



**Kitashori & 2 others (Suing as Personal Representatives of the Estate of the Late Sururu Ole Turere) v Kilesi & 4 others (Environment & Land Case E032 of 2024) [2025] KEELC 2882 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2882 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E032 OF 2024  
LN GACHERU, J  
MARCH 27, 2025**

**BETWEEN**

**PETER SANKALE KITASHORI ..... 1<sup>ST</sup> PLAINTIFF  
PETER MAINA KIBIRA ..... 2<sup>ND</sup> PLAINTIFF  
PHILLIP THUO MWANGI ..... 3<sup>RD</sup> PLAINTIFF  
SUING AS PERSONAL REPRESENTATIVES OF THE ESTATE OF THE LATE  
SURURU OLE TURERE**

**AND**

**WILLIAM KANTET OLE KILESI ..... 1<sup>ST</sup> DEFENDANT  
PARKISIA CHARS OLE TAKAI ..... 2<sup>ND</sup> DEFENDANT  
MOCHERE NYABERI ALFRED ..... 3<sup>RD</sup> DEFENDANT  
PARSIMEI EDWARD MUSIWI ..... 4<sup>TH</sup> DEFENDANT  
THE DISTRICT LAND REGISTRAR NAROK ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiffs herein filed this suit vide a Plaint dated 14<sup>th</sup> October, 2024, and sought for various orders against the Defendants herein jointly and severally. Among the prayers sought are a declaration that the subdivision of Cis-Mara/Olopito/493, was illegal, irregular, un-procedural and fraudulent and cancellation of various titles emanating from subdivision of land parcel No. Cis-Mara/Olopito/493, and other prayers.
2. Attached to the Plaint is Plaintiffs list of documents, and among them is Judgment in Narok CMCELC No.120 of 2018, wherein the Plaintiffs thereon are the Plaintiffs in this suit, wherein they



had sought various prayers; a declaration that the transfer of Narok Cis-Mara/Olopito/493, in May, 2015, to the 1<sup>st</sup> Defendant was fraudulent; cancellation of this title Narok Cis-Mara/Olopito/493, in the name of the 1<sup>st</sup> Defendant, and reversal of proprietorship of the said land to the estate of Sururu Turere(deceased).

3. After viva voce evidence, the trial court entered judgment for the Plaintiffs against the Defendants with costs. The said judgment was delivered on 6<sup>th</sup> August 2024 and a Decree was issued on 4<sup>th</sup> September 2024.
4. Thereafter the Plaintiffs herein who were also Plaintiffs in the subordinate court; Narok CMCELC No. 120 of 2018, filed this suit dated 14<sup>th</sup> October 2024. Therefore, the Plaintiffs herein have not executed and/ enforced the Judgment of the subordinate court in Narok CMCELC 120 of 2024.
5. Subsequent to filing of this suit, the 1<sup>st</sup> to 4<sup>th</sup> Defendants filed a Notice of Preliminary Objection dated 21<sup>st</sup> November 2024, and averred that this suit is res judicata and that it should be struck out with costs, as it was similarly heard and determined in Narok CMELC NO 120 OF 2018.
6. The said Notice of Preliminary Objection was canvassed by way of written submissions. The Objectors/ 1<sup>st</sup> to 4<sup>th</sup> Defendants filed their submissions dated 20<sup>th</sup> December 2024 through Stanley Dikkir Advocates and submitted that the suit herein is directly and substantially in issue with Narok CM ELC No.120 of 2018, which dealt with ownership of the land Parcel No. Cis-Mara/Olopito/493, which issues are also raised in the present suit.
7. On whether the former suit was between the same parties, it was submitted that the parties in the two suits are the same. On whether the parties are litigating under the same title, it was submitted that indeed the parties are litigating under the same title, being Cis Mara/ Olopito/493; and on whether the court that determined the previous matter was competent, it was submitted that the court that handled the matter was competent and had jurisdiction. Therefore, this matter is res judicata and should be dismissed and / struck out with costs
8. The Objectors relied on Section 7 of the *Civil Procedure Act* which states; -

“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,”

9. He also relied on the case of Kenya Commercial Bank Ltd vs Muiri Coffee Estate Ltd & another [2016] eKLR, where the court held; -

“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.”



10. On the principles to be considered in a claim where Res judicata is pleaded, the Objectors cited the case of IEBC vs Maina Kiai & 5 others [2017]eKLR, wherein the Supreme Court held; -

- “ a) The suit or issue directly and substantially in issue in the former suit.
- b) That the former suit was between the same 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.”

The Defendants/Objectors urged the court to strike out this suit for being res judicata with costs to the Defendants.

