



**Republic v Principal Secretary, State Departments of Lands and Housing & 3 others; Kinuthia (Suing on his Behalf and 99 others, Members of Njoro East Mau CBO) (Ex parte Applicant) (Environment and Land Judicial Review Case E006 of 2025) [2026] KEELC 2309 (KLR) (27 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2309 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E006 OF 2025**

**MAO ODENY, J**

**APRIL 27, 2026**

**IN THE MATTER OF ARTICLES 2(1), 20, 21(1), 22(1), 23(1), 47, 50(1),  
73, 162, 165, AND 232 OF THE CONSTITUTION OF KENYA (2010)**

**AND**

**IN THE MATTER OF ORDER 53 RULES 1 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF SECTION 8 & 9 OF THE LAW  
REFORM ACT CAP 26 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW  
BY NJORO EAST MAU COMMUNITY BASED ORGANIZATION**

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW  
PROCEEDINGS FOR THE ORDERS OF MANDAMUS AND PROHIBITION**

**AND**

**IN THE MATTER OF THE REFUSAL BY THE STATE DEPARTMENT FOR LANDS  
AND HOUSING AND NAKURU COUNTY LANDS ADJUDICATION OFFICER  
TO AVAIL PUBLIC INFORMATION REGARDING LR. NO 9216 (KISIMA FARM)**

**AND**

**IN THE MATTER OF AN APPLICATION FOR  
LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS**

**BETWEEN**

**REPUBLIC ..... APPLICANT**



AND

THE PRINCIPAL SECRETARY, STATE DEPARTMENTS OF LANDS AND HOUSING ..... 1<sup>ST</sup> RESPONDENT

THE LANDS ADJUDICATION OFFICER NAKURU COUNTY .... 2<sup>ND</sup> RESPONDENT

THE COUNTY COMMISSIONER NAKURU COUNTY ..... 3<sup>RD</sup> RESPONDENT

HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT

AND

JOHN NJOROGE KINUTHIA (SUING ON HIS BEHALF AND 99 OTHERS, MEMBERS OF NJORO EAST MAU CBO) ..... EX PARTE APPLICANT

### RULING

1. This ruling is in respect of the Notice of Preliminary Objection dated 15<sup>th</sup> January, 2026, by the 5<sup>th</sup> Respondent on the application dated 18<sup>th</sup> December, 2025, and the suit on the following grounds:

1. The Application and suit is Res Judicata

The application and statutory statement offends Section 7 of the *Civil Procedure Act*, Cap 21, the issues raised herein having been directly and substantially in issue in a former suit between the same parties i.e Nakuru ELC Case No. 342 Of 2024 Samuel Kirui & 180 Others V The Cabinet Secretary Ministry Of Devolution & Another, which suit was heard and finally determined by Mediation.

2. This Honourable Court is Functus Officio

Having previously heard and determined the substantive issues forming the basis of the intended judicial review proceedings, this Honourable Court is functus officio and lacks jurisdiction to re-open, re-litigate, or re-examine the same matters.

3. Abuse of the Court Process

The application for leave is a gross abuse of the court process, as it seeks to reintroduce issues already conclusively determined under the guise of judicial review, contrary to the principles of finality of litigation and orderly administration of Justice.

4. Judicial Review Cannot Be Used as an Appeal

The Applicant is improperly invoking Judicial review proceedings to challenge the merits of a decision already determined in Nakuru ELC Case No. 342 Of 2024 Samuel Kirui & 180 Others V The Cabinet Secretary Ministry of Devolution & Another, which is contrary to established law that Judicial review is concerned with the decision-making process, not the correctness or merits of the decision.

5. The Application and suit in general is incompetent and Fatally Defective. The Applicant has failed to meet the threshold for grant of leave under Section 9



of the Law Reform Act and Order 53 Rule 1 of the Civil Procedure Rules, as there exists a binding and final determination on the same subject matter.

