



Mairani & 2 others v Director of Land Adjudication & Settlement & 3 others (Civil Appeal E097 of 2022) [2025] KECA 400 (KLR) (21 February 2025) (Judgment)

Neutral citation: [2025] KECA 400 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E097 OF 2022
W KARANJA, J MOHAMMED & LK KIMARU, JJA
FEBRUARY 21, 2025**

BETWEEN

**NJERU MAIRANI 1ST APPELLANT
JOEL NGATIARI 2ND APPELLANT
DANIEL NYAGA 3RD APPELLANT**

AND

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT ... 1ST
RESPONDENT
THE LAND ADJUDICATION OFFICER MERU-SOUTH ADJUDICATION
AREA 2ND RESPONDENT
THE ATTORNEY-GENERAL 3RD RESPONDENT
CABINET SECRETARY - LANDS PHYSICAL PLANNING ... 4TH RESPONDENT**

(An appeal from the judgment and decree of the Environment and Land Court at Chuka (Yano, J.) dated 14th December, 2021 in ELC No. E005 of 2021)

JUDGMENT

Background

1. Before us is an appeal challenging the judgment of the Environment and Land Court (ELC) (Yano, J.) wherein Njeru Mairani, Joel Ngatiari & Daniel Nyaga (the 1st to 3rd appellants) filed a Judicial Review application dated 22nd September, 2021 seeking orders:
 - a. That an order of mandamus do issue compelling the 2nd respondent (the Land Adjudication Officer- Meru South Sub-County) to receive the ex-parte applicants' claims of interest in



lands within the subject adjudication sections specified in the formal claims of interest dated 28.2.2021 [exhibited here with as annexure "NJD- 2J and/or direct the recording officers of Kamaindi and Kamwimbi "B" Adjudication sections to receive the same as mandatorily provided under sections 5(2)(c) and 19(4) of the [Land Adjudication Act](#);

- b. That an order of mandamus do issue compelling the 2nd respondent to issue a legally valid and effective Notice under section 5 (2) (c) of the [Land Adjudication Act](#) fixing/ specifying/ setting the period (commencement and closure dates) within which all persons interested in lands in Kamaindi and Kamwimbi "B" Adjudication Sections 'are to present their claims thereof to the recording officers;
- c. That an order of certiorari do issue to call up and quash the decision by the 2nd respondent made on 21.6.2021 orally communicated to the ex-parte applicants rejecting their "group" claims of interest in the subject lands on behalf of their respective Mbeere clans as well as the said 2nd respondent's illegal direction to the recording officers of Kamaindi and Kamwimbi "B" Adjudication sections to reject and /or refuse to accept the said ex- parte appellants' aforesaid group claims; and
- d. That an order of prohibition do issue barring the 1st, 2nd and 3rd respondents from further enforcing the subject Notice of demarcation and survey of land in Kamaindi/Kamwimbi "B" Adjudication Sections dated 17.2.2021 and/or proceeding with the said demarcation exercises without regard to the inviolable right of the ex-parte applicants under section 5(2)(c) of the [Land Adjudication Act](#) to present their claims of interest in the subject lands for consideration in accordance with the law.

The Director of Land Adjudication & Settlement, The Land Adjudication Officer Meru-South Adjudication Area, Cabinet Secretary- Lands & Physical Planning and The Attorney-General are the 1st to 4th respondents respectively.

2. In order to place the appeal in context, a brief background of the salient facts is necessary. The appellants who were the ex parte applicants in the ELC were the chairmen of their respective Mbeere clans, namely Mbutha ya Gatua Clan, Mukera Clan and Mbuya ya Kamuri Clan. The appellants filed the suit on their own behalf and that of the Chairmen/leaders of the thirteen (13) Mbeere clans claiming interest in land within Kamaindi and Kamwimbi "B" Adjudication Sections. The appellants averred that in its judgment dated 18th December, 2018 in ELC JR Case No. 16 of 2017 (Njeru Mairani & 2 Others -vs- The A-G & 4 Others), the ELC noted that the respondents had discriminated against the ex-parte appellants and accordingly clarified that the "respondents may issue another declaration which does breach the constitutional rights of the appellants."
3. The appellants further averred that on 10th February, 2020 while issuing directions on the appellants' application to cite the Land Adjudication Officer for contempt of court, the ELC exhorted the said officer to follow the letter and spirit of the laid-down law while undertaking the intended demarcation exercise. That on 17th February, 2021, the 2nd respondent issued the notice of demarcation and survey of land in Kamaindi/Kamwimbi "B" sections pursuant to Section 5(2) (c) of the [Land Adjudication Act](#), notifying the general and resident public as follows:

"This is to bring to your attention that demarcation and survey work will be carried out from 3rd March, 2021 in the above- mentioned section. Please convey this information to all persons claiming an interest in land within the adjudication section so that they can make their claim according to the [Land Adjudication Act](#) Cap 284 Laws of Kenya."



4. The appellants contended that the said notice did not fix, set or specify the period within which to present the claims as mandatorily and materially prescribed. The appellants further contended that on 28th February 2021 they inquired from the 2nd respondent about the demarcation period and where the recording officers would be stationed for the purpose of presentation of their claims. That they were advised that the information would be availed in due course through the Land

Adjudication Committee.

5. The appellants aver that the said demarcation period has never been clarified by the 2nd respondent in a cavalier disregard of the law. The appellants further contended that they were never notified of the location of the respective recording officers site/offices. That the appellants managed to trace the same after the demarcation exercise was flagged off on 17th June 2021 during an official function at Kabururu Market presided over by the County Commissioner, Tharaka Nithi.
6. The appellants further contended that on 21st June 2021 the appellants appeared before the recording officer (Kamwimbi "B" Adjudication Section) at Kabururu market to present their respective clan claims of interest in the specified lands. That the recording officer refused to receive the same on the ground that he had been directed by the 2nd respondent to reject them as per the ministerial directive issued by the 3rd respondent. That the said recording officer directed the appellants to the 2nd respondent. The appellants contended that the 2nd respondent dismissively listened to them and informed them that her position still stood and that the recording officers would not accept the appellants' clan group claims. The appellants further contended that their attempts to engage the 2nd respondent in a meaningful discussion and in particular the decree dated 18th December 2018 were thwarted when the 2nd respondent dared them to go to court. It was the appellants further contention that they were ejected and were denied audience by the County Commissioner, Tharaka Nithi.
7. The appellants further contended that the 1st, 2nd and 3rd respondents have refused, failed and/or neglected to acknowledge receipt of and/or respond to their demand letter dated 22nd July, 2021. That the appellants' advocate who visited the 1st respondent's offices at Ardhi House was not given audience citing the then prevailing Covid-19 protocols. The appellants further contended that the supreme spirit of the *Fair Administrative Action Act* obligates administrators and state organs to show thematic responsiveness in regard to complaints of violation of the right to administrative actions, which are expeditious; efficient, lawful, reasonable and procedurally fair. The appellants contended that the respondents' cavalier attitude is unacceptable and bespeaks abuse of power and impunity.
8. The appellants further contended that they were of the view that the respondents are part of the scheme to portray the subject lands as Government settlement scheme and to dispossess the Mbeere Community of the same. The appellants contended that in the aforesaid ELC JR Case No. 16 of 2017 at Chuka, the court found and determined that being excluded from the previous demarcation exercise had unfairly discriminated against the appellants. It was the appellants' further contention that they ought to be allowed to present their claims in the manner provided in law.
9. The respondents opposed the application and filed grounds of opposition as follows:
 - a. That the application is barred by dint of the doctrine of res judicata as captured by the provisions of section 7 of the *Civil Procedure Act*;
 - b. That this matter involving the same parties over the same subject matter has been heard and concluded and judgment delivered on 18th December, 2018;



