



REPUBLIC OF KENYA



KENYA LAW
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**Makau & 2 others v Kirui & 5 others (Land Case E410 of 2025)
[2026] KEELC 2421 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2421 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E410 OF 2025
OA ANGOTE, J
APRIL 30, 2026**

BETWEEN

**MUKURU KWA NJENGA WOMEN GROUP 1ST PLAINTIFF
WILSON KIMEU MAKAU 2ND PLAINTIFF
ESTHER WANZIKU 3RD PLAINTIFF**

AND

**THOMAS KIRUI 1ST DEFENDANT
PHILIP KIBET TONUI 2ND DEFENDANT
NAIROBI CITY COUNTY 3RD DEFENDANT
CHIEF REGISTRAR OF LANDS 4TH DEFENDANT
DIRECTOR OF SURVEYS 5TH DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 6TH DEFENDANT**

RULING

Introduction

1. Vide a Notice of Motion dated 14th August, 2025 brought pursuant to the provisions of Article,10, 21, 22, 25 (c), 27, 40, 47, 50 (1), 159 (2) (a) of the Constitution of Kenya, Sections 1A, 1B and 3A Civil Procedure Act (Cap 21) Laws of Kenya and Order 51 Rule 1, Order 40 Rule 1 & 2 of the Civil Procedure Rules, the Plaintiffs/Applicants seeks the following reliefs:
 - i. Spent
 - ii. Spent



- iii. That pending the hearing and determination of the suit herein the Respondents by themselves, agents, servants or whomsoever be restrained from doing anything prejudicial to the suit property.
 - iv. That the OCS Villa Police Station do ensure compliance with the orders of this Honourable Court.
 - v. That the costs of this application be in the cause.
 - vi. Spent-that this Honourable court be pleased to issue conservatory orders until this Application is heard and determined.
 - vii. That the Honourable Court be pleased to issue any such further orders it deems fit and convenient in the circumstances of this case.
2. The Motion is grounded on the face thereof and is supported by the affidavit of Wilson Kimeu Makau, the Treasurer of Mukuru Kwa Njenga Women Group, duly authorized to swear the affidavit on behalf of the Plaintiffs/Applicants.
 3. The 1st Plaintiff's Treasurer stated that he has been in continuous and peaceful occupation of the suit property since 2005, during which period he has constructed permanent structures thereon. He added that he has recently been threatened with eviction and/or demolition of the said structures without being accorded due process of law.
 4. He further explained that they obtained approval to construct a perimeter wall and permanent structures on the land, which he presently occupies. He noted that Plot L.R. No. 209/11036 has three separate titles in the names of Thomas Kirui, Philip Kibet Tonui, and Silmon Kiprono, and that they have forwarded the same to the Ethics and Anti-Corruption Commission (EACC) for verification of their validity, which process is still pending.
 5. The 1st Plaintiff's Treasurer stated that members of Mukuru Kwa Njenga Women's Project stand to suffer irreparable harm should the Defendants proceed with their intended actions before the matter is heard and determined.
 6. He further stated that L.R. No. 209/11036 is the certified parcel number as per the Director of Land Administration, and that he has been in occupation thereof since 1998. He added that he submitted the original deed plan, attached to file no. 121624, to one Mwangi, who acknowledged receipt on 20th April 2011.
 7. The 1st Plaintiff's Treasurer contended that the 1st and 2nd Defendants/Respondents procured their titles fraudulently and through misrepresentation of facts, and that it is therefore in the interest of justice that the status quo prevailing on the suit property be maintained pending the hearing and determination of the suit.
 8. He further urged that injunctive orders be issued, noting that Mukuru Kwa Njenga Women's Project was not a party to ELC No. 921 of 2016, *Thomas Kirui v Joshua Odhiambo Tollo* [2022] eKLR, and that the proceedings therein cannot be relied upon in determining the present matter, as contemplated under Section 34(c) of the *Evidence Act*.
 9. The 1st Defendant/Respondent filed a replying affidavit on 24th October 2025, in which he stated that the Applicants' claim of continuous and peaceful occupation of the suit property since 2005, as well as their alleged development of structures thereon, is untrue.



