

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**NYAHURURU**  
**ELC NO. 26 OF 2018**

**HALIFAX LIMITED.....**

**....PLAINTIFF**

**VERSUS**

**LAIKIPIA & NAKURU PROPERTY**

**INVESTMENTS COMPANY LIMITED.....**

**DEFENDANT**

**RULING**

1. Before me is a notice of motion application dated 5.12.2025 filed by an intended interested party seeking orders that; they be allowed to participate in these proceedings, that the consent order of 2.4.2019 be varied, set aside or stayed, that there be an order of injunction restraining the respondents from interfering with the suit property

parcel IR 2528 in Laikipia County, that the OCS Nyahururu be directed to ensure compliance and that costs be provided for.

2. The application is premised on grounds on the face of the application and the supporting affidavit of one Gorore Kullow. The applicants are members of Chogotia (A) TAA which is a CBO. They aver that their members are about 300 in number and they have occupied 200 acres out of the 1000 acres of the suit land without interruption for a period of over three decades. They have developed the land where they have homes, schools and churches. That despite assurances from the 1<sup>st</sup> respondent, the said entity sold the land to the 2<sup>nd</sup> respondent. They have persistently been receiving threats of eviction and there have been an influx of strangers and surveyors on the suit land. Further, the 2<sup>nd</sup> respondent has charged the suit land to National

Bank of Kenya. They argue that the consent order was made without their involvement.

- 3.** In response thereof, the plaintiff who is being referred to as the 2<sup>nd</sup> respondent filed a replying affidavit and a Preliminary Objection dated 5.2.2026. It contends that the application is res-judicata, as the issues raised were determined in the ruling delivered on 28.4.2022, adding that the applicants have no locus standi in this matter.
- 4.** I did not see any response from the Defendants.
- 5.** I have considered the rival arguments and submissions. The main issues falling for determination are; Whether the application dated 5.12.2025 is res-judicata, if the answer is not in the affirmative, then whether the applicants should be joined in these proceedings, whether the consent of 2.4.2019 should be set aside and whether the injunctive orders should be issued.

6. The applicants contend that the doctrine of res-judicata should not be used to lock out a party who was not heard. **Section 7 of the Civil Procedure Act** 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 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”.**

6. In the case of **John Florence Maritime services Limited and another vs Cabinet Secretary for Transport and Infrastructure and 3 others (2015) eKLR**, it was held as follows:

**“...Res Judicata is a subject which is not at all novel. It is a discourse on which a lot of ink has been spilt and is now sufficiently settled. We therefore do not intend to reinvent any wheel. We can, however, do no better than reproduce the re-indentation of the doctrine many centuries ago as captured in the case of Henderson vs Henderson (1943) 67 ER 313: ...where a given matter becomes a subject of litigation in and 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 under special circumstances) permit the same parties to open the same subject of litigation in respect of 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.”**

Also see- **Daniel Mesiri Kasoo & 7 others v Fredrick Nkonge Mutwiri & another [2020] eKLR.**

7. A perusal of the ruling delivered on 28.4.2022 reveals that the applicants in the application dated 10.6.2021 were members of the Chogoti Farm Cosmopolitan, a CBO and they were raising the same issues raised in the current application. The only difference being a minor variation in the name, and that the deponent in the earlier application was one Paul Thairu Kimani while the current deponent is Gogore Kullow. At paragraph 11 of the said ruling, this court stated thus;

**“The court is thus of the opinion that since the property was sold and transferred to the Plaintiff in 2016 and subsequently charged to**

**National Bank of Kenya, the Applicants have no legally identifiable stake or interest in the suit property and that they have no legally recognizable duty to participate in the instant proceedings over the suit property. Their remedy, if any, can only lie as against the Defendant company in separate proceedings under the Companies Act and other applicable legislation”**

8. It is clear beyond peradventure that the issues being raised by the present applicants were dealt with by this same court in the ruling of 28.4.2022. Any attempt to venture into the merits of the application would be tantamount to clothing this court with appellate attires over its own decision, of which the court has no such powers. Thus, it matters not that the applicants are this time round being fronted by a different deponent, or that the CBO has a different name. The issues remain the same.

9. In the end, I find that the application dated 5.12.2025 is not merited, the same is hereby dismissed with costs to the plaintiff.

**DATED, SIGNED AND DELIVERED AT NYAHURURU  
THIS 5<sup>th</sup> DAY OF MAY 2026 THROUGH MICROSOFT  
TEAMS.**

**LUCY N. MBUGUA  
JUDGE**

**In the presence of:**

**Bedan - Court Assistant**

**No appearance for Plaintiff**

**Kirwa Mutai for the Defendant**

**M/s Nyamworo for the Intended Interested  
Party**