

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ELC PETITION NO. E006 OF 2025

MARITINO NJIRU NAMU1ST
PETITIONER

ANDREW IRERI NAMU.....2ND
PETITIONER

VS

THE LAND REGISTRAR SIAKAGO.....1ST
RESPONDENT

GABRIEL NJUE JOSEPH.....2ND
RESPONDENT

THE ATTORNEY GENERAL.....3RD
RESPONDENT

RULING

1. Vide a Preliminary Objection dated 16/10/2025, the 2nd Respondent raised an objection on the Petition on the grounds inter alia, that the Petition offends the provisions of section 7 of the Civil Procedure Act, in that the issues raised in the Petition are res judicata having been heard and determined by this Court; the Petition offends section 3A of the Civil Procedure Act because it is an abuse of the Court process through multiplicity of suits; that the Petition is scandalous, frivolous and vexatious, bad in law and is otherwise an abuse of the process of the Court and the same be dismissed with costs.

2. The parties agreed to have the preliminary objection canvassed through written submissions which the Court has considered. The Petitioners filed submissions in person dated 17/11/2025 and further submissions dated 23/02/2026. They are not so elegantly drafted. They submitted that this Court is empowered by section 13 of the Environment and Land Court Act to hear and determine any land dispute. They urged that the Court strikes out the objection and give the Petition a chance to be heard.
3. The 1st and 3rd Respondents did not file submissions and expressed that they would support the 2nd Respondents submissions.
4. The 2nd Respondent filed submissions dated 02/02/2026 through the firm of Fatuma Wanjiku and Company Advocates. They submitted that the Preliminary Objection should be upheld on the ground that the Petition is res judicata and amounts to an abuse of the court process. It is argued that the dispute concerns land parcels Evurore/Nguthi/2705 and 2706, which have been the subject of multiple previous proceedings, including Embu ELC Case No. 55 of 2016 (O.S.), Embu ELC Petition No. E01 of 2023, Embu ELC Case No. E012 of 2023 and related appeals, all of which were conclusively determined against the Petitioners.
5. The 2nd Respondent contended that in those earlier cases, the courts consistently found against the Petitioners. They further pointed out that the parties in the present Petition

are substantially the same and the subject matter remains unchanged despite attempts to vary the parties in successive filings. They urged the Court to find that the Petition is res judicata, is an abuse of the process of the Court, and should be dismissed with exemplary costs to deter further unnecessary litigation over issues already determined.

6. I have considered the application and the rival submissions. The issue for determination is whether the Petition herein is res judicata.

7. The circumstances in which a preliminary objection may be raised was laid out by the Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd (1969) EA 696, as follows:

“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 has to be ascertained or if what is sought is the exercise of judicial discretion.”

8. The doctrine of res judicata is founded on Section 7 of the Civil Procedure Act (Cap. 21, Laws of Kenya) 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.”

8. In this matter, it is clear that the Petitioners have been engaged in a long running dispute over land parcels Evurore/Nguthi/2705 and 2706, which originated from Evurore/Nguthi/2240. The original parcel was registered in the name of their father, Namu Ndumo, on 3/8/1979, but his registration was closed in 1981 when the land was transferred to Munyi Kivuana on 19/3/1981. That registration was challenged by the Petitioners’ father in Embu ELC Case No. 340 of 1990, and the court found in favour of Munyi Kivuana. The Petitioner’s father preferred an appeal in Civil Appeal No. 31 of 1996 which was dismissed on 5/9/1997, effectively bringing the issue of ownership to a close.
9. The Petitioners themselves later instituted Embu ELC Case No. 55 of 2016 (O.S.), together with David Ileri Namu, claiming ownership of Evurore/Nguthi/2705 and 2706 through adverse possession. That claim was heard and dismissed. They again returned to court in Embu ELC Petition No. E01 of 2023, this time introducing additional parties but still raising substantially the same issues. They complained that the respondents therein, including the 2nd Respondent, who were the registered owners of the suit land, had sold

the suit land despite knowing that the Petitioners were in occupation. They further alleged that the respondents had ordered them to vacate the land notwithstanding that their late father had previously lived on the land and that they too had continued to reside thereon and had developed the same. That Petition was also dismissed on the basis that it was res judicata.

10. The present Petition once again seeks cancellation of titles to Evurore/Nguthi/2705 and 2706 and reversion to Evurore/Nguthi/2240, orders compelling the 2nd Respondent to surrender the titles to the suit lands, and an order of certiorari to quash the registration of the parcels on grounds of alleged fraud and illegality.
11. In my view, the Petition herein is still about ownership of the same parcels of land and challenges to processes that have already been litigated and determined. The Court is therefore satisfied that the issues raised herein have been directly and substantially determined in previous proceedings involving the same parties by courts of competent jurisdiction.
12. The Petition herein is therefore res judicata and it is hereby dismissed with costs to the Respondents.
13. Orders accordingly

DATED, DELIVERED AND SIGNED AT EMBU THIS 07TH DAY OF MAY, 2026.

HON. E.C CHERONO
ELC JUDGE, EMBU

In the presence of;

1. Mr. Njagi H/B for M/S Fatuma for 2nd Respondent
2. Mr. Muriithi H/B for Mr. Kiongo for 1st & 3rd Respondents
3. 1st Petitioner-present
4. M/S Ruth C/A