the suit and the order made in Bungoma ELC Appeal No. 2 of 2017.
5. The application was canvassed through written submissions. The Plaintiff submitted that the parties in ELC OS No. 137 of 2017 were the 5<sup>th</sup> Plaintiff and the respondents alongside other two parties. They submitted that Bungoma ELC No. 2 of 2017 was dismissed for want of prosecution and that the Defendants filed Bungoma CMCC No. 57 of 2010 seeking eviction orders. The Plaintiffs submitted that they had been in occupation of a portion of the suit land, which belonged to the Defendants' late father. They maintained that the occupation of the land had not been interrupted by the Defendants. They submitted that they had demonstrated that if injunctive relief was not granted, they would suffer irreparable loss which cannot be compensated by damages.
6. Regarding the issue of res judicata, they submitted that the 5<sup>th</sup> Plaintiff had litigated with the Defendant over 1 acre of the suit land but that they excluded the other Plaintiffs who are in occupation of the entire land measuring 56 acres. They added that although the Plaintiffs were parties in Bungoma CMCC No. 57 of 2010, the cause of action was eviction and not ownership through adverse possession, which is a different cause of action. Regarding ELC Appeal 2 of 2017, they contended that their appeal was dismissed for want of prosecution. They maintained that for res judicata to apply the matter in issue must be identical and the parties should be the same. That there should be concurrence of jurisdiction and finality of the previous decision. The Plaintiffs submitted that the Defendants had failed to demonstrate the ingredients of res judicata prescribed by Section 7 of *Civil Procedure Act*. They maintained that the issue of adverse possession had not been determined by a court of competent jurisdiction.
7. The 2<sup>nd</sup> Defendant submitted that the Plaintiffs were vexatious litigants who do not follow due process. He pointed out that the 1<sup>st</sup> Defendant died long before this suit was filed. He relied on Section 7 of the *Civil Procedure Act* on the ingredients of res judicata. They urged the court to strike out the application and the suit and award costs to them.
8. The issue for determination is whether the court should grant the orders sought in the application dated 24/9/2025. The court is called upon to determine whether the Plaintiffs have established a prima facie case with a probability of success and that unless the orders sought are granted, they will suffer irreparable injury which cannot be adequately compensated by an award of damages. If in doubt, the court would decide the matter based on the balance of convenience.
9. The court was told by the 2<sup>nd</sup> Defendant that the 1<sup>st</sup> Defendant is dead. The 2<sup>nd</sup> Defendant raised the bar of res judicata to this suit. The Plaintiffs did not deny that there have been previous suits over the suit land; they only argued that some of the parties did not participate in those proceedings and that the causes of action were different. What this proves is that the subject matter in this suit has previously been dealt with by other courts. The Plaintiffs have failed to demonstrate that they have a prima facie case with a probability of success.



10. The court declines to grant the orders sought in the application dated 24/9/2025. The costs of the application shall be in the cause.

**DELIVERED VIRTUALLY AT BUNGOMA THIS 24<sup>TH</sup> DAY OF APRIL 2026.**

**K. BOR**

**JUDGE**

In the presence of: -

Court Assistants- Bett & Metrine

No appearance for the parties

