



REPUBLIC OF KENYA



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Kemboi & 2 others v Land Registrar, Naivasha & 3 others (Environment and Land Judicial Review Case E001 of 2025) [2025] KEELC 5362 (KLR) (Environment and Land) (17 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5362 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2025

MC OUNDO, J

JULY 17, 2025

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW ORDER OF CERTIORARI**

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT (2015)

AND

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE
LAW REFORMS ACT CAP 26 LAWS OF KENYA**

AND

IN THE MATTER OF SECTIONS 79 AND 80 OF THE LAND REGISTRATION ACT OF 2012

AND

**IN THE MATTER OF THE LAND REGISTRATION
(GENERAL) REGULATIONS, REGULATIONS NO. 93**

AND

IN THE MATTER OF NAIVASHA C.M.E.L.C NO. E037 OF 2024

BETWEEN

JACKSON KEMBOI 1ST APPLICANT

SIMBA PAUL ERICK 2ND APPLICANT

SAMWEL NGIGE CHIRI 3RD APPLICANT



AND

THE LAND REGISTRAR, NAIVASHA 1ST RESPONDENT
JANE NJAMBI KABIRU 2ND RESPONDENT
LUCAS KAMANDE MURIMI 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. Vide a Chamber Summons dated 24th April, 2025 brought under the provisions of Order 53 Rule 1 (1), 2, 7(2) and Order 22 Rule 22 of the Civil Procedure Rules, the Applicants herein sought for the court to grant them leave to institute Judicial Review proceedings through an order of certiorari to quash the 1st Respondent's decision cancelling the title deed to property known as Miti Mingi/ Mbaruk Block 5/5172 (Kiungururia) and its subsequent sub-divisions being Miti Mingi/ Mbaruk Block 5/6021-6028 (Kiungururia) held in the name of Joseph Kariuki Murimi. They also sought for costs of this application.
2. In response and in opposition, the 2nd Respondent filed a Notice of Preliminary Objection both dated 4th June 2025 stating that the Applicants' Chamber Summons was time barred, that the application was Res-Judicata the proceedings and Judgement made in Naivasha MC. ELC NO. E37 OF 2024. Further, that the Applicants' Chamber Summons was fatally defective and incompetent as the orders sought were on behalf of one Joseph Kariuki Murimi who was a stranger in this matter and there had been no legal authority exhibited to represent his interests.
3. That the Applicants' prayer for Stay of Execution of the Judgement issued in Naivasha MC. ELC. E037 of 2024 was untenable since the proceedings would not question the Judgement delivered therein thus there would be no basis upon which to grant stay of that Judgement. That the Applicants' Chamber Summons dated 24th April, 2025 was misconceived and an abuse of court process and ought to be Struck Out with costs to the 2nd Respondent.
4. The Preliminary Objection was disposed of by way of written submissions, wherein the 2nd Respondent founded her submissions on the decided case of Mukisa Biscuits Co. v West End Distributors (1969) EA 696 at pages 700 & 701 before framing her issues for determination as follows:
 - i. Whether the Application for Leave is time barred.
 - ii. Whether the proceedings for orders of certiorari for which Leave is sought would be Res-Judicata.
 - iii. Whether the Applicants' Chamber Summons for Leave is fatally defective and incompetent considering that the orders for Certiorari would be urged on behalf of a stranger Joseph Kariuki Murimi.
 - iv. Whether the Applicants' prayer for Stay of Execution of the Judgement issued in Naivasha MC. ELC. E037 of 2024 is tenable.
5. On the first issue for determination as to whether the Application for Leave was time barred, the 2nd Respondent placed reliance on the provisions of Section 9(2) and (3) of the *Law Reform Act* and Order 53 Rule 2 of the Civil Procedure Rules to submit that leave to apply for orders of Certiorari ought to



be presented in court within a period of six (6) months from the date of making the decision which an aggrieved party wants to be quashed. That by the time the Applicants filed their current application for Leave, they were conversant with the 1st Respondent's impugned decision dated 19th January, 2023 which decision had been subject of scrutiny and analysis in a previous case involving the same parties being Naivasha CMCELC. E037 of 2024 marked as annexures "JNK 2" and JNK. 5(b).

