



Langat v Olakeri-Lolasho Group Ranch & 7 others (Enviromental and Land Originating Summons E001 of 2023) [2024] KEELC 6126 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6126 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2023
CG MBOGO, J
SEPTEMBER 26, 2024**

BETWEEN

RICHARD K LANGAT PLAINTIFF

AND

OLAKERI-LOLASHO GROUP RANCH 1ST DEFENDANT

JOSEPH OE SHUNKUR 2ND DEFENDANT

LEMERDIK OE KORIATA 3RD DEFENDANT

RUKUTI OLE KORIATA 4TH DEFENDANT

SABAYA OLE NKONGONI 5TH DEFENDANT

STANLEY NGENO SIGILAI 6TH DEFENDANT

KITITA OLE SAAYOI 7TH DEFENDANT

ROBERT N KINGIS SHUNKUR 8TH DEFENDANT

RULING

1. On 11th July, 2024 and in the course of proceedings when the matter was coming up for mention, Mr. Kiprono, the learned counsel for the defendants raised the issue of res judicata, which he sought to be dispensed with first. The parties herein agreed to canvass the said issue vide written submissions.
2. The plaintiff filed his written submissions dated 11th September, 2024. The plaintiff while relying on the cases of Abok James Odera versus John Patrick Machira Civil Application No. Nai. 49 of 2001, The Independent Electoral & Boundaries Commission versus Maina Kiai & 5 Others [2017] eKLR, Lotta versus Tanaki [2003] 2 EA 556 and Tee Gee Electrics and Plastics Company Limited versus Kenya Industrial Estates Limited [2005] KLR 97 submitted that the current issue on adverse possession has not been heard before between the parties herein. He submitted that the plaintiff is not 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.

3. The plaintiff submitted that the instant matter which has not been determined is only instituted by the plaintiff alone and touches on a matter that has never been heard before.
4. The defendants did not file their written submissions. Be that as it may, I have considered the written submissions filed by the plaintiff, and in my view, the issue for determination is whether the suit is res judicata. The principle of res judicata is provided 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.

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.”

5. From the above, it will be observed that for res judicata to apply, the issue in the latter suit must have been directly and substantially in issue in the former suit, between the same parties, or between parties under whom they are litigating. The Court of Appeal in the case of Uburu Highway Development Ltd V Central Bank & Others, CA No. 36 of 1996 held that: -

“In order to rely on the defence of res judicata, there must be a previous suit in which the matter was in issue; the parties must have been the same or litigating under the same title; a competent court must have heard the matter in issue and the issue is raised once again in the fresh suit.”

6. The plaintiff filed the originating summons dated 1st August, 2023 seeking a determination of the following questions: -
 1. Whether the plaintiff is entitled to 200 acres of land comprised in the land parcel L.R. No. CisMara/ Ololulunga/ 156 subdivided into parcel nos. 15567, 15568, 15569 (17544 and 17545), 15570, 15571, 15572, 15573, 15574 (16254 and 16255), 15575 formerly Olokeri-



Lalasho Group Ranch by virtue of the plaintiff's adverse possession of the said parcel in open, quiet and peaceful occupation for a period of over 33 years.

2. Whether the titles resultant from the subdivision of L.R. No. CisMara/ Ololulunga/ 156 should be cancelled in order to pave way for excision and transfer of the 200 acres currently occupied by the plaintiff.
3. Whether the plaintiff herein should be registered as the proprietor of the said 200 acres in place of the defendants who are at present the registered owners/ proprietors of the said parcels of land.
4. Whether or not the plaintiff is entitled to an order of permanent injunction restraining the defendants, their agents, employees from entering, cultivating, occupying, trespassing, alienating, transferring, and/or in any other manner adversely dealing with the applicant's portion measuring 200 acres of the aforesaid land.
5. That cost of this suit be provided for.
7. The originating summons was supported by the affidavit of the plaintiff sworn on even date. In response, the 3rd defendant filed his replying affidavit sworn on 27th September, 2023 on his own behalf and on behalf of the other defendants. The 3rd defendant deposed that the plaintiff sued the other defendants in Misc. Civil Application No. 20 of 2009 and ELC Appeal No. 1 of 2017 formerly Nakuru HCA No. 54 of 2016, and that in all these matters, the plaintiff's suits were dismissed. In their response, the 3rd defendant annexed a copy of the ruling delivered in Misc. Civil Appl. No. 20 of 2009 and the judgment delivered by this court in ELC Appeal No. 1 of 2017.
8. In determining whether or not the instant suit is res judicata, this court will analyze the evidence as provided by the parties and consider the arguments contained in the written submissions filed by the plaintiff. The plaintiff argued that the issue of res judicata has never been canvassed before, and in the instant suit, he is the only plaintiff as opposed to the other matter which included 38 others against some of the defendants herein.
9. In Misc. Civil Application No. 20 of 2009, the plaintiff filed a suit alongside 38 others and it was against Rukuti Ole Koriata and 4 Others. It is not clear who the rest of the 38 plaintiffs are and who the 4 other defendants are as their names have not been disclosed. From the ruling delivered on 18th November, 2014, it can be seen that the plaintiff was seeking injunctive orders against the defendants with regards to the dealings of parcel no. Cis-Mara/Ololulunga/ 156. From the ruling, it appears that the suit property was the subject of litigation before the Land Dispute Tribunal. The application was dismissed as incompetent as the plaintiff sought certain officers to be compelled to carry out their functions. The plaintiff also filed ELC Appeal No. 1 of 2017. In a judgment delivered on 18th March, 2019 by Kullow, J, the court dismissed the appeal as lacking in merit and faulted the appellant for not invoking the correct procedure in requiring other parties to do certain acts i.e. enforcing the decree of the Land Dispute Tribunal.
10. From the above summary, can it be said that the instant suit is res judicata? It is not in doubt that the subject matter in all the suits before court is CisMara/Ololulunga/ 156 which has now been subdivided and forms other parcels of land. It is also not disputed that there are parties who were parties in the previous suits and are not parties in the present suit. However, the contention herein lies with the claim by the plaintiff who has now sought to ascertain his rights by claiming adverse possession. As I have understood the ruling delivered on 18th November, 2014, the plaintiff failed to invoke the correct procedure to compel the District Land Adjudication Officer, the District Physical Planning Officer



and the County Land Registrar to enforce the award of the Land Dispute Tribunal. This does not mean that the plaintiff gave away his ownership rights or claims arising from the suit properties.

11. The defendants in my view have not provided sufficient material in terms of the pleadings filed in the previous matters before this court to show the court that in the previous matters, the issues raised in the present matter were previously heard and determined and which would qualify to be termed as res judicata. The plaintiff in the instant matter is seeking to ascertain his ownership rights albeit a different means.
12. From the above, I find that the defendants have not sufficiently proved res judicata, the claim or assertion is thus dismissed. I make no orders as to costs. Further mention on 8th October, 2024 for further directions. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 26TH DAY OF SEPTEMBER, 2024.

HON. MBOGO C.G.

JUDGE

26/09/2024.

In the presence of: -

Mr. Meyoki – C.A