10. He explained that on 17th November, 1992, a letter of allotment was issued to S.K. Kirui for residential plot no. 16, Villa Franca, measuring approximately 0.11 hectares, which was subsequently presented to the Director of Surveys on 27th February, 1997.
11. According to the 1st Defendant, following a site visit by the surveyor, the land allocated to S.K. Kirui was found to measure 0.2312 hectares and was assigned L.R. No. 209/11036. Thereafter, the Director of Surveys excised a portion measuring 0.11 hectares in favour of S.K. Kirui.
12. He further stated that he applied for allocation of the remaining portion, which was subdivided into L.R. No. 209/13406 measuring 0.913 hectares and L.R. No. 209/13407 and that on 28th April, 1998, he was formally allocated L.R. No. 209/13406 by the Commissioner of Lands and that he duly paid the requisite stand premium and other statutory levies, and was on the 20th December, 2002, issued with Grant No. I.R. 92658 together with a survey map, being F/R No. 318/169, which effectively cancelled L.R. No. 209/11036.
13. The 1st Defendant deposed that in March, 2016, he discovered that one Joshua Odhiambo Tollo had commenced construction of a stone perimeter wall around his parcel and the adjoining L.R. No. 209/13407 and that he reported the matter to the area chief, who summoned the said Joshua Odhiambo Tollo.
14. Upon appearing before the chief, he deposed, Joshua Odhiambo Tollo produced a title for L.R. No. 209/11036, purporting to cover both his parcel and the adjoining land and that the said title bore the purported signature of Wilson Gachanja dated 21st December 2001, at a time when he was not the Commissioner of Lands.
15. He further noted that the said title appeared to have been registered on 21st December, 1999, which was inconsistent with the alleged date of execution in 2001, thereby raising serious questions as to its authenticity, and that the matter was thereafter referred to the police for investigation.
16. It is the 1st Defendant's case that notwithstanding the foregoing, Joshua Odhiambo Tollo proceeded to complete construction of the perimeter wall and permanent structures on the property and began utilizing the premises as offices prompting him to institute Milimani ELC No. 921 of 2016 against him.
17. He averred that at all material times, Joshua Odhiambo Tollo's claim to the suit property was derived from Mukuru Kwa Njenga Women Group and that upon a full hearing, the court rendered judgment in his favour, following which Joshua Odhiambo Tollo vacated the premises. However, the property was subsequently invaded by third parties who denied him access, necessitating further court orders to facilitate demolition of the structures.
18. Mr. Kirui urged that the Plaintiffs are bound by the judgment in ELC No. 921 of 2016, as Joshua Odhiambo Tollo derived his claim through them. He asserted that the present suit is res judicata; that the Plaintiffs have no lawful interest in the suit property capable of protection in law, and that the suit is mischievous, an abuse of the court process, and intended to frustrate his enjoyment of the fruits of the judgment in ELC No. 921 of 2016.
19. In response to the Motion, the 2nd Defendant/Respondent filed a replying affidavit dated 5th October, 2025, in which he stated that the application is incompetent in law and liable to be struck out on account of material non-disclosure, res judicata, and sub judice.
20. He explained that he has instituted proceedings against Wilson Kimeu and four others in ELCLC No. E078 of 2023, in which injunctive orders are subsisting restraining them from entering, occupying, or



interfering with the suit property. He noted that the said suit, filed on 14th September 2023, remains pending determination and relates to L.R. No. 209/13407.

