Yopuri & 12 others v Waso Trustland Project & another (Environment & Land Petition E004 of 2024) [2025] KEELC 578 (KLR) (13 February 2025) (Judgment)

Neutral citation: [2025] KEELC 578 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ISIOLO

ENVIRONMENT & LAND PETITION E004 OF 2024

JO MBOYA, J

FEBRUARY 13, 2025

BETWEEN

ULIPIRIDA YOPURI .... 1ST PETITIONER

ISAIAH KIARA EPURI .... 2ND PETITIONER

JOHN LORINYOK EPURI .... 3RD PETITIONER

SAMUEL ABOK EPURI .... 4TH PETITIONER

SILAS EMOJO EPURI .... 5TH PETITIONER

CECELIA AKIPETOT EPURI .... 6TH PETITIONER

SELINA LONGORI EPURI .... 7TH PETITIONER

PAULINA AMANA .... 8TH PETITIONER

VIVIAN AKUWAM .... 9TH PETITIONER

ELVIS EPURI WKIRU .... 10TH PETITIONER

PRISCILLAH MATHE .... 11TH PETITIONER

PAMELA ARUNYE .... 12TH PETITIONER

MLEZI WINNERS ACADEMY .... 13TH PETITIONER

AND

WASO TRUSTLAND PROJECT .... 1ST RESPONDENT

COUNTY GOVERNMENT OF ISIOLO .... 2ND RESPONDENT

JUDGMENT

Introduction and Background:

1. The Petitioners approached the court vide Petition dated 16th July 2024 and wherein same [Petitioners] have sought the following reliefs:

    i. A declaration that the Respondents have breached the Petitioners right to property under Article 40 of *the Constitution*.

    ii. General damages for breach of the Petitioners' right to property.

    iii. Costs of this suit and interests.

2. The instant Petition is supported by a Verifying Affidavit which merely verifies the contents of the Petition, albeit with no annexures and/or documents to vindicate the Petitioner's claim.

3. Upon being served with the Petition, the 1st Respondent duly entered appearance and filed a response vide Answer to Petition dated 4th November 2024. Instructively, the 1st Respondent contends that the dispute beforehand has already been canvassed and determined vide Isiolo Chief Magistrate's CMELC No. 64 of 2013, wherein it is averred that the court decreed that the Petitioners herein and others ought to be evicted from the suit property.

4. Furthermore, it has been contended that the subject Petition is barred and prohibited by the Doctrine of Res Judicata; and thus constitutes and amounts to an abuse of the due process of the court.

5. The 2nd Respondent neither entered appearance nor filed any response.

6. The instant Petition came up for directions before the court [differently constituted] whereupon the court ordered that the Petition be canvassed by way of written submissions. In addition, the court circumscribed the timeline for the filing and exchange of written submissions.

7. The Petitioners filed written submissions dated 3rd February 2025 whereas the 1st Respondent filed written submissions dated 11th February 2025. The two [2] sets of written submissions are on record.

Parties' Submissions:

a. Petitioners' Submissions

8. The Petitioners herein filed written submissions dated 3rd February 2025 and wherein the Petitioners have adopted the grounds contained in the body of the Petition. In addition, the Petitioners have also reiterated the contents of [sic] the Verifying Affidavit sworn on 16th July 2024.

9. Furthermore, learned counsel for the Petitioners has raised, highlighted and canvassed three [3] salient issues for consideration by the court.

10. Firstly, learned counsel for the Petitioners has submitted that the Petitioners herein have lived and resided on the suit property since childhood to date. Nevertheless, it has been posited that despite the Petitioners having lived and resided on the suit property, the 2nd Respondent herein has failed, neglected and/or refused to issue to and in favour of the Petitioners ownership documents in respect of the suit property. In this regard, learned counsel for the Petitioners has submitted that the failure by and on behalf of the 2nd Respondent constitutes a violation of the Petitioners' legitimate expectation.

11. Secondly, learned counsel for the Petitioners has submitted that the failure and/or neglect by the 2nd Respondent to issue the Petitioners with ownership documents also constitutes a violation and/or infringement of the Petitioners' right to own property.

12. In this regard, it has been contended that the actions complained of constitute a breach and/or violation of the provisions of Article 40 of *the Constitution* 2010 and in particular, the Petitioners Fundamental rights and freedoms to acquire and own property.

13. Thirdly, learned counsel for the Petitioners has submitted that the 1st Respondent herein colluded with the 2nd Respondent and some other people and filed civil proceedings vide Isiolo CMELC No. 64 of 2013; and wherein the 1st Respondent procured orders which are aimed at dispossessing/disinheriting the Petitioners of the suit property. In this regard, it has been submitted that the filing of the suit, namely, Isiolo CMELC No. 64 of 2013; was intended to grab the land in question from the Petitioners.