- c. That this court should not interfere or concern itself with a matter that is already adjudicated by a court of competent jurisdiction, the only way that this court may be involved is if there is an appeal or review;
 - d. That the application is bad in law on the ground that once the Land Adjudication and Settlement Officer issued another declaration in compliance with the court order, the declaration ceased to be separate from the judgment which ordered it;
 - e. That in the impugned judgment dated 18th December, 2018, the court ordered that the respondents may issue another declaration which does not breach the constitutional rights of the appellants;
 - f. That the respondents on 17th October, 2019 issued another declaration establishing Kamaindi adjudication section as per the provisions of section 5 of the [Land Adjudication Act](#);
 - g. That this matter is governed by the [Land Adjudication Act](#), which provides for the procedure to be followed during an adjudication process. It provides for the statutory duties of the adjudication officer and the mechanism for ascertain rights and interests in land;
 - h. That under section 29(3) of the [Land Adjudication Act](#) the court can only entertain a suit of this nature if the adjudication section has become final in all aspects, the adjudication process is still at its commencement stage, and thus this suit is immature;
 - i. That the parties need to first exhaust and demonstrate that they have exhausted all the procedures provided for under the [Land Adjudication Act](#);
 - j. That the application is misconceived and a non-starter; and
 - k. That the application is vexatious; frivolous, scandalous and an abuse of the court process.
10. Upon considering the submissions as well as the law, the ELC, (Yano, J.) in a judgment dated 30th April, 2021 held in part as follows:

“27. Having perused the pleadings and determination in the former suit J.R. Case No. 16 of 2017, it is my finding that the present suit is res judicata. The appellants in the former suit merely gave a face lift to their suit and are back in court litigating on the same issues. Parties cannot evade the doctrine of res judicata by merely adding or removing other parties or cause of action in a subsequent suit. Parties are forbidden from litigating in instalments. If allowed parties will forever re-litigate the same issues with the same opponent before court of competent jurisdiction. Litigation must come to an end and parties will not be allowed to litigate matters already settled and reopen closed matters. The court must remain cautious against such parties who are out to abuse the process of court by litigating endlessly on new cause of actions yet seeking the same remedies. I do find that the applicants have misused the process of court in order to reopen already decided issues.

28. I do note that the court in the decree in JR Case No. 16 of 2017 besides granting the applicants the prayers they sought, also decreed on how the respondents may proceed in resolving this long outstanding dispute. In my view, the actions of the applicants to institute the present suit may derail the execution of the decree in JR No. 16 of 2017 and is an abuse of the court process.



28. The upshot of this is that I find that the notice of motion application dated 22nd September, 2021 is res judicata and an abuse of the court process and I proceed to strike out the same with costs to the respondents.”
11. Aggrieved by that decision, the appellants preferred this appeal which is premised on three (3) grounds of appeal to wit that the ELC erred: on a matter of law in finding that the appellants’ suit was res judicata and consequently proceeding to summarily strike out the same yet the same was premised on distinguishably new causes of action; in failing to hear and determine the notice of motion dated 22nd September 2021 in an impartial manner thereby undermining the appellants’ right to a fair hearing; and the learned Judge erred in law in condemning the appellants (“indigent senior citizens”) to pay costs to the respondents yet such an order on costs in matters involving public litigation at the instance of rights-deprived citizens are only made in exceptional cases.
12. The appellants sought orders that their appeal be allowed and the decree dated 14th December, 2021 be set aside and substituted with an order allowing the substantive notice of motion dated 22nd September, 2021; and any other relief that this Court may consider meet and just in the circumstances.