21. Further, he deposed that the 1st Respondent is the registered proprietor of L.R. No. 209/13406, and had previously sued Joshua Odhiambo Tollo in ELCLC No. 921 of 2016 which matter was resolved in his favour and permanent injunctive orders issued.
22. He stated that in ELC No. 921 of 2016, the suit property in issue was L.R. No. 209/13406, and that it was deponed therein that the said property had been sold to Joshua Odhiambo Tollo by the Applicants herein, and that despite this, the Applicants vide the present suit now lay claim to both L.R. No. 209/13406 and L.R. No. 209/13407, describing the same as L.R. No. 209/11036. He noted that in ELC No. 921 of 2016, the court (Komingoi J.) held that L.R. No. 209/13406 was a subdivision of L.R. No. 209/11036.
23. The 2nd Defendant added that the court in that matter also found that there were no developments on L.R. No. 209/13407, and that the only unfinished structure stood on L.R. No. 209/13406. Further, he deposed that the court held that L.R. No. 209/11036, did not exist. He maintained that what exists are two distinct and separate parcels of land, namely L.R. No. 209/13406 and L.R. No. 209/13407, situated adjacent to each other.
24. It was his further deposition that the Applicants' suit and application are founded on an irregular and defective letter of allotment relating to a non-existent parcel of land. In contrast, he and the 1st Respondent hold valid titles and leases over the two parcels, which emanate from duly issued allotment letters, executed leases, approved surveys, and deed plans, culminating in the issuance of final titles. He further noted that the corresponding title files are available at the Lands Registry and are verifiable through official searches.
25. According to the 2nd Defendant, the documents relied upon by the Applicants are forgeries, and indicated that he would seek a forensic examination thereof. He added that neither he nor the 1st Respondent has any knowledge of one Simon Kiplimo or any title associated with him, the same being untraceable.
26. Mr. Tonui urged that the present suit and application have been mischievously instituted with the intent of undermining and rendering nugatory existing court orders, including the permanent injunction issued in ELC No. 921 of 2016 in respect of L.R. No. 209/13406 and the interim injunctive orders in ELCLC No. E078 of 2023 relating to L.R. No. 209/13407.
27. He asserted that the Applicants, being fully aware of these subsisting orders, have approached this court in bad faith, seeking to reopen and relitigate matters that have either been conclusively determined or are pending before courts of competent jurisdiction, thereby amounting to an abuse of the court process.
28. He urged the court not to countenance forum shopping and legal mischief aimed at defeating lawful court orders and undermining the due administration of justice and that he has held several meetings with Wilson Kimeu, who has deliberately suppressed material facts, thereby misleading the court and distorting the true position of the dispute.
29. The Applicants, through the 2nd Applicant, filed a further affidavit dated 13th October, 2025. He stated that the present matter is not sub judice, as there is no active suit involving the same parties and issues, nor any likelihood of conflicting decisions, the issues herein being distinct and supported by separate evidence.