14. Arising from the foregoing, learned counsel for the Petitioners has thus submitted that the Petitioners herein have established and demonstrated legitimate cause to warrant the grant of the declaratory order and in particular, declaration that the Respondents have breached the Petitioners' rights to property under Article 40 of *the Constitution* 2010.

15. Moreover, learned counsel for the Petitioners has also contended that the Petitioners are entitled to recompense on account of general damages for breach of the Petitioners' right to property. To this end, learned counsel for the Petitioners has implored the court to allow the Petition and grant the reliefs under reference.

b. 1st Respondent's Submissions:

16. The 1st Respondent filed written submissions dated 11th February 2025 and wherein the 1st Respondent reiterated the contents of the Answer to Petition dated 4th November 2024. In addition, the 1st Respondent has highlighted four [4] pertinent issues for consideration and determination by the court.

17. First and foremost, learned counsel for the 1st Respondent has submitted that the Petition beforehand is deficient and thus defective for want of supporting documents. In particular, learned counsel for the 1st Respondent has submitted that though the Petitioners are laying a claim to ownership of Plot No. 274 Chechelesi, same [Petitioners] do not have any ownership documents to anchor and found their claim to the suit property.

18. In the absence of ownership documents to and in respect of the suit property, it has been contended that the Petitioners cannot therefore be heard to lay and/or stake a claim to the suit property. In this regard, it has been posited that the Petitioners' claim has been made/mounted in vacuum.

19. Secondly, learned counsel for the 1st Respondent has submitted that four of the Petitioners herein were parties to Isiolo CMELC No. 64 of 2013; which suit touched on and concerned ownership of the suit property. Furthermore, it has been submitted that the suit under reference was heard and determined culminating into the judgement rendered on 10th June 2024.

20. Additionally, learned counsel for the 1st Respondent has submitted that the Chief Magistrate's court proceeded to and directed the eviction of the various Petitioners who were parties to the previous suit. In any event, it has been posited that the rest of the Petitioners herein are representatives of the parties in the previous suit and/or relatives. In this regard, learned counsel for the 1st Respondent has submitted that the entire Petition is barred and/or prohibited by the doctrine of res judicata.

21. Thirdly, learned counsel for the 1st Respondent has submitted that the 1st Respondent herein was declared to be the lawful and legitimate owner of the suit property vide Isiolo CMELC No. 64 of 2013. In this regard, learned counsel has referenced annexures/documents numbers. 17 and 18, respectively, which have been filed in court.

22. To the extent that the 1st Respondent was declared as the lawful owner/proprietor of the suit property, it has been posited that the orders sought by the Petitioners herein cannot therefore issue and/or be granted. For good measure, it has been contended that the grant of the orders sought, [if at all], would be tantamount to overturning a lawful judgement and decree issued by the Chief Magistrate's Court albeit through the backdoor.

23. Finally, learned counsel for the 1st Respondent has submitted that the suit property is currently registered in the name of the 1st Respondent. In this regard, it has been posited that the 1st Respondent therefore has lawful rights to and in respect of the suit property. In any event, it has been contended that the rights of the 1st Respondent are protected vide the provisions of Sections 24 and 25 of the *Land Registration Act*, 2012.

24. In view of the foregoing submissions, learned counsel for the 1st Respondent has invited the court to find and hold that the Petition beforehand is not only premature and misconceived but same constitutes an abuse of the due process of the court. In this regard, the court has been implored to find and hold that the Petition is devoid of merits and thus courts dismissal.

Issues for Determination:

25. Having reviewed the Petition and the Answer thereto and upon consideration of the submissions filed on behalf of the respective parties, I come to the conclusion that the determination of the instant Petition turns on two[2] issues, namely; whether the Petitioners herein have any actionable interests and/or proprietary rights to and in respect of the suit property capable of protection or otherwise; and whether the Petition is prohibited by the doctrine of res judicata.

Analysis and Determination

Issue One

Whether the Petitioners herein have any actionable interests and/or proprietary rights to and in respect of the suit property capable of protection or otherwise

26. The Petitioners herein have approached the court vide the Petition dated 16th July 2024 and wherein same are seeking a declaration that the Respondents have breached, violated and/or infringed upon their [Petitioners] rights to property. In this regard, the Petitioners have thus invoked the provisions of Article 40 of *the Constitution* 2010.

27. Despite the contention by the Petitioners that their [Petitioners] rights to property have been breached and/or violated, it is apposite to state that the same Petitioners are on record as stating that same have not been issued with any ownership documents.