6. That the approach by the Applicants of suggesting that the 1st Respondent's decision was undated was actually a tactic meant to mislead the court and to assist the Applicants in circumventing the statutory parameter of six (6) months limitation period. That he who seeks equity cannot be guilty of non-disclosure of material facts relevant to the case.
7. It was her submission that the 1st Respondent's (Land Registrar) decision of the 19th January, 2023 ought to have been challenged by initiating Judicial Review proceedings within a period of six (6) months from the date of the decision, that is, by 19th July, 2023. The Application herein seeking for Leave to apply for orders of certiorari, which had been filed on 24th April, 2025 was therefore out of time by about 21 months, time which could not be extended. Reliance was placed on the decisions in the cases of Raila Odinga and Others v Nairobi City Council [1990–1994] 1 EA 482 (HCK) and Rosaline Tubei & 8 Others v Patrick K. Cheruiyot & 3 Others [2014] KEELC 413 (KLR) at pages 4 & 5.
8. That whereas there was a different school of thought which argued that the six (6) months period to seek for Leave to institute Certiorari proceedings ought to be calculated from the time when the aggrieved party becomes aware of the decision and which the Applicants' herein had conveniently tried to rely on to the effect they had learnt about the 1st Respondent's impugned decision belatedly, ran hollow and was without substance.
9. That the decision of the 1st Respondent, the Land Registrar had been informed by an affidavit sworn on the 19th January, 2023 by the registered owner of the parcel of the land, at the time, one Joseph Kariuki Murimi who deponed that he had no knowledge of the transfer of land to himself and requested the Naivasha Lands office to cancel and/or remove his names from the green card so that the land could revert back to the initial owner his brother Lucas Kamande Murimi as evidenced in annexure "J.N.K 1."
10. That the Applicants herein had filed a suit being Naivasha CMCELC No. E010 of 2023 on 10th February, 2023 immediately after the Land Registrar's decision of 19th January, 2023 wherein jointly with three (3) other individuals they had sued Joseph Kariuki Murimi (1st Defendant), Lucas Kamande Murimi (2nd Defendant), the Land Registrar, Naivasha (3rd Defendant) and the Attorney General (4th Defendant) wherein in one of the prayers that they had sought as follows: -
 - "c) That an order does issue directing the defendants to transfer the property belonging to the plaintiffs failure of which the executive officer of this honourable court does execute the documents on their behalf."
11. That at paragraphs 12 and 14 of the Plaint in the said suit, the Applicants had pleaded as follows; -
 - "12. That the 1st and 2nd Defendants are seeking to frustrate the plaintiffs with the aid of the 3rd Defendant and will ultimately dispossess them of their property unless this honourable court does issue permanent restraining orders.



14. That the 1st and 2nd Defendants' actions ought to be stayed by this honourable court does order a cancellation of their title deeds if any and the plaintiffs issued with the same.”
12. She submitted that it was thus apparent from the captions of the Plaintiff in the case Naivasha CMCELC No. E010 of 2023 that the Applicants were already aware of the decision of the Land Registrar of 19th January, 2023 regarding registration of the parcel of land Miti Mingi/Mbaruk Block 5/5172 (Kiungururia) together with the subdivisions thereof being parcels No. 6021-6028.
13. That taking all the factors into account, the six (6) months period within which to initiate judicial review proceedings if calculated from the date of filing suit Naivasha CMCELC No. E010 of 2023 on 10th February, 2023 would have lapsed on 10th August, 2023.
14. That nonetheless, even though the Applicants' contention was that they had become aware of the decision of the Land Registrar after they had been served with the pleadings in the other related matter being Naivasha CMCELC No. E37 of 2024, that being Defendants, they had entered appearance through a Notice of Appointment of Advocates dated 13th May, 2024 and filed in court on 14th May, 2024.
15. That in any case, even if the Applicants had become aware of the impugned decision on 14th May, 2024 when they had entered appearance in the suit No. Naivasha CMCELC No. E37 of 2024 the six (6) months limitation period to initiate judicial review proceedings had lapsed on 14th November, 2024. That subsequently, it did not benefit the Applicants to argue that because there were other ongoing cases involving the same parties in Naivasha CMCELC No. E37 of 2024 and Naivasha CMCELC No. E010 of 2023, then they were not in a position to file the Judicial Review Proceeding. That in fact, it behooved the Applicants to initiate judicial review proceedings immediately they had become aware of the 1st Respondent's impugned decision dated 19th January, 2023 since Judicial Review proceedings were urgent matters which should be instituted immediately a party was aggrieved by the decision of an administrator/quasi-judicial officer and which judicial review proceedings ought to be concluded expeditiously thus the reason for strict time lines stipulated by legal provisions of Order 53, Rule 3 (1) of the Civil Procedure Rules
16. That nothing prevented them from withdrawing the suit in Naivasha CMCELC No. E010 of 2023 and seeking for orders to stay proceedings in Naivasha CMCELC No. E37 of 2024 pending determination of the intended Judicial Review. That they had slept on their rights. Reliance was placed in the decisions in the cases of *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd* [2002] KECA 8 (KLR) at pages 3 & 4 and *Dominic Musei Ikombo v Kyule Makau* [2019] KECA 482 (KLR) at page 3. That subsequently, the Applicants' chamber summons had no life, it was a stale application from the outset and was dead on arrival.
17. On the second issue for determination as to whether the proceedings for order of Certiorari was Res-Judicata, the 2nd Respondent hinged her reliance on the provisions of Section 7 of the *Civil Procedure Act* and the explanations 4 to 6 therein wherein she submitted that the Applicants herein had been the 1st to 3rd Defendants in a previous suit that had been filed by the 2nd Respondent herein being Naivasha CMCELC No. E37 of 2024 wherein in their counter claim, they had sought for similar reliefs
18. That the subordinate court in the aforementioned suit had delivered its judgement on 7th April, 2025 in favour of the 2nd Respondent herein while dismissing the Applicants' counter-claim therein wherein no appeal had been preferred against the decision of the learned Magistrate. That the Applicants now sought to re-open the case which was an abuse of the court process. She placed reliance on the decisions



