



**Rucha v Murithi (Environmental and Land Originating Summons E007 of 2024) [2025] KEELC 5616 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5616 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E007 OF 2024**

**BM EBOSO, J**

**JULY 23, 2025**

**BETWEEN**

**DOUGLAS NTEERE RUCHA ..... PLAINTIFF**

**AND**

**CHARLES MURIUKI MURITHI ..... DEFENDANT**

**RULING**

**Introduction**

1. The plaintiff/applicant, Douglas Nteere Rucha, initiated this suit through an originating summons dated 23/10/2024. He invited the court to determine the following seven questions:

- “ 1) Whether the plaintiff/applicant has been in open, continuous and exclusive possession of land parcel number Mwimbi/Chogoria/219 for a period of more than 12 years.
- 2) Whether the plaintiff/applicant has become entitled to land parcel number Mwimbi/ Chogoria/219 by operation of the law.
- 3) Whether the plaintiff/applicant should now be registered as the owner of land parcel number Mwimbi/Chogoria/219.
- 4) Whether the plaintiff has been on the suit land without the defendant’s permission.
- 5) Whether the plaintiff/applicant has been in open, continuous, uninterrupted, without permission in occupation of the suit land for a period of 12 years and more.



- 6) Whether the Deputy Registrar/Executive Officer of this court should be empowered to sign all the necessary documents to facilitate transfer of the land to the plaintiff/applicant in the event of the respondent declining to so sign.
  - 7) Whether the defendant should be condemned to pay costs of this suit.
2. In addition to inviting the court to determine the above questions, the plaintiff prayed for the following orders:
1. An order of injunction restraining the defendant by himself, his agents, assigns or anybody acting on his behest from alienating, disposing and/or charging land parcel number Mwimbi/Chogoria/219 or in any way interfering with the applicant's use and occupation of land parcel number Mwimbi/Chogoria/219 pending the hearing and determination of this suit.
  2. The plaintiff/applicant has become entitled to land parcel number Mwimbi/Chogoria/219 by adverse possession.
  3. That the plaintiff/applicant be registered the owner of land parcel number Mwimbi/Chogoria/219.
  4. The defendant be ordered to pay costs of the suit.
3. The plaintiff contended that he had become entitled to be registered as proprietor of land parcel number Mwimbi/Chogoria/219 (hereinafter referred to as "the suit land") under the doctrine of adverse possession. It was his case that he had been in exclusive, open and uninterrupted occupation and possession of the suit land for over 12 years, adding that he had extensively developed the suit land.
4. The suit attracted a notice of motion dated 28/4/2025 from the defendant, seeking an order striking out the suit on the ground that the suit is res judicata. The said notice of motion is the subject of this ruling. The single question to be determined in the ruling is whether this originating summons (the suit) is res judicata.

### **Applicant's/Defendant's Case**

5. The application was premised on the grounds outlined in the motion and in the applicant's supporting affidavit dated 28/4/2025. It was canvassed through written submissions dated 12/6/2025, filed through M/s Leonard K Ondari & Co Advocates. The case of the defendant/applicant is that this suit is res judicata because it was preceded by Meru High Court Succession Cause No 292 of 1998 which related to the estate of the late Kajau Magaru. The plaintiff was an objector in the said succession cause. Tabitha Kagiri Kajau was the petitioner in the cause. The plaintiff contends that the plaintiff is a grandson of Tabitha Kagiri Kajau. He states that the plaintiff's objection to the appointment of Tabitha Kagiri Kajau as administrator of the estate of the late Kajau Magaru was dismissed through a ruling rendered on 10/9/2001 and a certificate of confirmation of grant was issued to Tabitha Kagiri Kajau on 19/5/2004 vesting the suit land in her.
6. The defendant contends that the succession cause involved the same parties and the same subject matter (land parcel number Mwimbi/Chogoria/219), adding that the High Court made a final determination in the matter. It is the case of the defendant that through this suit, the plaintiff is seeking to revisit the issues which were adjudicated and determined by the High Court in the said succession cause.
7. The defendant adds that besides the succession cause in which the plaintiff was an objector, he (the plaintiff) filed Chuka ELC Case No E001 of 2023 which he later withdrew after the defendant raised a preliminary objection on points of law.