Submissions by Counsel

13. At the plenary hearing, the appellants were represented by Mr. Njagi Wanjeri while Ms. Elizabeth Kendi, Senior Litigation Counsel represented the respondents from the Attorney General’s Office. Counsel opted to rely on their written submissions on record with brief oral highlights.
14. Addressing us on the appeal, Mr. Njagi referred us to pages 204-205 - Administrative Law - 10th Edition- H.W.R. WADE & C.F.Forsyth on the principles of res judicata. He also relied on Mburu Kinyua vs Gachini Tuti [1976-80] I KLR (page 790) which dealt with the doctrine of res judicata. Counsel submitted and posed the question as to whether there was any res before the court capable of becoming res judicata? Counsel further submitted that in the impugned judgment, the learned Judge embarked on a comparison of the parties and the claims in ELC JR No. 16 of 2017 and the subject ELC JR Case No. E005 of 2021 at Chuka where the learned Judge made the following findings:-
- a. The appellants were the same;
 - b. The respondents were the same;
 - c. The appellants had in both suits sought orders of judicial review in the nature of mandamus, certiorari and prohibition;
 - d. Both suits related to claims over interest in the same subject lands in Kamaindi and Kamwimbi “B” Adjudication Sections; and
 - e. The former suit i.e. JR Case No. 16 of 2017 was heard and determined on merits by a court of competent jurisdiction in terms of the judgment dated 18th December, 2018 by Honourable Justice P.M Njoroge.
15. Counsel submitted that the pleadings and submissions in ELC JR No. 16 of 2017 are borne out clearly by the judgment dated 18th December, 2018: Njeru Mairani & 2 Others vs. Attorney-General & 4 Others; Andrew Nyaga & 2 Others (Interested Parties) [2018] eKLR. Counsel submitted that the respondents filed the impugned judgment as part of their written submissions dated and filed on 1st November 2021. Counsel further submitted that by way of clarification, the Meru H.C. JR No. 30 of 2013 is the one, which was transferred to Chuka and re-registered as ELC JR Case No. 16 of 2017 upon the opening of the Chuka ELC in 2017.



16. Counsel further submitted that the ELC had requested for soft copies of the pleadings and the submissions in ELC JR No. 16 of 2017 and observed as follows:

"1. This suit was canvassed by way of written submissions. The submissions are pasted in the exact format proffered to court. Any mistakes, if there are any, should be ascribed to the appellants' advocates." Counsel argued that, Order 15 Rule (3) stipulates that "material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute a defence". That is why Rule 1(1) provides that "issues arise when a material proposition of fact or law is affirmed by one party and denied by the other."

17. Counsel further submitted that the aforesaid grounds show that the appellant's Mbeere clans were in that former suit taking issue with the declaration reference number ADM/LA/4/118 of 4th October, 2012 to the extent that the said Mbeere clans had been left out of the adjudication committee selected and formed under Section 6 of the Land Adjudication Committee by reason whereof the Mbeere Community felt "discriminated" against and/or "unrepresented" thereof. That the complaint spilled over to court because as pleaded the Land Adjudication Officer not only refused to respond to the letter of complaint but also more importantly failed to address the manifest flaw in the composition of the adjudication committee. Counsel raised the following questions:

Why did the Land Adjudication Officer exclude the resident members of the Mbeere Community? Why was the said Adjudication Committee made up of the Tharaka Community only? Counsel asserted that Section 6(1) of the Land Adjudication Act as read together with Section 20 of the Land Adjudication Act indicates how critical the question of the composition of the Adjudication Committees is.

18. Counsel further submitted that both the material propositions pleaded in ELC JR Case No. 16 of 2017 at Chuka and the judgment/decreed dated 18th December, 2018 show that the suit was solely about the wrongful and discriminatory exclusion of the Mbeere clans from the Adjudication Committee in 2012.

19. Counsel further submitted that in the letter dated 18th June, 2019 confirmed receipt of the aforesaid judgment and further that "the officer has been advised accordingly to ensure that such irregularity is not repeated in future." Counsel further submitted that the "irregularity" advised against is the lop-sided appointment of the members of the Adjudication Committee that being the only "issue in dispute" that was dealt with and decided by the Court and that in other words, that was the only res that became *judicata* by dint of the decree dated 18th December, 2018. That it should be noted that being dissatisfied with the fresh appointment of the members of the Land Adjudication Committees under the letters dated 31st October, 2019, the decree holders applied to cite the Land Adjudication Officer for contempt of court but the matter was amicably resolved.

20. Counsel submitted that the enactment of the Fair Administrative Action Act pursuant to Article 47 of the Constitution aimed at upholding and broadening the principles of fair treatment by way of express codification.

Counsel asserted that the Notice of motion dated 28th August 2021 was patently meritorious.