30. He maintained that the Applicants' pleadings clearly demonstrate that there was no land available for allocation to the 1st and 2nd Respondents, the suit property having been allocated to the 1st Applicant in 1997, and that there has been no lawful cancellation of that initial allotment. In his view, the previous judgment does not bar the present suit.
31. He denied any material non-disclosure, stating that all relevant facts, including his occupation, developments on the land, and the pending verification of titles by the Ethics and Anti-Corruption Commission (EACC), were fully disclosed in the supporting affidavit. He further contended that the doctrines of res judicata and sub judice are inapplicable, as the Applicants herein were neither parties nor privy to ELC No. 921 of 2016 or ELC No. E078 of 2023.
32. He clarified that the present dispute concerns the lawfulness of the acquisition of title and the preservation of possession, as opposed to ownership of L.R. Nos. 209/13406 or 209/13407 as alleged by the Respondents. He further stated that the 1st and 2nd Respondents have deliberately conflated distinct parcels of land, namely L.R. Nos. 209/13406, 209/13407, and 209/11036, whereas the suit property in the present matter is L.R. No. 209/11036, which has a separate identity and record at the Directorate of Land Administration.
33. The 2nd Plaintiff asserted that the Applicants were never sued nor restrained in ELC No. E078 of 2023, noting that the annexed pleadings therein relate to different individuals. He further stated that ELC No. 921 of 2016 (*Thomas Kirui v Joshua Odhiambo Tollo*) did not involve them and that the judgment therein cannot bind them pursuant to Section 34(c) of the *Evidence Act*.
34. The 2nd Plaintiff added that the judgment in ELC No. 921 of 2016 relates specifically to L.R. No. 209/13406, which is a separate and distinct parcel from the suit property herein, and therefore cannot defeat the Applicants' occupation and interest in L.R. No. 209/11036.
35. Addressing the allegation that L.R. No. 209/11036 does not exist, he stated that the parcel does in fact exist, and that he has annexed a certified copy of the deed plan together with correspondence from the Director of Land Administration confirming its existence.
36. He maintained that the Plaintiffs' letter of allotment is genuine, traceable, and was duly issued by the Ministry of Lands as part of a government-led community settlement programme in the early 2000s for members of the Mukuru Kwa Njenga Women's Project. Further, that the Respondents' allegations of forgery are speculative and unsubstantiated, as no forensic report or official communication from the Lands Registry has been produced to impugn the Applicants' documents.
37. On the validity of the 1st and 2nd Respondents' titles, he stated that although they claim to hold valid titles, the same are subject to verification and investigation by the EACC following complaints of multiple and overlapping titles affecting the same block. He reiterated that they have approached the court in good faith, seeking protection of their long-standing possession and not to defeat any lawful court order.
38. He maintained that there is no subsisting court order binding upon or restraining them in respect of L.R. No. 209/11036, and that the present application does not offend the doctrines of res judicata, sub judice, or abuse of the court process.

Submissions

39. The Applicants' Counsel submitted that the application satisfies the established principles governing the grant of a temporary injunctions, namely establishment of a prima facie case with a probability of success, demonstration of irreparable harm and that the balance of convenience favours the grant



- of orders sought as set out in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358 and subsequently elaborated in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.
40. Counsel submitted that the Applicants have established a prima facie case by demonstrating long-standing, open, and uninterrupted occupation of L.R. No. 209/11036 since about 2005, coupled with development of permanent structures approved by Nairobi City County.
 41. It was further argued that the existence of multiple conflicting titles, now under investigation by the EACC, raises serious questions as to the legality of the registration process, thereby meeting the threshold set in *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125.
 42. Counsel further submitted that the 1st and 2nd Respondents failure to produce verifiable ownership documents invites the court to draw an adverse inference. Reliance was placed on *Bukenya & Others v Uganda* [1972] EA 549, where the court held that failure to call material witnesses or produce essential evidence may justify an inference that such evidence would have been adverse to the party withholding it.
 43. On the issue of irreparable harm, Counsel submitted that the Plaintiffs and over one hundred women who reside and conduct small-scale businesses on the land face imminent eviction and demolition of their homes resulting in loss of shelter, livelihoods, and community structures that cannot adequately be compensated by monetary damages.
 44. Counsel submitted that the balance of convenience favours preserving the status quo, as the Applicants are in actual possession of the land while the 1st and 2nd Respondents rely on disputed titles. Relying on *Giella vs Cassman Brown* (supra) and *Suleiman vs Amboseli Resort Ltd* [2004] 2 KLR 589, it was argued that maintaining the status quo would prevent eviction and preserve the subject matter pending determination of the dispute.
 45. Counsel invoked the principle of proportionality, submitting that interim relief would protect all parties while preventing undue hardship to the Applicants who have occupied the land for many years. He further argued that the 1st and 2nd Respondents' titles are open to challenge, relying on authorities which hold that titles obtained through illegality, fraud, or procedural impropriety are null and unenforceable.
 46. The 1st Respondent filed submissions on 24th November, 2025. Counsel submitted that the Applicants have failed to establish a prima facie case with a probability of success, as required under the principles in *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358.
 47. It was submitted that the Applicants' claim, being anchored on a letter of allotment, is untenable for want of proof of compliance with the allotment conditions, particularly payment of stand premium within the prescribed period. It was argued that the receipts and documents relied upon do not demonstrate such compliance nor establish ownership.
 48. Counsel further relied on *Wreck Motors Enterprises vs Commissioner of Lands & 3 Others* [1997] eKLR, *Mary Njoki Uno & Others vs Letshego Kenya Limited & Others*, Milimani ELC No. E299 of 2022, and *Torina Enterprises Limited vs Attorney General & 2 Others* [2023] KESC 79 (KLR), for the proposition that a letter of allotment does not confer proprietary rights unless its conditions are fulfilled and a formal title is issued.
 49. In any event, and as per the Applicants own documents, the alleged letter of allotment had lapsed and was acted upon outside its validity period. Reliance was placed on *Syedna Mohamed Burhanuddin Saheb & Others vs Benja Properties Limited & 2 Others* [2007] KEHC 292 (KLR) and *Waterfront Holdings Limited vs Kandie & 2 Others* [2023] KECA 1223 (KLR), for the proposition that an



