



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Odhiambo v Ndiri (Deceased) & 2 others; Owala (Intended Interested Party)**  
**(Land Case 4 of 2024) [2024] KEELC 7549 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7549 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT SIAAYA**  
**LAND CASE 4 OF 2024**  
**AY KOROSS, J**  
**NOVEMBER 14, 2024**

**BETWEEN**

**GEORGE ODHIAMBO ..... PLAINTIFF**

**AND**

**CHARLES NDIRI (DECEASED) ..... 1<sup>ST</sup> DEFENDANT**

**ROSE ONYANGO OWALA ..... 2<sup>ND</sup> DEFENDANT**

**GEORGE OMONDI OWALA ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**ROBERT OWALA ..... INTENDED INTERESTED PARTY**

**RULING**

1. The motion that is the subject of this ruling is dated 30/05/2024 and is filed by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants. The court has been moved under several provisions of law, in particular, Section 4(4) of the *Limitation of Actions Act*. They have sought the following reliefs from this court: -
  - a. Spent.
  - b. The Hon. Court does issue an order that the judgment and decree issued on 18/10/2006 is time-barred.
  - c. The court does issue such further orders as it may deem fit.
  - d. That costs of the application be provided for.
2. The motion was premised on the affidavit in support thereof which was sworn on 19/10/2023 by the 2<sup>nd</sup> defendant Rose Anyango Owala.



3. In summary, the averments contained in the affidavit asserted the judgment was rendered on 18/10/2006 and the decree extracted on 12/06/2006 yet, 17 years later, execution is not in sight. According to her, the judgment was unenforceable as it had expired. She urged this court to allow the motion. Despite service, the plaintiff did not oppose the motion or file written submissions.
4. As directed by the court, the 1<sup>st</sup> and 2<sup>nd</sup> defendants' law firm on record Ms. Sala & Mudany Advocates filed written submissions dated 30/05/2024 and identified a singular issue for determination- the import of Section 4(4) of the Limitation of Actions Act.
5. Having carefully considered the motion, affidavit, annexures thereto, 1<sup>st</sup> and 2<sup>nd</sup> defendants' submissions, provisions of law relied upon together with judicial precedents, the following 2 issues that arise shall be dealt with in a seriatim manner: -
  - a. Whether the motion is *res judicata*.
  - b. Whether the judgment and decree are stale.
  - a. Whether the motion is *res judicata*.
6. The doctrine of *res judicata* is provided for under Section 7 of the Civil Procedure Act in the following terms: -
 

“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.”
7. The essence of this doctrine is to thwart a party claiming under the same title, from seeking a second bite of the cherry by returning to court claiming a similar relief or additional reliefs other than the ones earlier claimed in the previous suit.
8. The Supreme Court of Kenya decision of Kenya Commercial Bank Limited v Muiri Cofee Estate Limited & another [2016] eKLR summarized the principles of *res judicata* thus: -
 

“This test is summarized in *Bernard Mugo Ndegwa v James Nderitu Gitbae & 2 others*, (2010) eKLR, under five distinct heads: (i) the matter in issue is identical in both suits; (ii) the parties in the suit are the same; (iii) sameness of the title/claim; (iv) concurrence of jurisdiction; and (v) finality of the previous decision.”
9. As illuminated in *Kenya Commercial Bank Limited (supra)*, the doctrine enhances the effectiveness of the adjudication process, eliminates multiplicity of suits, reduces backlog, brings litigation to an end, and saves parties from unnecessary costs.
10. The doctrine of *res judicata* is a substantive issue that touches on the jurisdiction of the court. The Court of Appeal in the case of John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others [2015] eKLR expressed itself as follows on the process of moving the court when the doctrine of *res judicata* is imminent in a suit;
 

“The general consensus therefore remains that *res judicata* being a fundamental principle of law that relates to the jurisdiction of the court may be raised as a valid defence to a



constitutional claim even on the basis of the court's inherent power to prevent abuse of process ...”

