



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**ELC LAND CASE NO. E008 OF 2025**

**SULEIMAN**

**KINYAMU**

**REUBEN.....PLAINTIFF**

**=VERSUS=**

**DAVID MURIUNGI MWANGANGI (*Sued as the  
Administrator of the estate of***

**ANDRIANO MWANGANGI).....1ST  
DEFENDANT**

**GEORGE MURITHI MWANGANGI.....2ND  
DEFENDANT**

**RULING**

- 1. Suleiman Kinyamu Reuben (*the plaintiff*)** initiated this suit through a plaint dated 23/6/2025. He sought the following reliefs against the defendant: (i) a declaration that he is the registered proprietor of land reference number **Tharaka Nithi/Chiakariga "A"/2556** (*the suit land*) and he is entitled to the absolute ownership of the same with all the rights and privileges appurtenant thereto; (ii) an order directing the 2nd defendant to give vacant possession of the land by vacating the land and by demolishing all his buildings and structures thereon; (iii) a permanent injunction

restraining the defendants against laying claim to or occupying, utilizing, developing or interfering with the land; (iv) general damages for trespass; and (v) costs of the suit.

2. The case of the plaintiff was that he was the registered proprietor of the suit land, having been so registered on 27/7/2016. He purchased the suit land from one **Mukambi Mwenda** in 2011 prior to completion of the land adjudication exercise in the area. The defendants' father (*the late Andriano Mwangangi*) filed **Meru High Court Judicial Review Case No 19 of 2012** which was decided in favour of the plaintiff.
3. Upon being served with the suit papers, the defendants brought a notice of motion dated 9/9/2025, inviting this court to strike out the suit on the ground that it was *res judicata*. The said application is the subject of this ruling.
4. The application was premised on the grounds outlined in the motion and in the 1st defendant's affidavit dated 9/9/2025 and written submissions dated 9/12/2025, filed by **M/s Jesse Mwiti Advocates**. The case of the applicants is that, through this suit, the plaintiff seeks orders evicting the defendants from the suit land. They contend that the suit is *res judicata* because in May 2021, the plaintiff filed **Marimanti PMC E&L Case No E010 of 2021** against the defendants in which he sought eviction orders against the defendants. The said suit was struck out on 19/4/2023 for being time-barred under the **Limitation of Actions Act**. Dissatisfied with the ruling of the lower court, the plaintiff filed **Chuka ELC Appeal No E011 of 2023** which was heard

and dismissed by this court (**Yano J**) through a judgment delivered on 30/11/2023.

5. Dissatisfied with the judgment of this court, the plaintiff filed **Civil Application No E014 of 2024** in the Court of Appeal at Nyeri, seeking leave to file an appeal out of time. The application was allowed by the Court of Appeal (**Muchelule J A**) on 28/6/2024 and the plaintiff was granted 7 days within which to file and serve a notice of appeal and 45 days within which to file and serve the record of appeal. The applicants contend that the plaintiff did not utilize the window of opportunity granted to him by the Court of Appeal; he slept on his rights only to subsequently bring the present suit in the Environment and Land Court.
6. The respondent opposed the application through a replying affidavit dated 25/11/2025 and submissions dated 26/1/2026, filed by **M/S Basilio Gitonga, Murithi & Associates**. The case of the respondent is that **Marimanti PMC E&L Case No. E010 of 2021** sought an order of permanent injunction and not an order of eviction as alleged by the applicants. He contends that in the present suit, he seeks eviction of the applicants from the suit land. The respondent further contends that at the time of instituting the suit in the subordinate court, the applicants and the other named defendants prevented him from accessing the suit land.
7. The respondent adds that the current suit arose from a new cause of action, contending that the applicants are now occupying the land and have begun construction. He

contends that the suit is not *res judicata*, adding that the earlier finding declaring his claim time-barred under **Section 7 of the Limitation of Actions Act** was made *per incuriam*. He states that he still intends to pursue the matter in the Court of Appeal despite his failure to comply with the order of the Court of Appeal.