21. In rebuttal, Ms. Kendi on the issue as to whether the trial court erred in holding that the suit was *res judicata* relied on the case of *Accredo AG & 3 Others v Stefano Uccelli & Another* [2019] eKLR, *John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure*



& 3 Others [2015] eKLR, Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR on the doctrine of res judicata.

22. Counsel submitted that in Chuka ELC JR No.16 of 2017 the claim was for Judicial Review orders of mandamus, certiorari and prohibition while in Chuka ELC JR No. E005 of 2021 the appellants sought the same orders in respect of Kamaindi and Kamwimbi “B” Adjudication sections. Further, that in both cases the appellants sought to bar enforcement and demarcation notices and survey of land in Kamaindi and Kamwimbi “B” Adjudication sections.

23. Counsel further submitted that Chuka ELC JR No. E005 of 2021 was heard and determined on merit before a court of competent jurisdiction.

That the ELC (P. M. Njoroge, J.) proceeded and made a determination granting the appellants the orders of mandamus and prohibition which is evident from the judgment in that suit. Counsel submitted that the applicants in that suit were Njeru Mairani, David Njiru Mutua and Daniel Nyaga who are also the applicants in Chuka ELC JR No. E005 of 2021 and that the appellants and the respondents are the same. Counsel submitted that in both applications the applicants were suing on their own behalf and as representatives of 13 Mbeere clans in Igamba Ng’ombe division and therefore the appellants are litigating under the same title.

24. Counsel asserted that the appellants’ motion dated 22nd September 2021 is res judicata. Counsel posited that litigation must come to an end and the appellants are forum shopping and causing resultant undue delay in conclusion of the adjudication process which affects the entire population within Kamaindi and Kamwimbi “B” adjudication sections and should not be allowed to continue to do so.

25. As to whether the trial court erred in awarding costs to the respondents’ counsel submitted that Section 27 of the *Civil Procedure Act* is instructive on the award of costs. Reliance was placed in *Supermarine Handling Service Ltd vs Kenya Revenue Authority*, Civil Appeal No. 85 of 2006 on the circumstances under which this Court can interfere with the trial court’s exercise of discretion. Counsel also relied on the persuasive decision of the High Court (John M. Mativo, J. – as he then was) in *Brian Asin & 2 Others vs Wafula W. Chebukati & 9 Others* [2017] eKLR on the issue whether public interest litigation should attract costs. The Court pronounced itself as follows:

“60. The Public Interest Litigation was designed to serve the purpose of protecting rights of the public at large through vigilant action by public spirited persons and swift justice. But the profound need of this tool has been plagued with misuses by persons who file Public Interest Litigations just for the publicity and those with vested political interests. The court’s therefore, need to keep a check on the cases being filed and ensure the bona fide interest of the petitioners and the nature of the cause of action in order to avoid unnecessary litigations. Vexatious and mischievous litigation must be identified and struck down so that the objectives of Public Interest Litigation aren’t violated. *The Constitution* envisages the judiciary as “a bastion of rights and justice...”

63. The question is whether the proceedings before me are frivolous or vexatious bearing in mind that it is the duty of the court to see whether the petitioner who approaches the court has a bona fide intention and not a motive for personal gain, private profit or political or other oblique considerations.”

26. Counsel submitted that the application dated 22nd September, 2021 does not qualify as public interest litigation as the same was not brought for the welfare of the general public. Counsel asserted that the



same was filed for the protection of interests of a few individuals to the exclusion of the general public, which is suffering irreparable damage. That the processing of their titles cannot be conducted due to the continued vexatious litigation by the appellants and hence the trial court rightfully exercised its discretion in ordering the appellants to pay costs as the application is not only vexatious and mischievous but also res judicata and a waste of judicial time.

27. As to whether the appeal should be allowed, counsel relied on the persuasive authority of the Uganda case of *Pastoli vs Kabale District Local Government Council & others* [2008] 2 EA 300 where the Court delimited the application of Judicial Review in the following terms:

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction of ultra vires, or contrary to the provisions of a law or its principles are instances of illegality.”

