

**REPUBLIC OF KENYA**

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

**ELC L CASE NO. E533 OF 2024**

**MOUNTAIN VIEW ESTATE RESIDENTS TRUST .....**

**PLAINTIFF**

**VERSUS**

**BOARD OF TRUSTEES NATIONAL  
SOCIAL SECURITY FUND ..... 1<sup>ST</sup>**

**DEFENDANT**

**GOLDROCK INTERNATIONAL  
ENTERPRISES (KENYA) LIMITED ..... 2<sup>ND</sup>**

**DEFENDANT**

**MUMBU HOLDINGS LIMITED ..... 3<sup>RD</sup>**

**DEFENDANT**

**NATIONAL ENVIRONMENT  
MANAGEMENT AUTHORITY ..... 4<sup>TH</sup>**

**DEFENDANT**

***ELC L CASE NO. E533 OF 2024***

***Ruling***

**THE CHIEF LANDS REGISTRAR ..... 5<sup>TH</sup>**

**DEFENDANT**

**THE NATIONAL LAND COMMISSION ..... 6<sup>TH</sup>**

**DEFENDANT**

**WATER RESOURCES  
MANAGEMENT AUTHORITY ..... 7<sup>TH</sup>**

**DEFENDANT**

**KENYA WILDLIFE SERVICE ..... 8<sup>TH</sup>**

**DEFENDANT**

**RULING**

1. What are before the Court for determination are two pending applications and a Notice of Preliminary Objection which include: Plaintiff's Notice of Motion dated 13<sup>th</sup> December 2024, the 3<sup>rd</sup> Defendant's Notice of Motion dated 28<sup>th</sup> October 2025 and the 2<sup>nd</sup> Defendant's Preliminary Objection dated 28<sup>th</sup> October 2025.

**Notice of Motion dated 13<sup>th</sup> December 2024**

**ELC L CASE NO. E533 OF 2024**

***Ruling***

2. It is filed by the Plaintiff who seeks the following Orders:

a) Spent.

b) Spent.

c) Spent.

d) That this Honourable court be pleased to issue a temporary injunction against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, their agents, servants, employees, contractors, subcontractors or any other person under their authority from leasing, transferring, charging, encumbering, entering upon, occupying, wasting and/or in any manner interfering with Land Reference Number 12948/178 (I.R 37934/461) situated in Mountain view, within Nairobi County herein after referred to as the 'suit property' pending the hearing and determination of this suit.

e) Spent.

f) That this Honourable court be pleased to issue an

**inhibition order restricting any dealings with regard to the register for Land Reference Number 12948/178 (I.R 37934/461) and the 5<sup>th</sup> defendant to secure under lock and key the file, binder, green card and any other registration documents relating to land Reference Number 12948/178 (I.R 37934/461) and be further prohibited from receiving, accepting and registering any further dealings over the said parcel pending the hearing and determination of this suit.**

**g) That costs of this application be provided for.**

**3.** The application is premised on grounds on its face and on the supporting affidavit of Kenneth Njiru, a Trustee of the Plaintiff. He avers that **LR No. 12948/178 (I. R 37934/461)**, was excised and set aside as a public open space and water catchment area during the subdivision of Mountain View estate on or about the year 1983 and is a source of Thiboro, Waititi and Magucha rivers, which are tributaries of the Nairobi River. He avers that the suit

property was however illegally registered in the 1<sup>st</sup> Defendant's name on 19<sup>th</sup> August 1994 and around 23<sup>rd</sup> December 2013, the 1<sup>st</sup> Defendant purportedly transferred it to the 2<sup>nd</sup> Defendant for a consideration of kshs.35 million.

4. He claims that around October 2021, a fleet of lorries, tractors and earth movers invaded the suit property and were dumping soil thereon, action which led to the water spring being completely wiped out. Further, that the Plaintiff's investigations revealed that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were behind the act.
5. He contends that a report from the Director of Physical Planning confirmed that the suit property has never been alienated or allocated to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and acknowledges that the said property was earmarked as a public open space and recommends that the 4<sup>th</sup> and 6<sup>th</sup> Defendants should reclaim it. Further, that it is in the public interest that the suit property is reclaimed, restored and the flora and fauna is saved from further harmful human

activities being carried out by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. He reiterates that the residents of Mountain View Estate and the larger Kangemi area have a constitutional right to a safe, clean environment and water and that the 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Defendants are duty bound to ensure that it is achieved.