6. Lack of Jurisdiction

This Honourable Court lacks Jurisdiction to entertain the application and suit by virtue of the doctrines of res judicata, functus officio, and the principle that litigation must come to an end, jurisdiction being everything.

2. The Preliminary Objection was canvassed by way of written submissions.

**5<sup>th</sup> Respondent's Submissions**

3. Counsel for the 5<sup>th</sup> Defendant filed submissions dated 2<sup>nd</sup> March 2026 and identified one issue for determination as to whether the suit is barred by the doctrine of res judicata. Counsel relied on Section 7 of the Civil Procedure Act and the cases of John Florence Maritime Services Ltd & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR), Independent Electoral and Boundaries Commission v Kai & 5 others (Civil Appeal 105 of 2017) [2017] KECA 477 (KLR), Uhuru Highway Development Ltd v Central Bank of Kenya [1999] eKLR, Bernard Mugo Ndegwa v James Nderitu Githae & 4 others [2017] KEELC 539 (KLR), MWANGI NJANGU vs MESHACK MBOGO WAMBUGU [2004] KEHC 2275 (KLR), E.T. v Attorney General & another [2012] eKLR, Pop-In (Kenya) Ltd & 3 others v Habib Bank AG Zurich [1990] eKLR
4. Ms. Nyambura submitted that it is evident that the Ex-parte Applicant has merely added parties and introduced a new cause of action surrounding LR.NO. 9216 (KISIMA FARM) which was also the suit property and subject matter in Nakuru ELC Case No. 342 of 2024 Samuel Kiwi & 780 others vs The Cabinet Secretary Ministry of Devolution & another. Counsel submitted that the present suit has satisfied the elements of res judicata.
5. Counsel submitted that the proceedings in the said case was finally determined vide a settlement agreement that had been adopted as an order of the court and further the proceedings were conducted by a court with proper jurisdiction whose adoption of the settlement agreement gave it the force of a judgment.
6. According to counsel, the Ex-parte Applicant's actions amount to an abuse of the court process and allowing the suit to proceed would defeat the principles of finality in litigation, judicial economy and certainty of court decisions.
7. In conclusion, counsel submitted that the proceedings in the suit are res judicata and constitute an abuse of the court process and urged the court to strike out the suit with costs.

**Ex Parte Applicant's Submissions**

8. Counsel for the Ex-parte Applicant filed submissions dated 10<sup>th</sup> January 2026 and identified the following issues for determination:
  - a. Whether this matter is Res Judicata
  - b. Whether this Court lacks jurisdiction.
9. On the first issue, counsel submitted that it is trite law that a Preliminary Objection should be premised on points of law and not matters of fact. Counsel, further submitted that the current Notice of Preliminary Objection on Res Judicata, was a matter of fact and the 5<sup>th</sup> Respondent needed to produce



documents relating to the case mentioned in their notice in order for the court to verify that it is indeed identical to this current matter.

10. Mr. Okiro, relied on the case of Pemu Engineering & Equipment Limited V Baron Capital Limited (Environment & Land Case E032 of 2025) eKLR where the court cited with approval the case of Mukisa Biscuits Manufacturing Co. Ltd V West End Distributors Ltd (1969) EA 696, and submitted that the matter alluded to by the 5<sup>th</sup> Respondent (Nakuru ELC Case No. 342 of 2024: Samuel Kirui & 180 Others V The Cabinet Secretary Ministry of Devolution and Another) was a dispute that was brought by a section of beneficiaries and the main issue for determination was who should be listed as the beneficiaries.
11. According to counsel, the suit was entirely different from the order of mandamus sought in this present suit to produce a final list after the conclusion of the above-mentioned suit and relied on the case of John Florence Maritime Services Ltd & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR).
12. Counsel submitted that even if the suit land in this case was the same as that of the aforementioned case, the reliefs sought are entirely different and this case did not in any way contest ownership of the land or its distribution but sought to produce certain information that would inform the next move of the Applicants and urged the court to find that the preliminary objection on res judicata was premature at this stage.
13. On the second issue, on jurisdiction, counsel submitted that the court is vested with sufficient jurisdiction to handle a Judicial Review on matters of land, and relied on the case of Republic V County Government of Meru & 5 others (Judicial Review E009 of 2024) [2025] eKLR which quoted with approval the Supreme Court holding in Republic V Chengo & 2 others (Petition 5 of 2015) [2017] eKLR, and urged the court to dismiss the preliminary notice of objection and allow the main suit proceed.