expired allotment cannot be revived and that non-compliance with allotment conditions renders any subsequent title liable to invalidation.

50. Counsel further argued that the 1st Respondent holds a valid registered title, which has not been impeached. It was also submitted that in ELC No. 921 of 2016, the aforesaid Respondent successfully litigated ownership of the property against Joshua Odhiambo Tollo, who had claimed title through the Applicants herein. Having transferred their interest to Joshua Odhiambo Tollo, and not rebutted the evidence of sale, it was submitted that they cannot now assert any proprietary rights over the suit property.
51. On the question of *res judicata*, Counsel submitted that although the Applicants contend that they were not parties to ELC No. 921 of 2016, the evidence shows that Joshua Odhiambo Tollo derived his claim through them and defended the earlier suit as the owner. As such, the dispute falls within the ambit of Section 7 of the *Civil Procedure Act*.
52. Counsel disputed the Applicants' claim of having developed the suit property, noting that no evidence was produced to link them to the alleged structures, and that in ELC No. 921 of 2016, the developments were attributed to Joshua Odhiambo Tollo.
53. The 2nd Respondent filed submissions on 2nd January, 2026. Counsel submitted that the Applicants have failed to disclose critical facts to the court, including the existence of previous and pending suits and the finding of non-existence of L.R. No. 209/11036 disentitling them to the equitable reliefs sought. Cited in support was *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358.
54. In addition, it was stated, the Applicants had failed to produce supporting documentation, such as a recent official search or title deed, to substantiate their claim to the land. Counsel relied on *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] KLR 125, where the court defined a *prima facie* case as one in which the applicant demonstrates that a legally protected right has been infringed or threatened.
55. It was also contended that the present application amounts to a disguised attempt to challenge or circumvent the decision in ELC No. 921 of 2016, where an eviction order was issued against the Applicants. Counsel submitted that a court of concurrent jurisdiction cannot be used as a forum to review or indirectly appeal a decision of another court of equal jurisdiction, and that such conduct amounts to abuse of the court process.
56. Finally, Counsel submitted that the Applicants had failed to establish a *prima facie* case, as mere occupation of land does not confer legal rights capable of protection by the court. In contrast, the 2nd Defendant had demonstrated a lawful root of title through documentary evidence including a letter of allotment, payment receipts, lease documents, and title instruments tracing ownership from government land to private ownership.
57. Counsel emphasized that equity will not assist a trespasser, and that the court should not grant equitable relief to a party who seeks to perpetuate unlawful occupation.

Analysis and determination

58. Having considered the Motion, and responses, the issues that arise for determination are:
 - i. Whether the present suit and motion are competent; and if so?
 - ii. Whether the Plaintiffs/ Applicants have met the threshold to warrant the grant of a temporary injunction?