### **Response**

6. In opposition, the 2<sup>nd</sup> Defendant filed the Notice of Motion dated 28<sup>th</sup> October 2025 in which it seeks the following Orders:

**a) That this Honourable court be pleased to strike out or dismiss the present suit or cause, in its entirety, on the ground that the same is res judicata in view of the proceedings and orders of the Honourable Court in Nairobi High Court Civil Suit No. 876 of 1996: Professor Fredrick Owino and 7 others v The National Social Security Fund, Board of Trustees, as well as the proceedings and orders of the Honourable Court in Nairobi ELC Case No. 280 of 2016 (O.S) Mumbu Holdings Limited v National Social Security Fund, Board of Trustees and Another.**

**b) That costs of this application, as well as the entire suit, be awarded to the 2<sup>nd</sup> Defendant.**

7. The application is premised on grounds on its face and on the supporting affidavit of Sang Yeul Park, a director of the 2<sup>nd</sup> Defendant. He avers that in **Nairobi High Court Civil Suit No. 876 of 1996**, a consent was entered on terms that the Defendant therein (The National Social Security Fund, Board of Trustees) undertook on its behalf or persons deriving title therefrom not to build/construct any structures other than the approved one private dwelling house on each and every subplot owned by the Defendant, being originally part of the **Grant Number I.R 37394 (Sub-Division Scheme of LR No. 12948 and LR No. 12952)**, and forming part of Mountain View Estate. Further, that the subject property, **LR 12948/178** is a sub plot originally part of the property **Grant Number I.R 37394** (subdivision scheme of **LR No. 12948**) thus it was subject of the suit in the said former suit. He states that the said Consent Order

has not been appealed against nor set aside and the 2<sup>nd</sup>  
**ELC L CASE NO. E533 OF 2024** **Ruling**

Defendant has not disregarded its terms and the Plaintiff having previously litigated on the 2<sup>nd</sup> Defendant's title cannot have a second bite at the cherry.

8. He avers that the 2<sup>nd</sup> Defendant's title to the suit property has also been recently upheld in **Nairobi ELC Case No. 280 of 2016: Mumbu Holdings Limited v National Social Security Fund, Board of Trustees and Gold Rock International Enterprises Limited.**
9. On its part, the 3<sup>rd</sup> Defendant filed a replying affidavit which is not legible in the online filing platform (CTS), and a Notice of Preliminary Objection dated 29<sup>th</sup> October 2025 in which it contends that the suit is res judicata in light of **Nairobi High Court Civil Suit No. 876 of 1996: Professor Fredrick Owino and 7 others v The National Social Security Fund, Board of Trustees**, as well as the proceedings and orders of the Honourable Court in **Nairobi ELC Case No. 280 of 2016 (O.S) Mumbu Holdings Limited v National Social Security Fund, Board of Trustees**  
**ELC L CASE NO. E533 OF 2024** **Ruling**

**Trustees and another.** It contends that the suit is bad since the Plaintiff was not accompanied by written statements.

10. On its part, the 9<sup>th</sup> Defendant filed a replying affidavit but it was later discharged from the suit.

11. The 1<sup>st</sup>, 5<sup>th</sup> and 7<sup>th</sup> Defendants did not participate.

12. In opposition to the 2<sup>nd</sup> Defendant's Notice of Motion and the 3<sup>rd</sup> Defendant's Preliminary Objection, the Plaintiff filed a replying affidavit and a supplementary affidavit sworn by its Trustee, Kenneth Njiru. He insists that this suit is not res judicata the **Nairobi High Court Civil Suit No. 876 of 1996** and **Nairobi ELC Case No. 280 of 2016 (O.S)**. He points out that in **Nairobi High Court Civil Suit No. 876 of 1996** the Plaintiff herein and all other parties were not parties to that suit save for the 1<sup>st</sup> Defendant who was sued as the sole Defendant and that the dispute therein was purely on planning and the kind of structures that would be erected on the one hundred and twenty (120) plots that were

available for private development. Further, that the suit property did not comprise it, having been carved as a wetland which was to remain as public property. He insists that the instant suit concerns the illegal and irregular allocation of the suit property to the 3<sup>rd</sup> Defendant thus it is distinct from the said previous suit.

