



**Njenga v Chumba & another (Environment & Land Case E037 of 2022)
[2024] KEELC 6090 (KLR) (23 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6090 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E037 OF 2022
DO OHUNGO, J
SEPTEMBER 23, 2024**

BETWEEN

ANNA KABOI NJENGA PLAINTIFF

AND

STEPHEN KIMTAI CHUMBA 1ST DEFENDANT

THE LAND REGISTRAR, KAKAMEGA COUNTY 2ND DEFENDANT

RULING

1. This ruling is in respect of two applications: the Plaintiff's Notice of Motion dated 8th September 2023 and Chamber Summons dated 18th October 2023. The Chamber Summons was filed jointly by Abraham Gimode Agola and Daniel Simiyu Wakhungu who seek to join this suit as plaintiffs or interested parties.
2. The Notice of Motion is supported by an affidavit sworn by the Plaintiff and seeks the following orders:
 1. [Spent]
 2. [Spent]
 3. That this honorable court be pleased to issue a temporary injunction restraining the 1st Defendant/Respondent either by himself, his agents, servants, or personal representatives from entering, tilling, encroaching, trespassing, sub-dividing, selling, charging, mortgaging, leasing, using, acquiring or in any manner interfering with a portion of land measuring 16.8 acres forming part of land known as Kakamega/SOY/219 pending the hearing and determination of this suit.
 4. That this honorable court be pleased to compel the Land Registrar Kakamega to cause the registration of a restriction to prevent any further dealings in parcel of land known as Kakamega/SOY/219 pending the hearing and determination of this suit.



5. That this honorable court be pleased to order the County Surveyor Kakamega to visit land L.R No. Kakamega/SOY/219 and ascertain the boundary of a portion of land measuring 16.8 acres currently in occupation by the Plaintiff/applicant.
6. That this honorable court be pleased to issue an order authorizing the Officer Commanding Likuyani Police Station to enforce the orders restraining the 1st Defendant/Respondent either by himself, his agents, servants, or personal representatives from entering, tilling, encroaching, trespassing, sub-dividing, selling, charging, mortgaging, leasing, using, acquiring or in any manner interfering with a portion of land measuring 16.8 acres forming part of land known as Kakamega/SOY/219.
7. That the costs of this application be awarded to the Plaintiff/Applicant.
3. The First Defendant opposed the Notice of Motion through a replying affidavit in which he deposed that the application is res judicata and an abuse of the court's process since the issues therein were heard and determined in a ruling delivered on 29th May 2023. He also filed a supplementary affidavit in which he deposed that the Plaintiff had approached the court with unclean hands in that while this suit was pending, the Plaintiff filed a similar suit being Kakamega MC L&E No E253 of 2023 with a similar application. Since an issue of jurisdiction has been raised, I have not found it necessary to rehash the other details deposed to by both the Plaintiff and the First Defendant in their affidavits.
4. The Chamber Summons is supported by an affidavit sworn jointly by Abraham Gimode Agola and Daniel Simiyu Wakhungu. They deposed that Abraham Gimode Agola purchased 1 acre of Kakamega/Soy/219 while Daniel Simiyu Wakhungu purchased 1.1 acre of the said parcel and that they may suffer prejudice and loss of the only place they know as home if they are not given a hearing in the suit.
5. Counsel for the Plaintiff indicated to the court that the Plaintiff does not oppose the Chamber Summons.
6. Both applications were canvassed together through written submissions. The Plaintiff argued that he established a prima facie case since he has a beneficial interest in a 16.8 acres portion of Kakamega/Soy/219 and that the balance of convenience tilts in his favour since he will be greatly disadvantaged if the orders sought are not granted. He further contended that damages will not be an adequate remedy since subdivision, lease or sale of the suit property may result in the subject matter ceasing to exist. He therefore urged the court to allow the Notice of Motion.
7. Abraham Gimode Agola and Daniel Simiyu Wakhungu urged the court to allow the Chamber Summons in the interest of justice.
8. I have considered the applications, the affidavits and the submissions. The issues that arise for determination are whether the Notice of Motion is res judicata and whether Abraham Gimode Agola and Daniel Simiyu Wakhungu should be joined to the suit.
9. The doctrine of res judicata is embodied in 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.



