



Mwaganda & 5 others v Al'amin (Sued as Administrator of the Estate of Mohamed Al Amin & Teba Binti Mohamed) (Environment & Land Case 21 of 2024) [2025] KEELC 264 (KLR) (30 January 2025) (Ruling)

Neutral citation: [2025] KEELC 264 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 21 OF 2024
FM NJOROGE, J
JANUARY 30, 2025

BETWEEN

GILBERT ARLINGTON MWAGANDA & 5 OTHERS PLAINTIFF

AND

AMANI MOHAMED AL'AMIN (SUED AS ADMINISTRATOR OF THE ESTATE OF MOHAMED AL AMIN & TEBA BINTI MOHAMED) DEFENDANT

RULING

1. In the Notice of Preliminary Objection dated 11/3/2024, the 1st defendant objects to the entire suit herein on the grounds that the suit is *res judicata* Mombasa High Court Petition No 10 of 2018 – [*Gilbert Mwaganda & Others Vs Mohamed Al Amin & Others*](#) and seeks that it be dismissed with costs. The 3rd and 4th defendants supported the preliminary objection, which was disposed of by way of written submissions is opposed by the plaintiff.
2. The 1st respondent's case is that in Mombasa ELC Petition 10 of 2018 the plaintiff sought inter alia that the interested party be ordered to vacate the suit land and give the petitioner vacant possession thereof; that the petitioner be declared the rightful owner of the said parcel and the respondent be ordered to issue title deed in favour of the petitioner, and that the title deed in the name of the interested parties be cancelled. He argued that the issue in both the former case and this case is vacant possession and cancellation of title to Plot No 553/II/MN, and that the parties remain the same in both suits, and that the Mombasa ELC was also a competent court. As things stand, posits the 1st defendant the Mombasa case is finally settled; the plaintiff herein ought to have lodged an appeal if he was dissatisfied with the decision of the court in the earlier case. The plaintiff on the other hand admits that he filed the earlier case and that it sought the three prayers listed by the 1st respondent as above but that it had the additional prayer that the decision of the Ministry Of Lands do register the interested party as the owner of the land known as "xN111/553 Kanamai –original 284/5/MN /111" (I am not certain that



is the correct reference even by just a casual glance at it) be declared null and void as it violated the petitioner's fundamental rights to ownership of the said land parcel. He further states that the court dealing with the matter found that it does not raise any constitutional issue admit was dismissed. He agrees that for the doctrine of res judicata to be upheld in a case, the matter in issue must be the same in both suits, that the issue must have been decided by a court of competent jurisdiction. He raises two major setbacks to the preliminary objection as raised by the 1st defendant:

3. First, that the decision must have been on the merits and dismissals on procedural issues including those based on filing of suits in improper fora should not bar a subsequent suit. Secondly, he avers that res judicata can not be raised save by way of a notice of motion where pleadings would be annexed to allow the court consider whether the issues in the previous suit and those in the current suit are similar.
4. He avers that applying the doctrine of res judicata would bar the plaintiff from obtaining a determination on the merits of the case, thus undermining the overriding objective of ensuring that justice is administered fairly and substantively, and prays that the preliminary objection be dismissed.
5. I have considered the submissions of the parties. I agree with the plaintiff on one submission that will put the matter to a rest and obviate the need to comment on the rest of the arguments raised: the need for evidence. To establish that a matter is res judicata evidence is needed and this includes perusal of pleadings from another court record. I agree that without that course of action, the court may not know that the matter is res judicata.
6. In this case no pleadings from the previous suit have been placed by the 1st respondent before this court and this court is at a loss how the court would go about the task of ascertaining that the issues raised in the petition filed in Mombasa are similar to the issues filed herein. It would have been a salutary course of action had the objector instead of filing a preliminary objection, filed a notice of motion as suggested by the plaintiff so that the pleadings may be brought to the attention of the court.
7. As stated in the locus classicus *Mukisa Biscuits Manufacturers Ltd* case a preliminary objection is one that is premised on the ground that all the facts as pleaded by the parties are correct and there is no need to look elsewhere for evidence. I need not duplicate the oft cited dicta of that famous case here.
8. In the final analysis I find that to determine it, this court has to examine evidence beyond the pleadings in the present case and thus the purported preliminary objection does not meet the threshold of a preliminary objection as suggested by the 1st defendant, and that objection is hereby dismissed with costs to the plaintiff only.
9. The parties shall each comply with Order 11 of the [Civil Procedure Rules](#), the plaintiff within the first 21 days from the date of this ruling and the defendants within the following 21 days and this matter shall be listed for mention on 13th March 2025 for issuance of a hearing date. Parties shall strictly observe this time frame and mention date.

JUDGMENT DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 30TH DAY OF JANUARY 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