13. He explains that **Nairobi ELC Case No. 280 of 2016 (O.S)** is not related to the orders sought herein and it did not involve all the parties in the current suit as it was filed by the 3<sup>rd</sup> Defendant herein against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants purporting to claim ownership through adverse possession but the claim was dismissed.
14. The 1<sup>st</sup>, 4<sup>th</sup> to 8<sup>th</sup> Defendants did not file responses.
15. The applications and Preliminary Objection were canvassed through written submissions.

### **Submissions**

16. On the allegation that this suit is res judicata **Nairobi High Court**

**Civil Suit No. 876 of 1996** and **Nairobi ELC Case No. 280 of 2016 (O.S)**, the Plaintiff submits that the plea of res judicata is inapplicable as the two suits did not involve the same parties and the cause of action in both is different from the cause of action herein. Further, that no nexus has been drawn between this suit and **Nairobi ELC Case No. 280 of 2016(O.S)** and that res judicata is a factual issue which cannot be determined through a preliminary objection. It further submits that failure to file written statements is not fatal, as it can be remedied at the pretrial stage and cured under Article 159 of the Constitution.

17. On its prayer for temporary injunction, the Plaintiff submits that it has satisfied the requirements for granting temporary injunctions as set out in the case of **Giella v Cassman Brown** and points out that it has established a prima face case by demonstrating that the suit property is a public

property, a wetland with springs and other diverse flora and fauna but it was fraudulently alienated by the 1<sup>st</sup> Defendant in favour of the 2<sup>nd</sup> Defendant and subsequently to the 3<sup>rd</sup> Defendant.

**18.** It reiterates that it will suffer irreparable harm as the society cannot be adequately compensated where a natural resource has been grabbed and depleted due to human activities, as it cannot be quantified in terms of loss and damage, adding that the balance of convenience tilts in awarding the prayers sought as the Defendants have not demonstrated by evidence that the suit property is not public property.

**19.** To buttress its averments, the Plaintiff relied on the case of **John Florence Maritime Services Ltd & another v Cabinet Secretary Transport Infrastructure & 3 others [2021] KESC 39 (KLR)**.

**20.** On its part, the 3<sup>rd</sup> Defendant submits that it has owned a plot that was hived from **LR 12948/178** for over 30 years

and since the consent recorded in **Nairobi High Court Civil Suit No. 876 of 1996** was to apply to subsequent users of plots hived from **LR 12948/178**, this suit is res judicata, the Court ought to dismiss it.

### **Analysis and Determination**

**21.** Upon consideration of the instant two Notice of Motion applications including the Notice of Preliminary Objection as well as the affidavits and rivalling submissions, the following are the issues for determination:

- **Whether the Plaintiff is entitled to orders of temporary injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from interfering with the suit property.**
- **Whether this suit is res judicata.**
- **Whether the Plaintiff has demonstrated sufficient cause for grant of inhibition orders restricting dealings with regard to the register for Land Reference Number 12948/178 (I.R 37934/461).**

22. On the first issue, the Plaintiff has sought for a temporary injunction restraining the 1<sup>st</sup> to 3<sup>rd</sup> Defendants including their agents or assigns from interfering with LR No. 12948/ 178 pending hearing and determination of this suit. In line with the principles on injunctions as established in the case of **Giella v Cassman Brown & Company Limited (1973) E A 358**, as well as the definition of a prima facie as articulated in the case of **Mrao Ltd v First American Bank of Kenya Ltd & 2 others (2003) eKLR**, I will proceed to decipher if the Plaintiff has established a prima facie case to warrant the Orders as sought. The Plaintiff contends that **LR No. 12948/178 (I.R 37934/461)**, was excised and set aside as a public open space and water catchment area during the subdivision of Mountain View estate and reserved for public use but it has been interfered with by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. The Plaintiff has not disputed that the 2<sup>nd</sup> Defendant has been registered as proprietor of the said land for over 30 years. It has also emerged that the 2<sup>nd</sup> Defendant