in the cases of *Ngugi v Kinyanjui & 3 Others* [1989] KLR 146 at page 147 and *Satya Bhama Gandhi v Director of Public Prosecutions & 3 Others* [2018] KEHC 6100 (KLR) at pages 3,4 & 5.

19. That the Applicants neither joined the Land Registrar or Joseph Kariuki Murimi as parties in the previous suit, being Naivasha CMCELC No. E37 of 2024 yet they claimed that their interests on the suit land stemmed from the ownership interests of the said Joseph Kariuki Murimi. It was her submission that the Applicants could not circumvent the doctrine of Res-judicata simply by introducing new parties. Reliance was placed in the decided case in *John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 Others* [2015] KECA 472 (KLR) amongst others.
20. On the third issue for determination, the 2nd Respondent submitted that from the Applicants' prayers, it was evident that they were seeking orders of Certiorari on behalf of one Joseph Kariuki Murimi who was not a party herein wherein they had not exhibited any Power of Attorney or any other legal authority to represent his interests.
21. That the said Joseph Kariuki Murimi was a necessary party to the proceedings hence in his absence, no tangible orders could be issued as the matter revolved around his rights and interests over the subject land. She hinged her reliance in the decided case of *Kiprotich Bore v Joseph Tuei Koech* [2010] KEHC 2476 (KLR) to submit that Joseph Kariuki Murimi being a necessary party to the matter, he ought to have been joined as one of the Applicants, hence the failure to join him rendered the entire application fatally defective and incompetent.
22. On the fourth issue for determination as to whether the Applicants' prayer for Stay of Execution of the Judgement pending the determination of this Application, was tenable, the submission therein were that the said judgement was not a subject of the application for Leave to seek orders of Certiorari, that the said prayer for stay of execution was a stand-alone prayer which had no correlation with the substantive issues to be addressed by court in the judicial review proceedings thus the same was incompetent and should be disallowed.
23. That allowing the Application herein to initiate Judicial review proceedings would result in an extravagant usage of judicial time and resources for a vain purpose, to the clear detriment of the 2nd Respondent in an abuse of the court process. She sought for the same to be struck out with costs.
24. In response and in opposition to the Preliminary objection raised by the 2nd Respondent, the Applicants vide their submissions dated 27th June, 2025 summarized the factual background of the matter and framed their issues for determination as follows:
 - i. Whether the Judicial review proceedings for orders of Certiorari is time barred in the suit herein.
 - ii. Whether the orders of Certiorari upon the decision of the 1st Respondent is Res-Judicata.
 - iii. Who should bear the costs of the Application.
25. On the first issue for determination, Reliance was placed on the provisions of Section 9 (3) of the *Law Reform Act* and Order 53 rule (1) and (2) of the Civil Procedure Rules, Section 9 (2) and (3) of the *Fair Administrative Action Act*, 2015 as well as the decisions in the cases of *R v National Environmental Management Authority, CA No. 84 of 2010*; [2011] eKLR and *Mwangi & Another v Naivasha County Hotel t/a Sawela Lodges (Petition E003 of 2021)* [2022] KEHC 10975 (KLR) where the court had cited the case of *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties)* [2020] eKLR to submit that the cancellation of the title held by the Applicants herein had been done on the 26th April 2023 a period of 2 months after the