10. The effect of the doctrine is that it deprives a court of jurisdiction to hear and determine any matter that falls within the four walls of the doctrine. For an objection based on the doctrine to succeed, there must be a previous suit in which the matter was in issue; the parties in both matters were the same or litigating under the same title; the previous matter was heard and determined by a competent court and the issue is raised once again in the new suit. The doctrine is a complete estoppel against any suit that runs afoul of it. See *John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others* [2015] eKLR and *Maithene Malindi Enterprises Limited v Kaniki Karisa Kaniki & 2 others* [2018] eKLR.
11. In *Kenya Commercial Bank Limited v Muiro Coffee Estate Limited & another* [2016] eKLR, the Supreme Court stated that the doctrine allows a litigant only one bite at the cherry by preventing the litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action or submitting to court issues that have been heard and determined by a competent court. The effect of the doctrine is to prevent a multiplicity of suits and to ensure that litigation comes to conclusion.
12. A perusal of the record herein shows that the Plaintiff filed Notice of Motion dated 2nd August 2022 through which she sought an injunction to restrain the Defendants from dealing with the parcels of land known as Kakamega/Soy/2109 and Kakamega/Soy/2110 pending the hearing and determination of this suit. She deposed in an affidavit in support of the application that the said parcels were subdivisions of parcel number Kakamega/Soy/219. Upon considering the application, this court rendered its ruling on 29th May 2023 wherein it dismissed the application for want of merit.
13. In the present Notice of Motion, the Plaintiff has yet again approached the court for an injunction, this time to restrain the First Defendant from dealing with a 16.8 acre portion of Kakamega/Soy/219 and to compel the Second Defendant to register a restriction against the said parcel. I further note that the Plaintiff is also seeking an injunction against the County Surveyor Kakamega, who is not a party to this suit.
14. Pursuant to explanation number 4 of Section 7 of the *Civil Procedure Act*, the Plaintiff was required to plead her entire case for injunction in Notice of Motion dated 2nd August 2022. She cannot litigate the issue of injunction piecemeal. Her application for injunction having been heard and determined through the ruling delivered on 29th May 2023, Notice of Motion dated 8th September 2023 is res judicata and this court has no jurisdiction to hear and determine it. The application is for striking out.
15. Regarding Chamber Summons dated 18th October 2023, I note that the Plaintiff does not oppose the said application.
16. The principles that guide the court while considering an application for joinder of an interested party are straightforward and were discussed by the Supreme Court in *Communications Commission of Kenya & 3 others v Royal Media Services Limited & 7 others* (supra) thus:

22] In determining whether the applicant should be admitted into these proceedings as an Interested Party we are guided by this Court's Ruling in the *Mumo Matemo* case where the Court (at paragraphs 14 and 18) held:
“[An] interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be



well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”

(23) Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

“(i) Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

(ii) joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;

(iii) joinder to prevent a likely course of proliferated litigation.”

(24) We ask ourselves the following questions: (a) what is the intended interested party’s stake and relevance in the proceedings? and (b) will the intended interested party suffer any prejudice if denied joinder?

17. Abraham Gimode Agola and Daniel Simiyu Wakhungu deposed in their supporting affidavit that Abraham Gimode Agola purchased 1 acre of Kakamega/Soy/219 while Daniel Simiyu Wakhungu purchased 1.1 acre of the said parcel. They annexed copies of some agreements. I note that Kakamega/Soy/219 is expressly mentioned at prayer (d) of the plaint herein. Whereas Abraham Gimode Agola’s and Daniel Simiyu Wakhungu’s allegation of purchase is yet to be fully tested, I am persuaded that they may be affected by the decision of the Court and that they should be given an opportunity to articulate their interest. I find merit in the Chamber Summons.

18. In the end, I make the following orders:

- a. Notice of Motion dated 8th September 2023 is struck out for being res judicata.
- b. Abraham Gimode Agola and Daniel Simiyu Wakhungu are joined to this suit as First and Second Interested Party, respectively.
- c. The First Defendant shall have costs of Notice of Motion dated 8th September 2023.
- d. Costs of Chamber Summons dated 18th October 2023 shall be in the cause.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 23RD DAY OF SEPTEMBER 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Ms Isokoni for the plaintiff

No appearance for the first defendant

No appearance for the second defendant

Court Assistant: M Nguyayi