has put up permanent developments on the suit property. It is my considered view that since there is already a registered proprietor of the suit property that has developed it, granting orders of injunction would amount to issuing eviction orders at an interlocutory stage. Further, the Plaintiff has not indicated why they never took any action before the developments were put on the disputed property. In the circumstances, I find that the Plaintiff has not established a prima facie case to warrant the orders of interlocutory injunction as sought. In further associating myself with the decision of **Nguruman Ltd. Vs. Jan Bonde Nielsen (2014) eKLR** where the Court of Appeal held that where a party has failed to establish a prima facie case, the Court need not proceed to make a determination of the other two limbs on injunction and I will hence decline to do so.

**23.** As to whether this suit is res judicata. The 1<sup>st</sup> to 3<sup>rd</sup>

Defendants contend that this suit is res judicata **Nairobi**

**High Court Civil Suit No. 876 of 1996 and Nairobi ELC**

**ELC L CASE NO. E533 OF 2024**

**Ruling**

**Case No. 280 of 2016(O.S).** They insist that the suit property formed part of the land previously litigated upon in **Nairobi High Court Civil Suit No. 876 of 1996** where a Consent order was entered into, and it binds successors in title. On its part, the Plaintiff argues that **Nairobi HCCC No. 876 of 1996** concerned planning restrictions and development conditions within Mountain View Estate while the instant suit concerns encroachment on public land, thus issues and causes of action are materially different, and the threshold for res judicata has not been met.

24. Res judicata is anchored on Section 7 of the Civil Procedure Act which provides that:

***“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.”*

25. The Supreme Court stated as follows in **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] KESC 53 (KLR)**:

*“(317) The concept of res judicata operates to prevent causes of action, or issues from being relitigated once they have been determined on the merits. It encompasses limits upon both issues and claims, and the issues that may be raised in subsequent proceedings....There are conditions to the application of the doctrine of res judicata: i. the issue in the first suit must have been decided by a competent Court; (ii) the matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and (iii) the parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title...”*

26. In **John Florence Maritime Services Ltd & Another v. Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR**, it was held that:

*“The rationale behind res-judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res-judicata ensures the economic use of court’s limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably.”*

27. In this instance, I note the Plaintiff claims the suit property is

public land which fact is opposed by the 2<sup>nd</sup> and 3<sup>rd</sup>  
**ELC L CASE NO. E533 OF 2024** **Ruling**

Defendants. On perusal of the Plaint, I note the Plaintiff seeks for cancellation of the title to the suit property as well as reclamation of the suit property. The Plaintiff has further argued that the dispute in the two suits were different since in **Nairobi HCCC No. 876 of 1996**, the fulcrum of the dispute revolved around planning while in the instant suit it concerns reclaiming public land. I note the 1<sup>st</sup> Defendant was a party in the three suits, while the suit property is the same. I also note that in **Nairobi ELC Case No. 280 of 2016(O.S)**, the 3<sup>rd</sup> Defendant sued the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, claiming the suit property through adverse possession but the said suit was dismissed. It is not in dispute that there are already permanent developments on the suit property.

**28. In Gurbachan Singh Kalsi vs. Yowani Ekori Civil Appeal No. 62 of 1958** the former East African Court of Appeal stated as follows:

*"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 under 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 a judgement, but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence, might have brought forward at the time... No more actions than one can be brought for the same cause of action and the principle is that where there is but one cause of action, damages must be assessed once and for all... A cause of action is every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support*

*his right to the judgement of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.”*

29. While in the case of **Mwikali & another v Mutungi & 3 others (Civil Appeal 189 of 2019) [2026] KECA 231 (KLR) (13 February 2026) (Judgment)**, the Court of Appeal while dealing with a dispute revolving around res judicata observed as follows:

*‘There are two other important principles to bear in mind as regards the doctrine of res judicata, which are relevant to this appeal. The first is that the doctrine applies not only to the issues raised in the first suit, but also to all issues which, by reasonable diligence, the parties ought to have raised in that first suit. Accordingly, parties are required to bring forward their entire claims in the first suit rather than to litigate the issues in instalments. Thus, if, from the nature of the case, an issue ought to have been raised in the first suit but due to accident, inadvertence or negligence it was not raised, the court will not allow it to be*

*raised subsequently. In Henderson v. Henderson [1843] 67 ER 313..... The second principle is that parties will not be permitted to evade the doctrine of res judicata by adding new parties or introducing a new cause of action so as to seek the same remedy as that sought in the first suit..... Like the ELC, we are satisfied that the addition of new parties and causes of action is nothing short of a poorly contrived stratagem to defeat the doctrine of res judicata, which the courts have consistently warned against. The central question in the second suit, which was resolved by the High Court in the first suit, remains whether the suit property belonged to Mutyambui and whether he had the right to sell the same to Mutungi. That issue is plainly and simply settled and closed, and is therefore res judicata'. Emphasis Mine*

30. It is my considered view that in so far as the Plaintiff has argued that this suit is different as it concerned encroachment on public land, while in **Nairobi High Court Civil Suit No. 876 of 1996: Professor Fredrick Owino and 7 others v The National Social Security Fund, ELC L CASE NO. E533 OF 2024** *Ruling*

**Board of Trustees**, the fulcrum of the dispute revolved around planning, I opine that the dispute still revolved around the suit property and it was incumbent upon the Plaintiff to present all the facts before the Court in **Nairobi High Court Civil Suit No. 876 of 1996: Professor Fredrick Owino and 7 others v The National Social Security Fund, Board of Trustees**, so that the said Court could determine them once and for all. In the foregoing, while relying on the legal provisions cited and associating myself with the decisions quoted, I find this suit is indeed res judicata and will strike it out.

- 31.** On whether the Plaintiff has demonstrated sufficient cause for grant of inhibition orders restricting dealings with regard to the register for Land Reference Number 12948/178 (I.R 37934/461). In the case of **Japhet Kaimenyi M'ndatho v M'ndatho M'mbwiria [2012] eKLR**, the conditions to be satisfied for grant of an inhibition order were outlined. The Court held that:

***“In an application for orders of inhibition, in my understanding, the applicant has to satisfy the following conditions;***

***a) That the suit property is at the risk of being disposed of or alienated or transferred to the detriment of the applicant unless preservative orders of inhibition are issued.***

***b) That the refusal to grant orders of inhibition would render the applicant’s suit nugatory.***

***c) That the applicant has arguable case.”***

32. At this juncture, I wish to point out that the suit property is registered in the 2<sup>nd</sup> Defendant’s name who has since developed it with permanent structures thereon. It is my considered view that there is no risk that the suit property would be disposed of as claimed. Further, since I have held that the instant suit is res judicata, the Plaintiff’s suit will not be rendered nugatory and neither is it arguable. I will hence

decline to register an inhibition Order against the title to the suit property.

**33.** In the foregoing, I find the Plaintiff's Notice of Motion dated 13<sup>th</sup> December 2024 unmerited and will dismiss it. I find the 3<sup>rd</sup> Defendant's Notice of Motion dated 28<sup>th</sup> October 2025 merited and will allow it. I further find the 2<sup>nd</sup> Defendant's Preliminary Objection dated 28<sup>th</sup> October 2025 merited and will allow it.

**34.** I hence proceed to strike out the Plaintiff's suit and award costs to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS  
4<sup>TH</sup> DAY OF MAY, 2026**

**CHRISTINE OCHIENG  
JUDGE**

**In the presence of:**

Karwanda for Plaintiff

Kamau Allan for 1<sup>st</sup> and 5<sup>th</sup> Defendants

Mwango for 2<sup>nd</sup> Defendant

Ndirangu for 1<sup>st</sup>, Intended Interested Party Applicant

Court Assistant: Joan

ORIGINAL