### **Analysis And Determination**

14. The issue for determination is whether the 5<sup>th</sup> Respondent's Preliminary Objection on res judicata and the jurisdiction of this court has merit.
15. The principles of what amounts to a preliminary objection are well settled as was held in the case of Mukisa Biscuits Manufacturing Co. Ltd V West End Distributors Ltd (1969) EA 696, where the court held as follows:

“A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion.”

16. For a preliminary objection to succeed it must be purely on points of law and not facts which the court has to ascertain before coming up with a decision whether it has merit or not. When a court has to look outside the grounds stated in the preliminary objection to decide whether a matter is res judicata or not, in that case it is no longer a preliminary objection but determining a suit at an interlocutory stage without evidence.



17. It is also well settled that a preliminary objection ought to raise a pure point of law, argued on the assumption, that all facts pleaded by the other side are correct, as was held in the case of Oraro Vs Mbaja (2005) 1KLR 141, where the court held that:

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence.”

18. The 5<sup>th</sup> Respondent submitted that this court lacks the jurisdiction to hear and determine the present matter as it is res judicata Nakuru ELC Case No. 342 of 2024 Samuel Kirui & 180 Others V the Cabinet Secretary Ministry of Devolution & Another, whereby the subject property in the present suit is similar to the one in the previous suit, where the court concluded the matter vide a settlement agreement that was adopted as an order of the court.

19. The 5<sup>th</sup> Respondent did not make it any easier by attaching the judgment in the above case. Was it the duty of the court to go looking for that judgment to confirm its existence and the content to ascertain that this matter is res judicata? This is a flaw in parties looking for short cuts to terminate suits without a hearing. If the 5<sup>th</sup> Respondent really wanted to raise a proper preliminary objection on points of law, then it should have filed a Notice of Motion, supported by an affidavit and annexures to enable the Ex-parte Applicants to explain themselves on oath why the suit is not res judicata.

20. In the case of George Kamau Kimani & 4 others v County Government of Trans-Nzoia & another [2014] eKLR, the court held as follows:

“I have considered the points raised by the first defendant. All those points can be argued in the normal manner. They do not qualify to be raised as Preliminary Points. One cannot raise a ground of res judicata by way of preliminary objection. The best way to raise a ground of res judicata is by way of notice of motion where pleadings are annexed to enable the court to determine whether the current suit is res judicata. Professor Sifuna did not raise the issue of res judicata by way of notice of motion. Professor Sifuna only annexed a ruling in respect of a case which was struck out. This is not a proper way of raising the issue of res judicata. The other points raised in the preliminary objection are issues which require ascertainment of facts by way of evidence. They cannot be brought by way of preliminary objection.”

21. In addition, both parties dispute that Nakuru ELC Case No. 342 of 2024 Samuel Kirui (supra) is similar and was heard and determined. In the case of Suleiman Said Shabhal vs Independent Electoral & Boundaries Commission & 3 Others [2014] eKLR, the court in addressing what amounts to res judicata held as follows:

“To constitute res judicata, there must be adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy.”

22. Consequently, I find that the 5<sup>th</sup> Respondent’s Preliminary Objection lacks merit and is therefore dismissed with each party bearing their own costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 27<sup>TH</sup> DAY OF APRIL 2026.**

**M. A. ODENY**

**JUDGE**