28. For coherence, it is imperative to reproduce paragraphs 9 and 10 of the Petition.

29. Same state as hereunder:

    9. The Petitioners have been denied ownership documents by the 2nd Respondent despite several pleas and requests to issue them with ownership documents.

10. On various occasions, the Respondent unlawfully colluded and took a substantial part of the Petitioners' parcel of land without their consent or authority.

30. It is evident and apparent that the Petitioners herein have neither been issued with the requisite letter of allotment nor certificate of title, to an in respect of the suit property. Pertinently, the Petitioners are confessing that same [Petitioners] do not have any ownership documents to underpin their claim to the suit property or at all.

31. The question that does arise and which the court must grapple with touches on and concerns whether a person, the Petitioners not excepted, who has not been issued with any ownership documents to a designated parcel of land/plot can approach the court pursuant to Article 40 of *the Constitution* 2010.

32. To start with, it is my humble opinion that prior to and before approaching the court under Article 40 of *the Constitution* 2010, the claimant must demonstrate that same [claimant] has acquired and/or accrued rights to and in respect of the designated property. For good measure, it is the acquired and/or accrued rights which have crystalised that can be protected by invoking Article 40 of *the Constitution*, 2010.

33. Moreover, it is not lost on this court that Article 40 of *the Constitution* as read together with Article 64 of *the Constitution* only crystallise upon the acquisition of property rights. In this regard, it suffices to state that a person who has not acquired property rights cannot be heard to run to court seeking protection. Surely, a court of law can only protect property rights which have accrued; and not an imaginary, illusory/fictitious claim[s].

34. Additionally, it is worth pointing out that courts of law in the discharge of their constitutional and statutory mandate are not vested with the jurisdiction to confer property rights to persons, the Petitioners not excepted.

35. On the contrary, the duty and mandate of the court is to interpret and apply the law and to protect property rights that have accrued and crystallised. [See Article 20 (2) of *the Constitution* 2010].

36. Other the foregoing, it is also apposite to reference the decision of the Court of Appeal in the case of Kenya Forest Service v Rutongot Farm Limited [2015] KECA 160 (KLR) where the court stated and held thus:

> We take the view that, from the documents that were placed before the court below, this was a case of willing buyer/willing seller. Since Olsen opted to dispose of the suit land to the appellant, the question of deprivation of the suit land from the respondent cannot be said to arise. The respondent did not acquire any proprietary interest in the suit land which the Government either compulsorily acquired or confiscated or expropriated. As such, the application of Article 40 of *the Constitution* or even section 75 of the retired Constitution was inapplicable to the circumstances of this case. [Emphasis supplied]

37. The fact that one has to acquire property rights before same can approach a court of law vide Article 40 was re-visited and elaborated upon by the Court of Appeal in the case of Nelson Kazungu Chai & 9 others v Pwani University College [2017] KECA 135 (KLR) where the court stated thus:

22. Before we conclude, we need to say something about Dr. Khaminwa's submission about the appellants' human rights being violated, and also on forceful evictions. A right can only be protected when it exists in reality and not where it remains an illusion or a mere expectation. Right to property is not one of those rights that inhere to every human being upon birth. They are acquired in different ways after one comes into this world. One cannot acquire

property rights over another's property other than in a manner prescribed in law. In this case the appellants' claim to the suit property was in our view merely aspirational or rhetorical. This is so both under our very progressive Constitution and also under International Law. Indeed, other than call in aid International Law, learned counsel Dr. Khaminwa did not cite any specific instrument that the appellants can leverage on to elevate the appellant's right to practice and enjoy their culture on the respondent's property over the respondent's rights under Article 40 of *the Constitution*. In the absence of any right under the doctrine of legitimate expectation and of any other valid colour of right, the trial court could not have arrived at any other finding. Our conclusion is that the learned Judge arrived at the right decision based on the evidence placed before him, and he cannot be faulted.

38. In the absence of property rights to and in respect of the suit property, the Petitioners herein cannot be heard to contend that their rights under Article 40[3] of *the Constitution*, 2010; have been breached and/or violated.

39. Notably, one can only stake a claim for breach and violation of rights that have accrued and crystallised. Illusory and/or imaginary rights, like the one[s] being propagated herein, cannot found the basis of a claim for protection under Article 40 of *the Constitution*.

Issue Two

Whether the Petition is prohibited by the doctrine of Res Judicata

40. The Petitioners themselves have conceded that there existed a previous suit, namely, Isiolo CMELC No. 64 of 2013; which was filed by the 1st Respondent herein. In addition, the Petitioners have also acknowledged that the said previous suit impleaded some of the current Petitioners who were defendants. Furthermore, it has also been admitted that the suit under reference touched on and concerned the same suit property.