28. Counsel further submitted that the appellants failed to prove the allegations in the application on the grounds that the appellants failed to attach the decision barring them from claiming their interest as alleged in the application. Further, that the appellants have not shown that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety. Counsel further submitted that from the record, while the appellants allege that they were denied an opportunity to claim their interest in their parcels of land, they have lodged committee cases challenging the impugned decision.
29. This Court was urged to dismiss the appeal for lack of merit with costs to the respondent.

Determination.

30. Having considered the record, submissions by counsel, the authorities cited and the law, we find that the appeal turns on the issue whether the ELC erred in its holding that the application dated 22nd September, 2021 filed by the appellants was res judicata and whether the ELC erred in awarding costs to the respondents.
31. The doctrine of res judicata is provided for under Section 7 of the Civil Procedure Code in the following terms:

“No court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in a former suit between the same parties under whom they or any of them claim, litigating under the same title in a court competent to try such subsequent suit or issue in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

32. The doctrine of res judicata is founded on public policy and is aimed at achieving two objectives namely, that there must be finality to litigation and that an individual should not be harassed twice with the same account of litigation. The factors that the court takes into consideration in deciding if a matter is res judicata were laid out by the Supreme Court of Kenya in the case of *Kenya Commercial Bank Limited vs Muiri Coffee Estate Limited & Another* [2016] eKLR in the following terms:

“Hence, whenever the question of res judicata is raised, a Court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether



these are the same in the subsequent case. The Court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a Court of competent jurisdiction. This test is summarized in *Bernard Mugo Ndegwa v. James Nderitu Githae & 2 others*, [2010] eKLR, under five distinct heads:

- i. the matter in issue is identical in both suits;
- ii. the parties in the suit are the same;
- iii. sameness of the title/claim;
- iv. concurrence of jurisdiction; and
- v. finality of the previous decision.”

33. Expounding further on the essence of the doctrine of res judicata this Court in *John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others* [2015] eKLR stated as follows:

“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 unravelling uncontrollably.”

34. In the instant appeal, the respondents’ stand was that the application raised similar issues, which had been considered and determined in the judgment dated 18th December 2018 by the ELC (P.M. Njoroge, J.) in *Chuka ELC JR No. 16 of 2017*. On the other hand, the appellants advanced the case that the orders sought in the application dated 20th September, 2021 had neither been raised by any party nor determined by the court.

35. In *Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others* [2017] eKLR, the Supreme Court while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked. That is:

- “(a) The suit or issue was directly and substantially in issue in the former suit.
- b. That former suit was between the same parties or parties under whom they or any of them claim.
- c. Those parties were litigating under the same title.
- d. The issue was heard and finally determined in the former suit.
- e. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

The foregoing elements apply in equal measure to applications.

36. Looking at the record, we cannot help but note that the orders sought in *Chuka ELC JR No.16 of 2017* and in *Chuka ELC JR No. E005 of 2021* are similar in nature, being orders of mandamus, certiorari



and prohibition and they relate to the adjudication sections in relation to Kamaindi and Kamwimbi “B” adjudication.

37. Further, the ELC vide the judgment dated 18th December, 2018 issued orders of prohibition and mandamus as well as an order that the respondents may issue another declaration which does not breach the constitutional rights of the appellants. The ELC addressed and made determinations with respect to the orders sought. Specifically in that judgment, the trial court made definitive findings to the effect that

“14. The only issues for determination here is if or if not the appellants are entitled to an order of prohibition against the 2nd, 3rd, 4th and 5th defendants from effecting Declaration Reference No. ADM/LA/4/118 of 4th October, 2012, by the 5th respondent declaring Kamaindi of Kamaindi Location in Igamba Ng’ombe Division as an adjudication section and an order of mandamus bringing into this court and compelling the respondent to cancel and remove Declaration Reference No. ADM/LA/4/118 of 4th October, 2012 by the 5th respondent declaring Kamaindi of Kamaindi Location in Igamba Ng’ombe Division an adjudication Section for lack of representation.

16. It is clear that the respondents have not denied that they discriminated against the appellants who represent the Mbeere Community in this suit. I find that the appellants merit the issuance of the orders they seek.”