59. Vide their responses to the Motion, the 1st and 2nd Respondents have raised objections to the competence of the proceedings, contending, first that they breach the doctrine of res judicata and second, they breach the doctrine of sub judice.
60. These doctrines, though distinct, are closely related and serve the common purpose of preventing multiplicity of suits and abuse of the court process. The doctrine of sub judice is codified under Section 6 of the *Civil Procedure Act*, and bars a court from proceeding with a matter where the issues in dispute are directly and substantially in issue in a previously instituted suit between the same parties, or those claiming under them, pending before a court of competent jurisdiction.
61. On the other hand, the doctrine of res judicata, as provided under Section 7 of the *Civil Procedure Act*, prohibits a court from re-litigating matters that have already been conclusively determined between the same parties, or those claiming under them, by a court of competent jurisdiction. It operates as a jurisdictional bar and may be raised as a pure point of law where the relevant facts are ascertainable from the pleadings.
62. Turning first to the doctrine of sub judice, its rationale was aptly captured by the Supreme Court in *Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] eKLR, where it was observed that the rule is intended to prevent multiplicity of suits, avoid conflicting decisions, and safeguard the integrity of the judicial process.
63. For the doctrine to apply, it must be demonstrated that there exists parallel proceedings involving the same subject matter, between the same parties or their privies, pending before courts of competent jurisdiction, with the earlier suit having been instituted prior to the latter.
64. As regards res judicata, the same was comprehensively discussed by the Supreme Court in *John Florence Maritime Services Limited & another vs Cabinet Secretary for Transport & Infrastructure & 3 others* [2021] KESC 39 (KLR), drawing from the decision in *Henderson vs Henderson* (1843) 67 ER 313, to the effect that parties are bound to bring forward their entire case, and cannot subsequently reopen matters that were, or ought to have been, raised in earlier proceedings.
65. Accordingly, where a plea of res judicata is raised, the court is required to examine the earlier decision relied upon and determine whether it conclusively settled the dispute between the parties.
66. The applicable criteria was succinctly set out in *Bernard Mugo Ndegwa vs James Nderitu Githae & 2 others* [2010] eKLR under five distinct heads:
- “(i) the matter in issue is identical in both suits;
 - (ii) the parties in the suit are the same;
 - (iii) sameness of the title/claim;
 - (iv) concurrence of jurisdiction; and
 - (v) finality of the previous decision.”
67. Beginning with res judicata, the 1st Respondent contends that the present suit is barred by the doctrine on account of the judgment in ELC No. 921 of 2016, *Thomas Kirui v Joshua Odhiambo Tollo*. That suit concerned the ownership and possession of L.R. No. 209/13406, where the Plaintiff, the 1st Respondent herein, sought declaratory orders, eviction, and a permanent injunction against Joshua Odhiambo Tollo.