- filing of the suit in ELC E010 of 2023 (sic) wherein the Applicants only became aware of the same after they had been served with pleadings by the 2nd Respondent herein in ELC No. E037 of 2024.
26. That the Judgement delivered on 7th April 2025, in ELC No. E037 of 2024 had been in favour of the Plaintiff, the 2nd Respondent herein wherein the court had upheld the cancellation of the title deeds they held as well as the mother title deed. That it was only prudent that the remedies that they had sought be exhausted prior to them instituting proceedings of judicial review.
27. That the decision of the court in the said matter had necessitated the filing of the present suit challenging the authority of the Land Registrar to cancel the title deeds held by the Applicants and its adoption by the court in ELC No. E037 of 2024. That it was trite law that a party could not initiate proceedings touching on the same subject matter and between the same parties while another suit was still pending hence the Applicants herein could only move the court after the determination of the matters and thus time ought to run from the date of delivery of judgement in ELC No. E037 of 2024.
28. On the second issue for determination as to whether the orders of Certiorari on the decision of the 1st Respondent was Res-Judicata, they placed reliance on the Provisions of Section 9 (1) of the *Fair Administrative Action Act*, 2015 and the decided case of *Kenya National Examination Council v Republic Exparte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No. 266 of 1996* to submit that they were challenging the cancellation of the titles on the resultant sub-divisions and the mother title by the 1st Respondent, the land Registrar, Naivasha. That in any case, the court in both ELC No. E010 of 2023 and ELC No. E037 of 2024 did not decide on the matters touching on judicial review but rather on a civil claim which had ultimately adopted the decision of the land registrar.
29. Their submission was that pursuant to the provisions of Section 27 (1) of the *Civil Procedure Act* and the decisions in the case of *Harun Mutwiri v Nairobi City County Government [2018] eKLR* among others, that costs follow the events hence they being successful parties were entitled to costs upon the dismissal of the Notice of Preliminary Objection filed by the 2nd Respondent.

Determination.

30. I have considered the 2nd Respondent's Replying Affidavit and Notice of Preliminary Objection both dated 4th June 2025, in response to the Applicants' Application dated the 24th April 2025 seeking leave to file a substantive Notice of Motion on Judicial Review for orders of Certiorari to remove unto this court for purpose of being quashed, the decision made by the 1st Respondent in the cancellation of the title deeds to the property known as Miti Mingi/ Mbaruk Block 5/5172 (Kiungururia) and its subsequent sub-divisions being Miti Mingi/ Mbaruk Block 5/6021-6028 (Kiungururia) held in the name of one Joseph Kariuki Murimi. They also sought for stay of execution of the judgment in Naivasha CMCELC No. E037 of 2024. I have further considered the Applicants' response thereto, the submissions by Counsel for the parties, the authorities cited and applicable law.
31. The application was opposed by the 2nd Respondent herein by their notice of Preliminary objection to the effect that the Application was statute barred by virtue of the provisions of Section 9 (2) and (3) of the *Law Reform Act* and Order 53 Rule 2 of the Civil Procedure Rules, the impugned decision having been made on the 19th January, 2023 while the Application herein seeking for Leave to apply for orders of certiorari having been filed on 24th April, 2025 which was out of time by about 21 months out of the stipulated period of six (6) months.
32. That further, the application was Res-Judicata the proceedings and Judgement in Naivasha CMCELC No. E037 of 2024 the matter having been decided via a judgement of 7th April, 2025 between the same parties over the same subject matter and where no appeal had been preferred against the decision of the



learned Magistrate. Further, that the Application was fatally defective and incompetent as the orders sought were on behalf of one Joseph Kariuki Murimi who was a stranger in this matter.