38. It was for that reason that the ELC issued the orders as follows:

“18. In the circumstances, judgment is issued for the applicants in the following terms:

- a. An order of prohibition is hereby issued prohibiting the 2nd, 3rd, 4th and 5th respondents from effecting Declaration Reference number ADM/LA/4/118 of 4th October, 2012 by the 5th respondent declaring Kamaindi of Kamaindi Location in Igamba Ng’ombe Division.
- b. An order of mandamus is hereby issued bringing into this court and compelling the respondents to cancel and remove Declaration Reference Number ADM/LA/4/118 of 4th October, 2012 by the 5th respondent declaring Kamaindi of Kamaindi Location in Igamba Ng’ombe Division for want of representation.
- c. This being a matter that evinces public interest litigation, parties are to bear their own costs.

19. It is clarified that the respondents may issue another Declaration which does not breach the constitutional rights of the appellants.”

39. Addressing our minds on the orders sought in the application, we find that the ELC did not err when it held that regardless the terms or words employed thereunder, the same were touching on the orders of Judicial Review of mandamus, certiorari and prohibition over declaration reference No. ADM/LA/4/118 of 4th October 2012, by the 5th respondent declaring Kamaindi of Kamaindi location in Igamba Ng’ombe Division of Meru South District later referred to as Kamaindi and Kamwimbi “B” Adjudication sections in the application. In our view, this had been conclusively determined by the



judgment dated 18th December, 2018. In other words, the orders of mandamus and prohibition were granted in the said judgment and the application dated 22nd September 2021 filed by the appellants sought the same orders in respect of the same subject matter.

40. Accordingly, the issue of Kamaindi and Kamwimbi "B" Adjudication sections was directly and substantially in issue in the impugned judgment of 18th December 2018 and could therefore not be raised again, even with the use of judicial craftsmanship, as we find was the case in the application whose ruling gave rise to the instant appeal.

41. Our position is fortified by this Court's sentiments in *Suleiman Said Shabhal vs Independent Electoral & Boundaries Commission & 3 Others* [2014] eKLR thus:-

"To constitute res judicata, there must be adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy."

42. In the circumstances, we find that the elements set herein above which give rise to the application of the doctrine of res judicata could be discerned from the record and were not uncertain or unclear as the appellants alluded to. It follows therefore, that the respondents' case was based on pure points of law, that is, jurisdiction and the doctrine of res-judicata, and did not require additional evidence to substantiate the objection. We are fortified in so finding by the locus classicus case of *Mukisa Biscuits Manufacturing Ltd. vs West End Distributors Ltd.* [1969] E. A. 696 which stated as follows:

2017 in the Appeal which confirmed the High Court orders dated 30th April 2015 superseded any other orders which were issued in the High Court, more particularly the orders enumerated by the appellants, with regard to the decree, "In our view, this Court's judgment dated 15th December

43. The appellants' assertion that the ELC erred in finding that the suit was res judicata as the same was premised on distinguishably new causes of action is unsupportable. This Court in *Independent Electoral & Boundaries Commission vs Maina Kiai and 5 others* [2017] eKLR pronounced itself as follows:

"The rule or doctrine of res judicata serves the salutary 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 and the behest of intrepid pleaders hoping, by a multiplicity of suits and for a, 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." See also, *William Koross Vs Hezekiah Kiptoo Komen & 4 others* [2015] eKLR.

44. In the circumstances, we find that there was a sound basis for the ELC's finding on the issue of res judicata and we have no basis for overturning it.

45. On the issue of costs, we are cognisant that the issue of costs lies within the discretion of the court. From the record nothing has been placed before us to warrant a finding that the ELC did not properly exercise its discretion in imposing costs of the application to be paid by the appellants. The submission by counsel for the appellants that they are enior citizens does not sway us to hold otherwise.



46. The upshot of our consideration of this appeal is that it is devoid of merit. It is accordingly dismissed with costs to the respondent.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF FEBRUARY, 2025

W. KARANJA

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JUDGE OF APPEAL

JAMILA MOHAMMED

.....

JUDGE OF APPEAL

L. KIMARU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