68. It was his case that he was the registered proprietor of L.R. No. 209/13406 by virtue of a grant, and that Joshua Odhiambo Tollo had, sometime in 2002, unlawfully encroached onto the property and erected a perimeter wall.
69. In response, Joshua Odhiambo Tollo maintained that he was the lawful proprietor of L.R. No. 209/11036, having purchased it from Mukuru Kwa Njenga Women Group, whom he described as the original allottee. He asserted that his occupation and developments on the land were pursuant to that purchase.
70. Upon hearing the parties, the court determined the dispute in favour of Thomas Kirui, declared him the lawful owner of L.R. No. 209/13406, and issued eviction and permanent injunctive orders against Joshua Odhiambo Tollo. The court further found that the alleged L.R. No. 209/11036, as presented in that suit, did not exist as a separate parcel capable of sustaining the Defendant's claim.
71. In the present suit, the Plaintiffs are Mukuru Kwa Njenga Women Group, Willy Kimeu and Esther Wanjiku, its officials, while the Defendants are Thomas Kirui, Philip Kibet Tonui, Nairobi City County, the Registrar of Lands, the Director of Surveys and the Hon. Attorney General.
72. Their claim is framed around L.R. No. 209/11036, which they describe as the parcel they have occupied for many years, and in respect of which they seek, among other reliefs, declarations as to their lawful occupation and beneficial interest, cancellation of L.R. 209/13406, and injunctive protection against interference.
73. They contend that the titles held by the 1st and 2nd Defendants were procured fraudulently and that their own occupation predates the alleged subdivisions and resultant titles.
74. The court has carefully considered the pleadings vis the doctrine of res judicata. Beginning with the issue in dispute, although differently described, both suits concern the same subject matter and raise identical questions regarding the existence and validity of L.R. No. 209/11036.
75. In the previous proceedings, the court, after a full hearing, made definitive findings that L.R. No. 209/11036 did not exist as a valid parcel and that L.R. No. 209/13406, held by the 1st Respondent, was lawfully derived therefrom and constituted a valid title. Those determinations conclusively resolved both the status of the suit parcel herein and the validity of the 1st Respondent's title.
76. As to the identity of parties, although the present Applicants were not formally named in ELC No. 921 of 2016, the evidence shows that Joshua Odhiambo Tollo litigated as a purchaser deriving title from Mukuru Kwa Njenga Women's Project. In law, he stood as a successor in title to the present Applicants and they are bound by the outcome.
77. Crucially, the Applicants have not disavowed the earlier transaction through which Joshua Odhiambo Tollo claimed to have purchased the suit property from them, nor have they joined him in these proceedings.
78. The joinder of the 2nd Respondent and public entities, including the Registrar of Lands, the Director of Surveys, and the Attorney General, does not alter this position. The dispute remains one of ownership and entitlement to the same land, and the core issues remain unchanged. The addition of parties cannot be used to reopen matters already conclusively determined.
79. It follows that the Applicants cannot revive a claim premised on L.R. No. 209/11036, whether framed as occupation, beneficial ownership, or otherwise. Once the court determined that the said parcel did not exist, any derivative claim is legally untenable.



80. Although L.R. No. 209/13407 was not directly in issue in the earlier suit, it is not disputed that it also emanated from L.R. No. 209/11036. On that account, and given the court's prior finding that L.R. No. 209/11036 did not exist, any claim founded upon it is untenable.
81. A separate claim over L.R. No. 209/13407 is, in any event, untenable as it falls within the ambit of the doctrine of sub judice. This is because ELCLC No. E078 of 2023 which is pending before this court concerns a dispute over the aforesaid parcel.
82. In the aforesaid suit, instituted by the 2nd Respondent, he seeks declaratory, permanent injunctive, and mandatory injunctive reliefs in respect of L.R. No. 209/13407 against, among others, Willy Kimeu, the 2nd Applicant herein who asserts long-standing occupation of the land under title L.R. No. 209/11036 and claims such occupation through Mukuru Kwa Njenga Women Group. Interim protective orders have been issued therein and hearing has proceeded.
83. It is therefore clear that the questions of occupation, interference, and entitlement to possession of the said parcel are directly and substantially in issue in the earlier proceedings, and cannot be reopened in the present suit.
84. To permit such a course would create the very mischief that Section 6 of the *Civil Procedure Act* is intended to prevent, namely parallel proceedings over the same subject matter with the attendant risk of conflicting decisions.
85. The result is that the Applicants' challenge, in so far as it is anchored on L.R. No. 209/11036 and directed against L.R. No. 209/13406, is barred by res judicata; and in so far as it extends to L.R. No. 209/13407, it is caught by sub judice.
86. The objection to the competence of the suit is therefore well founded with the result that both the Plaintiff and by extension the Motion both dated 14th August, 2025 are incompetent. The same are hereby dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30TH DAY OF APRIL, 2026.

O. A. ANGOTE

JUDGE

In the presence of;

Mr. Ondieki for Plaintiff

Mr. Kimani for 1st Defendant

Court Assistant: Tracy