33. In response to the preliminary objection, the Applicants' argument had been that cancellation of the title held by the Applicants had been done on the 26th April 2023 wherein they only became aware of the same after they had been served with pleadings by the 2nd Respondent herein in CMCELC No. E037 of 2024. That they were therefore not time barred.
34. Having Given a background of the matter an issue, I find the issue therein arising for determination is whether the preliminary objection here in raised by the 2nd Respondent has merit.
35. In the landmark case of Mukisa Biscuit Manufacturing Co. Ltd –VS- West End Distributors Ltd. [1969] E.A. 696, Law JA had held as follows with regards to a Preliminary Objection:

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
36. It is therefore evident that a Preliminary Objection consists of pure points of law and it is also capable of bringing the matter to an end preliminarily.
37. Order 53 Rule 2 of the Civil Procedure Rules, is the applicable law on leave to commence Judicial Review proceedings. The said proviso provides as follows:

“No Leave shall not be granted to apply for an order of certiorari to remove any judgment, order, decree, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made not later than six months after the date of the proceeding or such shorter period as may be prescribed by any Act; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”
38. On the other hand, Section 9 (3) of the Law Reform Act provides as follows:

“In the case of an application for an order of certiorari to remove any judgment, order, decree, conviction or other proceedings for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of that judgment, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceedings or such shorter period as may be prescribed under any written law; and where that judgment, order, decree, conviction or other proceedings is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.”
39. As seen from the above, an application for leave to apply for an order of certiorari to quash a judgment, order, decree, conviction, or other proceeding cannot be made later than six months after the date of the proceeding or such shorter period as may be prescribed by any law.



40. In *Wilson Osolo v John Ojiambo Ochola & Another* [1996] eKLR, the court of Appeal observed as follows;

“It can readily be seen that order 53 rule 2 (as it then stood) is derived verbatim from Section 9(3) of the *Law Reform Act*. Whilst the time limited for doing something under the civil procedure rules can be extended by an application under order 49 of the Civil Procedure Rules that procedure cannot be availed of for the extension of time limited by statute, in this case the *Law Reform Act*.” There is no provision for extension of time to apply for such leave in the *Limitation of Actions Act* (Cap 22, Laws of Kenya) which gives some limited right for extension of time to file suits after expiry of a limitation period. But this Act has no relevance here.”

41. In the present matter, it has been argued that the impugned decision by the 1st Respondent, the Land Registrar was rendered on the 19th January, 2023, wherein the Application for Leave to apply for orders of certiorari were filed on the 24th April, 2025 which was way beyond the time period prescribed in law.

42. I have gained sight of the annexures herein marked as JNK 4(c) a Plaint in Naivasha CMCELC No. 010 of 2023 filed by the Applicants (Plaintiffs) herein and other vs the 1st Respondent (5th Defendant) and others wherein at para 10(a) of the Plaint the Applicants(Plaintiffs) had deponed as follows:

“The 2nd Defendant in collusion with the 3rd and 5th defendants had the title to the property known as Miti Mingi/ Mbaruk Block 5/5172 which had been transferred to the 1st Defendant canceled and another issued in the name of the 2nd Defendant.’

43. The annexure marked as JNK 5(a) is a defence and counterclaim filed by the Applicants herein who were the Defendants in Naivasha CMCELC No. E037 of 2024 and who also referred to Naivasha CMCELC No. 010 of 2023. It is therefore evident that by the time the Applicants herein filed their defense and counterclaim dated 22nd October 2024, in Naivasha CMCELC No. E037 of 2024, and also by the 9th February 2023 when they filed suit in Naivasha CMCELC No. 010 of 2023, they were aware of the decision by the Land Registrar regarding the cancellation of the mother title to parcel of land Miti Mingi/Mbaruk Block 5/5172 together with the subdivisions. Indeed, the impugned judgment delivered in Naivasha CMCELC No. E037 of 2024, made reference to a letter dated 19th January 2023 addressed to the District Land Surveyor and the Land Registrar Naivasha making reference to cancellation of titles of the resultant subdivisions of the mother title Miti Mingi/Mbaruk Block 5/5172 and reverting the land to the rightful owner one Lucas Kamande Murimi. (this proprietor shall be referred to later in this ruling)

44. The Court of Appeal in *Kihoro v Commissioner of Lands & 3 others* [2022] KECA 958 (KLR) had held as follows;

“Consequently, we hold and find that leave to institute Judicial Review proceedings having been sought on 17th January 2013, eleven years from the date of the impugned decision i.e. on 23rd January 2002, the 4th respondent’s Judicial Review application before the High Court was incompetent and time barred and could subsequently not stand. Accordingly, we find this ground of appeal to be merited and we hereby allow the same.”

