



**Wainaina (For and on Behalf of the Estate of the Late Samuel Wainaina) v Kiarie & another
(Environment & Land Case E030 of 2024) [2024] KEELC 5831 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 5831 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E030 OF 2024**

**BM EBOSO, J
AUGUST 8, 2024**

BETWEEN

**TERESIA WANJIKU WAINAINA PLAINTIFF
FOR AND ON BEHALF OF THE ESTATE OF THE LATE SAMUEL WAINAINA**

AND

**ALICE KIARIE 1ST DEFENDANT
LAND REGISTRAR - THIKA 2ND DEFENDANT**

RULING

1. The plaintiff initiated this suit through a plaint dated 16/2/2024. She contended that she was the administrator of the estate of the late Samuel Wainaina, whom she alleged was the beneficial owner of land parcel number Ruiru/ Ruiru East Block 2 4834 [“the suit property” or “the suit land”]. It was her case that the late Samuel Wainaina [hereinafter referred to as “the deceased”] acquired the land through his mother the late Jane Njambi, “as was the requirement by Nyakinyua Investments Limited. She relied on a title deed dated 23/8/1988, expressed as issued to Jane Njambi by the Kiambu Land Registry. She sought: (i) a permanent injunction against the 1st defendant in relation to the suit land; (ii) an eviction order; (iii) an order enjoining the Officer Commanding Station-Juja Police Station to offer police assistance in enforcing the eviction; (iv) an order cancelling all records in the Land Registry reflecting the 1st defendant as the proprietor of the suit property.
2. Upon being served with the suit papers, the 1st defendant brought a notice of motion dated 18/3/2024, inviting the court to dismiss the suit on the ground of res judicata. The application was supported by the applicant’s affidavit sworn on 18/3/2024, in which she deposed that the late Jane Njambi’s claim of ownership of and title to the suit property was the subject of litigation in Nairobi High Court Environment and Land Division [now Nairobi ELC) Case No 445 of 2012, in which the Court found Jane Njambi’s title to have been fraudulent and annulled it.



3. In opposition to the application, the plaintiff deposed that Nairobi High Court Environment and Land Division Case No. 445 of 2012 was filed on 25/7/2012 at a time when the late Jane Njambi was already dead, hence the Judgment and the Decree rendered in the said case were irregular. She contended that an application had been filed to set aside the Judgment and the Decree. The plaintiff added that the parties to Nairobi High Court Environment and Land Division Case No 445 of 2012 were different from the parties in the present suit. She urged the court to dismiss the application.
4. The Court has considered the application; the response to the application; and the submissions that were tendered on the application. The court has also considered the relevant legal frameworks and jurisprudence. The key question to be answered in the application is whether the plaintiff's suit offends the doctrine of res judicata.
5. The common law doctrine of res judicata was codified by Kenya's Parliament through the enactment of 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.”

6. Kenya's Parliament went a step further to enact the following five explanatory notes that elaborate the tenor and import of the doctrine of res judicata:

Explanation. (1)—The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation. (2)—For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. (3)—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation.(4)—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation. (5)—Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. (6)—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

7. The Court of Appeal gave the following rationale that underpins the doctrine of res judicata in [John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others](#) [2015] eKLR as:

“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 unraveling uncontrollably.”

8. In the present suit, the plaintiff traces the root of the deceased’s interest in the suit land to the late Jane Njambi. Indeed, she came to Court waving a purported title bearing the name of Jane Njambi. It has subsequently emerged that the alleged title was the subject of litigation in Nairobi High Court Environment and Land Division [now Nairobi Milimani ELC] Case No. 445 of 2012. The said title was annulled by Gitumbi J in a Judgment rendered on 20/9/2013. The court affirmed the title held by Daniel Waothu Mburu as the genuine one. Yet the plaintiff came to this court waving the same annulled title and procured interim orders from this Court on the basis of the annulled title. That is not all. It does also emerge that the land register relating to the title which was upheld by the Court [Gitumbi J] was closed in 2019 on partition and new land registers were opened.
9. In her response, the plaintiff exhibited a stand-alone portion of an incomplete certificate of urgency as evidence of her pending application seeking the setting aside of the existing Judgment and Decree. This court does not know whether indeed an application has been filed at the Nairobi [Milimani] ELC. The exhibited document does not bear the name of the applicant.
10. Further, it is not lost to this Court that the plaintiff came to court purporting to represent the estate of Samuel Wainaina but relied on a purported title held in the name of Jane Njambi. The estate of Jane Njambi is, in essence, not represented in this suit.
11. Taking into account the existing Judgment and Decree and the above circumstances, the Court comes to the finding that to the extent that the plaintiff’s claim of ownership is founded on the annulled title that was purportedly held by the late Jane Njambi, her suit is untenable under the doctrine of res judicata. To hold otherwise would be to allow proceedings that would culminate in the procurement of a parallel and contradictory Judgment and Decree over the same title and the same suit land.
12. Given the above unique circumstances, the Court will strike out this suit as opposed to dismissing it. For the same reason, parties will bear their respective costs. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 8TH DAY OF AUGUST 2024

B M EBOSO

JUDGE

In the presence of:

Mr Muhita for the 1st Defendant

Court Assistant: Elvis Hinga