11. The principles of *res judicata* are conjunctive and the essence of the doctrine is to bring litigation to finality and affords parties closure and respite from the spectre of being vexed by multiple suits that have already been determined by a competent court.
12. The intent of the doctrine was aptly summarized by the Supreme Court of Kenya decision of *John Florence Maritime Services Limited & another v Cabinet Secretary, Transport and Infrastructure & 3 others* [2021] eKLR as follows: -

“It is primarily founded on the following three maxims:

- (1) *nemo debet bis vexari pro una et eadem causa*: no man should be vexed twice for the same cause.
- (2) *interest republicae ut sit finis litium*: it is in the interest of the State that there should be an end to a litigation; and
- (3) *res judicata pro veritate occipitur*: a judicial decision must be accepted as correct.”

13. On being presented with the present motion and to appreciate the history of the subject suit, I carefully scrutinized the records and I came across a ruling rendered in this matter by Hon. Fred A. Ochieng J (as he then was) that he delivered on 16/01/2021 (this decision shall be referred as “previous ruling”).
14. The Hon. learned judge was faced with an application dated 7/10/2020 filed by the plaintiff which sought orders for eviction, committal of the defendants to civil jail, attachment of property, and costs.
15. In it, the defendants responded and raised the issue of the judgment and decree being time-barred and relied on similar precedents as submitted herein. The Hon. learned judge applied his mind to the issue that was before him in the previous ruling and stated: -

“The defendants’ response to the application was that it was time- barred pursuant to Section 4 (4) of the *Limitation of Actions Act*...

The point is the plaintiff commenced the process of execution of the judgment well within the period of 12 years from the time when the judgment was delivered.

On 7<sup>th</sup> June 2007, the learned deputy registrar Hon. Ong’ingo (as she then was) signed an eviction order.

Another eviction order was issued by Hon. Sala on 17/09/2013.

Surely, a judgment debtor cannot be permitted to continually place hurdles in the decree-holder’s path, and then be rewarded by a declaration that the judgment or decree could no longer be executed because it is time barred...”

16. This excerpt of the ruling speaks for itself. I do not entertain in my mind that the instant motion squarely falls on all the principles of *res judicata*.
17. The issue of the judgment and decree being stale was substantially in issue in the previous ruling, the parties were substantially the same, and they were litigating under the same title, the court was competent to try the issue and determined the issue of the judgment and decree being time-barred on merits and with finality.



18. The same issue has been subsequently raised in this matter. I find the motion is *res judicata* and an abuse of court process. Since *res-judicata* is a jurisdictional issue, I down my tools thus rendering a determination of issue (b) unnecessary.
19. I must state the defendants are hell-bent to frustrate to execution of this matter and are abusing the court process by filing a myriad of applications or suits. This court is privy that in *Owala & another v Odbiambo* (Environment & Land Case 21 of 2021) [2023] KEELC 20684 (KLR) (12 October 2023) (Ruling), it struck out the defendants' claim of adverse possession which involved the subject matter of the judgment and decree herein.
20. The judgment and decree of this court are valid and execution is at an advanced stage. The defendants' abhorrent and despicable conduct should not be entertained by this court and they should prepare themselves to vacate the suit property without delay.
21. This court should allow the plaintiff to enjoy the fruits of his judgment by fast-tracking the eviction process. The defendants' day of eviction is nigh. Any delay tactics that the defendants have conveniently applied to delay the eviction process shall not be entertained by this court whatsoever.
22. Ultimately, I find the application dated 30/05/2024 *res judicata* and an abuse of court process. It is trite law costs follow the event and since the plaintiff did not participate in the motion, there shall be no orders as to costs. As a result, I hereby issue the following orders: -
  - a. The plaintiffs' application dated 30/05/2024 is hereby struck out with no orders as to costs.
  - b. Matter to be mentioned on 4/02/2025 for further directions on execution of the decree.Orders accordingly.

**DELIVERED AND DATED AT SIAYA THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024.**

**HON. A. Y. KOROSS**

**JUDGE**

**14/11/2024**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

In the Presence of:

Miss. Awuor S. for the defendants

Plaintiff

N/A for intended interested party

Court assistant: Ishmael Orwa