45. Consequently, this Application seeking leave to institute Judicial Review proceedings having been made more than two years from the date of the impugned decision on 19th January 2023 cannot stand.



46. Secondly, the 2nd Respondent has raised the issue of this matter being Res judicata Naivasha CMCELC No. E037 of 2024. Res judicata is a fundamental principle of law that goes to the very jurisdiction of the court. If a matter has already been directly and substantially decided by a court of competent jurisdiction between the same parties (or those claiming under them), then the court lacks the jurisdiction to hear it again. Indeed, the Supreme Court of Kenya has held that res judicata is a matter affecting the jurisdiction of the Court, and it is thus prudent that it be determined in limine (at the threshold) before delving into the merits of the case.
47. The Supreme Court in the case of John Florence Maritime Services Ltd & Another v Cabinet Secretary Transport and Infrastructure & 3 Others, Petition 17 of 2015 (2021) KESC 39 KLR (Civ) 6 August 2021 (Judgement) at paragraph 59 held as follows:
- “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.”
48. Thus in order therefore to decide as to whether this case is res judicata, a court of law should always look at the decision claimed to have been settled, the issues in question and the entire pleadings of the previous case and the instant case to ascertain;
- i. What issues were really determined in the previous case;
 - ii. Whether they are the same in the subsequent case and were covered by the decision of the earlier case.
 - iii. Whether the parties are the same or are litigating under the same title and that the previous case was determined by a court of competent jurisdiction.
49. From the above definition, it is clear that Res judicata (Latin for "a matter judged") is a legal doctrine that prevents the re-litigation of issues or claims that have already been finally decided by a competent court between the same parties or those in privity with them. Its purpose is to ensure finality in litigation, prevent vexatious litigation, and conserve judicial resources.
50. In the present matter, whereas the Applicants herein sought for the court to grant them leave to institute Judicial Review proceedings through an order of certiorari to quash the 1st Respondent's decision cancelling the title deed to property known as Miti Mingi/ Mbaruk Block 5/5172 (Kiungururia) and its subsequent sub-divisions being Miti Mingi/ Mbaruk Block 5/6021-6028 (Kiungururia) held in the name of Joseph Kariuki Murimi, I have considered the applicants counter claim in Naivasha CMCELC No. E037 of 2024 wherein they had sought as follows;
- “An order that the fraudulent cancellation of the title held by Joseph Kariuki Murimi by the Land registrar and subsequent entries contravened the provisions of the [Land Registration Act](#).



iii. An order that the properties revert back to its previous owner Joseph Kariuki Murimi and the sub-divisions thereof maintained.”

51. In its final determination, the court in its judgement of 7th April 2025 held in favour of the Plaintiff as being the rightful proprietor of land parcel No. Miti Mingi/ Mbaruk Block 5/6073 which was a subdivision of No. Miti Mingi/ Mbaruk Block 5/5172 having purchased it from its proprietor Lucas Kamande Murimi.
52. I thus find that the matter in issue is identical with the matter in the previous suit, that further the parties were similar wherein the title was also identical and lastly that there was concurrence of jurisdiction. Indeed the orders issued by the court in the previous proceedings were of a nature of finality.
53. There having been a Judgment from a Court of competent jurisdiction, the same could only be varied, vacated, set aside or reviewed by the same Court, or by an appellate Court in an appropriate proceeding.
54. It was held by the Supreme Court in the case of John Florence Maritime Services Ltd & Another (supra)that:
- “The doctrine of res judicata was based on the principle of finality which was a matter of public policy. The principle of finality was one of the pillars upon which the judicial system was founded and the doctrine of res judicata prevented a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensured that litigation came to an end, and the verdict duly translated into fruit for one party, and liability for another party, conclusively...”
55. The upshot of the foregoing is that the Applicants’ application by way of a Chamber Summons dated 24th April, 2025 is herein dismissed with costs while the 2nd Respondent’s Preliminary Objections dated the 4th June 2025 herein succeeds. It is trite that the mere addition of parties in a subsequent suit does not necessarily render the doctrine of res judicata inapplicable since a party cannot escape the said doctrine by simply undertaking a cosmetic surgery to his pleadings.

DATED AND DELIVERED AT NAIVASHA VIA MICROSOFT TEAMS THIS 17TH DAY OF JULY 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