8. The defendant cites Section 7 of the *Civil Procedure Act* and the High Court ruling dated 10/9/2001 and argues that the plaintiff was a direct party in the succession cause, adding that if the plaintiff was dissatisfied with the ruling of the High Court, he ought to have appealed against it.
9. The defendant argues that the plaintiff has formed a habit of giving his claim “a cosmetic uplift” and coming to court under a disguised new cause of action, observing that prior to filing the present suit, the plaintiff filed Chuka ELC Case No E001 of 2023 which he subsequently withdrew after a preliminary objection was raised. The defendant adds that the claim of adverse possession is a camouflage. He urges the court to strike out the suit on the ground of res judicata.

### **Plaintiff’s Case**

10. The plaintiff opposed the application through a replying affidavit dated 19/6/2025 and written submissions dated 23/6/2025, filed through M/s Mokuia Obiria & Associates. He terms the application dated 28/4/2025 as an abuse of the process of the court and lacking in merit. He argues that the cause of action in the present suit is adverse possession which is not similar to what was the cause of action in the succession cause. The plaintiff argues that the issues for determination in the present suit are not similar to the issues that fell for determination in the succession cause. He urges the court to dismiss the application for lack of merit.

### **Analysis and Determination**

11. 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 originating summons (the suit) is res judicata. I will be brief in my analysis.
12. 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 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.”

13. 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 re 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 and the same issues 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.
14. The rationale of the doctrine of res judicata was outlined by the Court of Appeal in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] eKLR as follows:

“The rule or doctrine of res judicata serves the statutory 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 fora, 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.”

15. The Court of Appeal in *Kenya Commercial Bank Limited v Benjoh Amalgamated Limited* [2017] eKLR reiterated 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 hear and determined the issues was competent to try the subsequent suit or the suit in which the issue is raised.
16. The court has examined all the materials placed before it in support of the application. The court has also examined the pleadings in the present suit. It emerges from the exhibited ruling of the High Court, dated 10/9/2001, that the issue which arose for determination in the succession cause in relation to the plaintiff was the question as to who between the plaintiff and his grandmother, Tabitha Kagiri Kajau, was entitled to be appointed as the administrator of the estate of the late Kajau Magaru. The High Court found that Tabitha Kagiri Kajau was entitled to be appointed as the administrator of the estate.
17. It further emerges from the evidence presented to this court that subsequent to the above determination, the High Court distributed the assets of the late Kajau Magaru. The suit land was one of the two assets that were distributed by the Succession Court in 2004. The suit land was given to Tabitha Kajau vide a certificate of confirmation of grant dated 19/5/2004. The other asset, land parcel number Mwimbi/Chogoria/172, was similarly given to Tabitha Kajau. Subsequent to that, the suit land was transferred to the defendant on 24/6/2004 while parcel number Mwimbi/Chogoria/172 was transferred to Ashford Kimathi on the same day, 24/6/2004.
18. A perusal of the present original summons and the supporting affidavit reveals that the originating summons was drawn on 23/10/2024 and was filed on 28/10/2024. The cause of action in the originating summons is adverse possession. The plaintiff contends that he has been in adverse possession of the suit land for over 12 years and that he has acquired ownership of the suit land through adverse possession. The dominant issue to be determined in the originating summons is the question as to whether the plaintiff has acquired ownership of the suit land through adverse possession.
19. Clearly, the cause of action and the dominant issue in the present originating summons are not the same as the cause of action and the issue that fell for determination in the objection proceedings that arose in Meru High Court Succession Cause No 292 of 1998.
20. For the above reasons, it is the finding of the court that the applicant has failed to establish the essential elements of res judicata. It is the further finding of the court that this originating summons is not res judicata. Consequently, the application dated 28/4/2025 is rejected and dismissed for lack of merit.
21. In tandem with the general principle in Section 27 of the *Civil Procedure Act* - that costs follow the event, the defendant/applicant shall bear costs of the application.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 23RD DAY OF JULY, 2025.**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of:

Mr. Charles Mokuu for the Plaintiff

Mr. Ondari for the Defendant

Court Assistant – Mr. Mwangi