41. Additionally, the Petitioners have averred that the previous suit was heard and determined. Nevertheless, the Petitioners have posited that the said suit was [sic] filed by the 1st Respondent in an endeavour to deprive and/or deny the Petitioners of their land.

42. For ease of appreciation, it suffices to reproduce the contents of paragraphs 12 and 15 of the Petitions.

43. Same state as hereunder:

    12. The 1st Respondent colluded and filed Isiolo CMELC No. 64 of 2013 without informing and serving most of the Petitioners with the aim of grabbing their parcels of land.

    15. The Petitioners aver that save as what is disclosed in this Petition, there have been previous proceedings in Isiolo CMELC No. 64 of 2013 and there is no pending suit in any court between the parties over the same subject matter.

44. Though inelegantly worded, the paragraphs cited hereinbefore denote the existence of a previous suit that was heard and determined over and in respect of the suit property. Moreover, the Petitioners are indeed conceding that same or most of them were parties to the said previous suit.

45. Other than the foregoing, the 1st Respondent has also adverted to the existence of the previous suit. In addition, the 1st Respondent has posited that the said suit was heard and determined culminating into a judgement rendered on 10th June 2024.

46. To my mind, the Petitioners herein cannot be allowed to commence and prosecute the instant petition yet the issues that are substantially and directly in contest have been heard and determined in a previous

suit. Simply put, the Petition beforehand is barred by the doctrine of Res judicata. [See Section 7 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya].

47. The scope of the doctrine of res judicata has been highlighted and elaborated in a number/plethora of decisions. It suffices to cite and reference just but a few.

48. To start with the import and tenor of the doctrine of res judicata was underscored in the case of Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR; where the Court of Appeal stated and held as hereunder;

> Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms;
>
> (a) The suit or issue was directly and substantially in issue in the former suit.
>
> (b) That former suit was between the same parties or parties under whom they or any of them claim.
>
> (c) Those parties were litigating under the same title.
>
> (d) The issue was heard and finally determined in the former suit.
>
> (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.
>
> The learned Judges were fully aware and applied their minds to these elements when, applying this Court's decision in Uhuru Highway Development Ltd v Central Bank of Kenya [1999] eKLR they rendered the elements as;
>
> "(a) the former judgment or order must be final;
>
> (b) the judgment or order must be on merits;
>
> (c) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and
>
> (d) there must be between the first and the second action identity of parties, of subject matter and cause of action."

49. Res judicata was similarly elaborated upon by the Court of Appeal in the case of Kenya Commercial Bank Ltd v Benjoh Amalgamated 2016 eKLR where the court stated thus:

> As was stated in Henderson v Henderson (1843) 67 ER 313, res judicata applies not only to points upon which the court was actually required by parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time. In the case of Mburu Kinyua v Gachini Tutu (1978) KLR 69 Madan, J. Quoting with approval Wilgram V.C. in Henderson v Henderson (supra) stated:
>
>> "Where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case and will not (except in special circumstances) permit the same parties to open the same subject of ligation in respect of a matter which might have been brought forward as part of the subject in contest,

but which was not brought forward, only because they have from negligence, inadvertence, or even accident omitted part of their case. The plea of res judicata applies except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce judgment but to every point which properly belonged to the subject of litigation, and which parties exercising reasonable diligence, might have brought forward at the time" [emphasis added].

50. The Supreme Court of Kenya [the apex court] has also had an occasion to speak to the doctrine of res judicata. In particular, the court dealt with the doctrine of res judicata and the ingredients attendant thereto in the case of John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment), where the Court stated thus;

58. This court in the case of Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another Motion No 42 of 2014 [2016] eKLR (Muiri Coffee case) held as follows regarding the doctrine of res judicata:

"52. Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights. Such a perception has a basis in comparative jurisprudence; in the Ugandan case of Hon Norbert Mao v Attorney-General, Constitutional Petition No 9 of 2002; [2003] UGCC3, the petitioner brought an action on behalf of 21 persons from his constituency, for declarations under article 137 of the Uganda Constitution, and for redress under article 50 of that Constitution. The matter arose from an incident in which officers of the Uganda Peoples Defence Forces attacked a prison, and abducted 20 prisoners, killing one of them. Unknown to the petitioner, another action had already been filed under article 50, seeking similar relief; and Judgment had been given in Hon Ronald Reagan Okumu v Attorney-General, Misc Application No0063 of 2002, High Court HCT 02 CV MA 063 of 2002. The Constitutional Court dismissed the petition, on a plea of res judicata, declining the petitioner's pleas that certain important constitutional declarations now sought, had not been accommodated in the earlier Judgment.

