



**Wahome & 15 others v Ng'ang'a & 2 others (Environment & Land Case
E063 of 2023) [2024] KEELC 4403 (KLR) (23 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4403 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E063 OF 2023**

MD MWANGI, J

MAY 23, 2024

BETWEEN

MILLICENT W. WAHOME 1ST PLAINTIFF
ROBERT M. WARUI 2ND PLAINTIFF
LYDIA WAMBUI KIARIE 3RD PLAINTIFF
PAUL NJUGUNA 4TH PLAINTIFF
DOMITRA W. MIITHI 5TH PLAINTIFF
MONICA M. MURAGE 6TH PLAINTIFF
JACINTA W. NGUGI 7TH PLAINTIFF
OSCAR S. MUSIOMI 8TH PLAINTIFF
BENARD K. MANKONE 9TH PLAINTIFF
ALICE W. IRUNGU 10TH PLAINTIFF
EZRA M. KIRIKA 11TH PLAINTIFF
KELVIN N. NJOROGE 12TH PLAINTIFF
STANLEY M. KINYUA 13TH PLAINTIFF
MARTIN P. NJUGUNA 14TH PLAINTIFF
JAKTAN G. KIRUJA 15TH PLAINTIFF
JOHN K. GITHAITE 16TH PLAINTIFF

AND

PAUL NG'ANG'A 1ST DEFENDANT
CRISPUS RAINI NYAGA 2ND DEFENDANT



RULING

1. Before me is an application dated 8th April, 2024 by the 2nd Defendant seeking for orders that;
 - a. This Honourable Court be pleased to strike –out the Plaint herein and to dismiss the Plaintiffs’ suit.
 - b. The 2nd Defendant be awarded costs of this suit in any event.
2. The application is based on the grounds on the face of it and the Supporting Affidavit of Crispus Raini Nyagah, the 2nd Defendant herein, sworn on the 8th April, 2024. The 2nd Defendant avers that he is the legitimate allottee of Plot Number 13 Kahawa West Phase II measuring 0.16 Hectares. Evident by the Letter of Allotment, Beacon Certificate and Receipt of Payment of Stand Premium. He asserts that the Plaintiff on the other hand has not produced any document to proof ownership of their alleged Plots; no title or Letter of Allotment.
3. The Applicant avers that he was the first owner of the suit property having been allocated in 1992 way before the alleged allocation to the Plaintiffs. He states that he has never sold or authorized any person to deal with his property in any manner. He argues that the Plaintiffs are therefore trespassers on his property.
4. He further states that the records with the 3rd Defendant indicates that he is the rightful owner of Plot Number 13 as evidenced by the Ground rates receipts and invoices.
5. The applicant asserts that the issues raised herein are res judicata having been dealt with and determined in case number ELC 808 of 2012 vide the Judgement delivered on the 8th February, 2019. He argues that the Plaintiffs’ suit as drawn and presented before this court is scandalous, frivolous and vexatious and is only meant to ‘buy time’ for the Plaintiffs to continue illegally occupying his property without paying for it.
6. He argues that in any event, the Plaintiffs’ suit is defective as the Verifying Affidavit purportedly in support of the suit is contrary to the provisions of law. That the deponent has not annexed authorization purportedly issued by her co-Plaintiffs.
7. Despite service of the Application, the Plaintiffs did not file any response to application. The application is therefore not opposed.

Issues for determination

8. Having considered the application herein and the Plaint filed herein, the only issue for determination is whether the instant suit res judicata as alleged by the Applicant.

Analysis and Determination

9. The law pertaining to the doctrine of res judicata is captured under the provisions of Section 7 of the [Civil Procedure Act](#) which states:

“No court shall try any suit 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 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.”

10. Section 28 of the [Environment and Land Court Act](#) also bars the court from adjudicating over disputes between the same parties and relating to the same issues previously and finally determined by any court of competent jurisdiction.
11. The doctrine of *res judicata* as stated has been explained in a plethora of decided cases. In the case of the [Independent Electoral and Boundaries Commission –vs- Maina Kiai & 5 Others](#) (2017) eKLR, the Court of Appeal held that:

“Thus, for the bar of *res judicata* to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in distinctive but conjunctive terms:

 - a) The suit or issue was directly and subsequently in issue in the former suit.
 - b) The 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.”
12. The court explained the role of the doctrine 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 pragmatic and commonsensical 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 or calumny. The foundation of *res judicata* thus rest in the public interest for swift, sure and certain justice.”
13. From the pleadings and the annexed Judgement in Elc Case No. 808 of 2012, it is not in dispute that the subject matter in the previous litigation and the current suit is the same. Both the former suit and the present suit are between the same parties.
14. In the case of [E.T.V –v- Attorney General & Another](#) (2012) eKLR Majanja J stated that;

“The courts must be vigilant to guard against litigants evading the doctrine of *res judicata* by introducing new causes of action so as to seek the same remedy before the court. The test is whether the Plaintiff in the second suit is trying to bring before the court in another way and in a form a new cause of action which has been resolved by a court of competent jurisdiction.”
15. Applying the stated law to the facts before me, it is clear that the Plaintiffs seek to re-open issues that were raised and dealt with in the earlier proceedings. In my view, by filing this suit, the Plaintiff are trying to re-litigate a concluded matter.



Conclusion

16. In the result I find and hold that the 2nd Defendant's application dated 8th April, 2024 is merited. It is allowed as prayed. Consequently, this suit is struck out with costs to the 2nd and 3rd Defendants.

17. The 2nd Defendant shall also have costs of the application.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF MAY, 2024.

M.D. MWANGI

JUDGE.

In the virtual presence of:

N/A for the Plaintiffs and the 1st Defendant

Mr. Njeru for the 2nd Defendant/Applicant

Ms. Chepkoyo for the 3rd Defendant

Yvette: Court Assistant

M.D. MWANGI

JUDGE