8. The respondent argues that courts should avoid dismissing suits without hearing parties. He says the present suit is a counterclaim to **Chuka ELC No. E008 of 2024 (OS)**. He argues that orders preventing trespass and eviction orders are distinct claims. He urges the court to let him pursue his claim.
9. The court has considered the application; the response to the application; and the parties' respective submissions. The court has also considered the relevant legal frameworks and the jurisprudence relevant to the key issue in the application. The single issue to be determined in the application is whether this suit is *res judicata*.
10. The common law doctrine of *res judicata* has been enacted as part of Kenya's statute law under **Section 7** of the **Civil Procedure Act** which provides as follows:

***“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in use 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.”***

11. Kenya’s Parliament legislated explanatory notes defining the doctrine in details. It emerges from the substantive framework and from the explanatory notes that a party alleging *res judicata* must demonstrate the following essential elements. (i) previous existence of a suit relating to the same cause of action in a court of competent jurisdiction; (ii) previous determination of the same cause of action or the same issue by a court of competent jurisdiction; and (iii) privity to the previous suit by the parties or legally recognized representatives of the parties in the offending suit.
12. Commenting on the application of the doctrine of *res judicata* in civil proceedings in Kenya, the Supreme Court of Kenya outlined the following as the essential elements of *res judicata* in ***John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC KLR:***

***“For res judicata to be invoked in a civil matter, the following elements must be demonstrated: (a) There is a former judgment or order which was final; (b) the Judgment or order was on merit; (c) The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and (d) There must be between the first and the second action identical parties, subject matter and cause of***

**action. (See Uhuru Highway Developers Limited v Central Bank of Kenya & others [1999] eKLR and see the decision of the Court of Appeal in Nicholas Njeru v Attorney General & 8 others Civil Appeal 110 of 2011 (2013)eKLR.”**

- 13.** The Court of Appeal in **Kenya Commercial Bank Limited v Benjoh Amalgamated Limited [2017] eKLR** stated that the elements of *res judicata* are conjunctive rather than disjunctive. The Court of Appeal emphasized that for a suit to be deemed as *res judicata* on account of a former suit, the following five elements must be established: (i) the suit or issue was directly or substantially in issue in the former suit; (ii) that former suit was between the same parties or parties under whom they or any of them claim; (iii) those parties were litigating under the same title; (iv) the issue was heard and finally determined in the former suit; and (v) the court that formerly heard and determined the issues was competent to try the subsequent suit or the suit in which the issue is raised.
- 14.** The court in the English Case of **Henderson v Henderson (1843) 67 ER 313** emphasized that the doctrine of *res judicata* applies not only to issues on which the court was actually required by parties to make pronouncements, but also to every issue which properly belonged to the subject of litigation (cause of action) in the previous suit and which the parties, exercising reasonable diligence, might have canvassed in the preceding suit. The court stated thus:

**“Where a given matter becomes the subject of litigation in, and of adjudication by a court of**

***competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case and will not (except in special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have from negligence, inadvertence, or even accident omitted part of their case. The plea of res judicata applies except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce judgment but to every point which properly belonged to the subject of litigation, and which parties exercising reasonable diligence, might have brought forward at the time.”***

- 15.** The Supreme Court of Kenya outlined the policy rationale of the doctrine of *res judicata* in ***John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 Others [supra]*** as follows:

***“We affirm our position as in the Muiiri Coffee case that the doctrine of res judicata is based on the principle of finality which is a matter of public policy. The principle of finality is one of the pillars upon which our judicial system is founded and the doctrine of res judicata***

***prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party conclusively”.***

- 16.** On its part, the Court of Appeal outlined the rationale of the doctrine of *res judicata* in ***Independent Electoral & Boundaries Commission v Maina Kiai & 5 others [2017] eKLR*** as follows:

***“The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. it is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and for a, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”***