53. In Silas Make Otuke v Attorney-General & 3 others, [2014] eKLR, the High Court of Kenya agreed with the Privy Council decision in Thomas v The AG of Trinidad and Tobago (1991) LRC (Const) 1001, in which the Board was "satisfied that the existence of a constitutional remedy as that upon which the appellant relies does not affect the application of the principle of res judicata".

54. The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.

55. It emerges that, contrary to the respondent's argument that this principle is not to stand as a technicality limiting the scope for substantial justice, the relevance of res judicata is not affected by the substantial-justice principle of article 159 of *the Constitution*, intended to override technicalities of procedure. Res judicata entails more than procedural technicality, and lies on the plane of a substantive legal concept.

56. The learned authors of Mulla, Code of Civil Procedure, 18th Ed 2012 have observed that the principle of res judicata, as a judicial device on the finality of court decisions, is subject only to the special scenarios of fraud, mistake or lack of jurisdiction (p 293):

> The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a Judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision."

57. The essence of the res judicata doctrine is further explicated by Wigram, V-C in Henderson v Henderson (1843) 67 ER 313, as follows:

> ... where a given matter becomes the subject of litigation in, and adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward, as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a Judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time" [emphasis supplied].

58. Hence, whenever the question of res judicata is raised, a court will look at the decision claimed to have settled the issues in question; the entire pleadings and record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case. The court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a court of competent jurisdiction. This test is summarized in Bernard Mugo Ndegwa v James Nderitu Githae & 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.

59. That courts have to be vigilant against the drafting of pleadings in such manner as to obviate the res judicata principle was judicially remarked in ET v Attorney-General & another, (2012) eKLR, thus:

> The courts must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in a form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi v National Bank of Kenya Limited and others, (2001) EA 177 the court held that, 'parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.' In that case the court quoted Kuloba J, in the case of Njangu v Wambugu and another Nairobi HCCC No 2340 of 1991 (unreported) where he stated, 'If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face-lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata….."

51. Pertinently, the doctrine of res judicata does apply even to constitutional petitions. In this regard, the Petitioners herein cannot resort to and clothe their claim to the suit property as a constitutional petition merely to evade and/or circumvent the plea of res judicata.

52. To this end, it suffices to reference and reiterate the case of E.T. v Attorney General & another [2012] KEHC 5506 (KLR) where the court stated thus:

66. The court held that the respondent having signed the consent letter which settled the matter was now estopped from relitigating the same issues under the guise of a constitutional grievance. In coming to its conclusion the court relied on the decision in Booth Irrigation v Mombasa Water Products Limited (Booth Irrigation No.1) Nairobi HCMisc. App. No. 1052 of 2004 (Supra) where the court held that, 'Although Constitutional Applications should be heard on merit, I find that there is nothing that would prevent a challenger of the alleged contravention moving this court to demonstrate that the application does violate fundamental principles of law including public policy for example the matter raised was res judicata. Res judicata is in turn based on the principle grounded on public policy that litigation at some point must come to an end. Res judicata is a fundamental principle of our law.' In respect of consent orders the court further stated, 'An equally cherished principle of our law is that a consent order or decree can only be set aside only on the grounds of fraud or mistake or any other grounds which would vitiate a contract. The court cannot prevent a party from demonstrating at the preliminary stage that there has not been any challenge to the consent or that the matter is res judicata and therefore there cannot be possibly be contravention under section 84 of *the Constitution* and that the application does breach fundamental principles of law.'

53. Arising from the foregoing, my answer to issue number two [2] is to the effect that the Petition beforehand is equally barred by the doctrine of Res Judicata and by extension, the provisions of Section 7 of the *Civil Procedure Act*, Chapter 21, Laws of Kenya.

Final Disposition:

54. Flowing from the analysis highlighted in the body of the judgement, it must have become apparent that the Petition beforehand is not only premature and misconceived but same indeed constitutes an abuse of the due process of the law. For coherence, same [Petition] ought not to have been filed in the first place.

55. In the circumstances, the final orders of the court are as hereunder:

    i. The Petition dated 16th July 2024 be and is hereby dismissed.

    ii. Costs of the Petition be and are hereby awarded to the 1st Respondent.

56. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2025.

OGUTTU MBOYA

JUDGE.

In the presence of

Mutuma Court Assistant.

Mr. Kevin Nyenyire for the Petitioners.

Mr. Muchiri for the 1st Respondent.

No Appearance for the 2nd Respondent.