- 17.** Is this suit *res judicata*? Put differently, have the defendants/applicants established the essential elements of *res judicata* in the application under consideration? The court has looked at the exhibited pleadings relating to **Marimanti PMC E&L Case No E010 of 2021**. The court has also looked at the exhibited judgment rendered in the said suit on 19/4/2023 by **Hon. Mbayaki Wafula, PM. Suleiman Kinyamu Reuben** was the plaintiff in the said suit. The defendants were: (i) **Andriano Mwangangi** (*the deceased father of the two defendants*); (ii) **Paul Kithure Murithi**; (iii) **John Muthomi Mwangangi**; (iv) **Catherine Kathure Gitonga**; (v) **Peter Kirimi Mwangangi**; (vi) **Muriungi Mwangangi** (*the 1st defendant in the present suit*); (vii) **George Murithi Mwangangi** (*2nd defendant in the present suit*); and (viii) **John Kiama Mugao**.
- 18.** The cause of action in **Marimanti PMC E&L Case No E010 of 2021** was that the above named defendants had prevented the plaintiff from accessing land reference number **Tharaka Nithi/Chiakariga/2556** (*the suit land*). Through it, the plaintiff sought; (i) a permanent injunction restraining the above named defendants against trespassing onto, entering or in any way interfering with the plaintiff's right of use, ingress or working on the suit land.
- 19.** The above named defendants filed a defence and counterclaim dated 21/6/2021. The defence and counterclaim were amended on 19/5/2022. The case of the above named defendants was that the suit land was part and parcel of land parcel number **458** within **Chiakariga "A" Adjudication Section**. They contended that parcel

number **Tharaka Nithi/Chiakariga "A"/2556** was an illegal excision from parcel number 458 which had been illegally hived from parcel number 458 without their knowledge. The defendants further contended that the plaintiff's title over the suit land had been extinguished under **Section 7** of the **Limitation of Actions Act**. They prayed for adverse possession orders.

20. In its judgment rendered on 19/4/2023, the Principal Magistrate Court at Marimanti considered the following issues: (i) Whether the plaintiff's suit was time-barred and whether the court lacked jurisdiction on that ground; (ii) Who were the owners of parcel numbers **Tharaka Nithi/Chiakariga "A"/2556** and **458**; and (iii) What remedies were available to the parties. The Principal Magistrate Court at Marimanti found that the plaintiff's claim/suit was time-barred under **Section 7** of the **Limitation of Actions Act**. On the question of ownership in relation to the doctrine of adverse possession, the Principal Magistrate Court found that it did not have jurisdiction to deal with the issue of adverse possession.
21. Upon the plaintiff lodging **Chuka ELC Appeal No E011 of 2023**, this Court (**Yano J**) considered the appeal and rendered a judgment dated 30/11/2023. The court upheld the findings of the lower Court on the issue of limitation and on the issue of jurisdiction of magistrate courts over adverse possession claims.
22. It is clear from the pleadings in **Marimanti PMC E&L Case No E010 of 2021** that the plaintiff sought to prevent the

late **Andriano Mwangangi** and his children (including the two defendants) against trespassing onto, entering onto or interfering with the suit land. The plaintiff seeks similar reliefs in the present suit (prayer c). Secondly, both the lower court and this court (**Yano J**) pronounced themselves on the question of the plaintiff's right to maintain an action relating to enforcement of proprietary rights against the late **Andriano Mwangangi** and his children. The two courts found that the plaintiff's right to maintain a cause of action for recovery of the suit land against the defendants was statute-barred under **Section 7** of the **Limitation of Actions Act**. By dint of **Section 7** of the **Civil Procedure Act**, the plaintiff is barred against ventilating against the same defendants a claim that has been adjudged to be time-barred. Secondly, under the principle in **Henderson v Henderson (Supra)**, the plaintiff is precluded from bringing the present suit against the defendants.

**23.** The plaintiff properly sought and was granted an order by the Court of Appeal, enlarging time for lodging an appeal. He elected to squander the opportunity only to bring the present suit to the Environment and Land Court. Regrettably, at this point and in the above circumstances, the Environment and Land Court does not have jurisdiction to entertain this dispute. The jurisdiction of the Environment and Land Court stands ousted by the doctrine of *res judicata* as spelt out in **Section 7** of the **Civil Procedure Act**.

**24.** For the above reasons, it is the finding of this court that this suit is *res judicata*. Consequently, the notice of motion dated

9/9/2025 succeeds. This suit is accordingly struck out for being res judicata.

- 25.** On costs, the general principle in **Section 27** of the **Civil Procedure Act** is that costs follow the event. No proper grounds have been demonstrated to warrant a departure from the above general principle. Consequently, the plaintiff shall bear costs of the suit.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 20TH DAY OF APRIL, 2026.**

**B M EBOSO [MR]**

**ELC JUDGE**

**In the Presence of:**

Mr. Mwiti for the Defendants

Mr. Murithi for the Plaintiff.

Court Assistant - Nicholas