11. The Plaintiffs opposed this Notice of Preliminary Objection and averred that Narok CMELC No. 120 of 2018, dealt with ownership of Cis-Mara/Olopito/493, wherein the trial court determined that the said parcel of land belonged to the estate of Sururu Turere (deceased), and barred the 1<sup>st</sup> Defendant and any person claiming under him from entering upon, or remaining on the said suit land; they also averred that the instant suit deals with the question of subdivision of Cis-Mara/Olopito/493, and they are seeking a declaration that the subdivision of the said suit land is illegal, irregular, un-procedural and fraudulent and also sought for the reversal of the said parcel of land to the estate of Sururu Turere( deceased).

12. The Plaintiffs relied on various cases among them the case of Caltex Oil (K) Ltd vs Mohamed Yusuf and others, wherein the court held: -

“For the doctrine of res judicata to apply, three basic conditions must be satisfied. The party relying on it must show;

- i. That there was a former suit or proceeding in which the same parties as in the subsequent suit litigated.
- ii. The matter in issue in the latter suit must have been directly and substantially in issue in the former suit.
- iii. That a court competent to try it had heard and finally decided the matter(s) in controversy between the parties.”

13. The Plaintiffs also submitted that the parties in this case are not the same parties and are not acting in the same capacity as in Narok CMELC No. 120 of 2018, and the matter in issue herein are not directly on substantially in issue in the former suit, and the doctrine of res judicata cannot apply.

14. The Plaintiffs also relied on the case of Agnes Wachu Wamae & 97 others vs Barclays Bank of Kenya, where court relied on the principles in Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors [1969]EA 696 and held: -

“a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer



the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

15. It was the Plaintiffs further submissions that the court herein will have to ascertain facts and exercise discretion in determination of this Preliminary Objection filed by the 1<sup>st</sup> to 4<sup>th</sup> Defendants herein, and therefore, it is not a proper Preliminary Objection as envisaged in Mukisa Biscuit’s case.
16. Having considered the instant Preliminary Objection and the rival written submissions, the court finds the issues for determination are;
  - i) whether the Preliminary objection herein raises pure points of law;
  - ii). whether the suit herein is res judicata.
17. What constitute a Preliminary Objection? In the case of Hassan Ali Joho & another vs Suleiman Said Shabal & others; SCK Pet. No 120/3 [2014]eKLR, the Supreme Court re-stated the definition of Preliminary Objection given in the case of Mukisa Biscuit Manufacturing vs West End Distributors Ltd [1969]EA, which held; -

“A preliminary objection consists of a point of law which has been plead or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.”
18. Therefore, a Preliminary Objection must raise pure point of law, which if argued may dispose of the entire suit, and it should be based on the presumption that the pleadings and/or facts as pleaded by the opposite side are correct or agreed facts.
19. In the instant Preliminary Objection, the 1<sup>st</sup> to 4<sup>th</sup> Defendants have averred that the suit herein is res judicata, and should be dismissed. It is trite that the principle of res judicata is a matter of law, while in determining whether it applies to a specific case ,the court will have to determine facts. However, in this case, the Plaintiffs did plead that there was indeed a case involving Plaintiffs and 1<sup>st</sup> Defendant & another before the Narok Chief Magistrate’s Court, being case No CMELC NO.120 OF 2028, wherein judgment was delivered 6<sup>th</sup> August, 2024.
20. It is evident that a Preliminary Objection stems from the pleadings, and in the instant case, the Plaintiffs have pleaded the existence of Narok CMELC No. 120 of 2018. Therefore, the court finds that the instant Preliminary Objection stems from the pleading, and it meets the threshold of what amount to a Preliminary Objection.
21. The issue of res judicata is found in section 7 of the *Civil Procedure Act*, and this principle is invoked to prevent parties from re-litigating issues that have already been decided in a final judgment by a court of competent jurisdiction. Therefore the doctrine of res judicata is based on the principle of finality which is a matter of public policy see the case of John Florence Maritime Services Limited & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others [2021] eKLR
22. The doctrine of res judicata is invoked is to ensure that legal disputes are resolved definitively and efficiently. Once a court of competent jurisdiction has made a final judgment on a matter, the parties are generally barred from relitigating the same issue in subsequent proceedings.
23. Further, this doctrine is to the effect that once the rights of parties have been determined judicially, such edict stood as a conclusive statement as to those rights. Parties are only allowed to bite the



cherry once. The Principles to be considered a suit where res judicata had been alleged, have been elaborated by courts in various decisions. In the case of John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 Others [2021] eKLR the Supreme Court stated that for res judicata to be invoked in a civil matter the following elements had to be demonstrated:

- a. There was a former judgment or order which was final;
- b. The judgment or order was on merit;
- c. The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
- d. There had to be between the first and the second action identical parties, subject matter and cause of action.

24. In the instant suit, the parties herein are the same, save for the fact that more Defendants have been added, from the original in CMELC 120 OF 2018. Further, the issues raised herein are over land parcel No. Cis-Mara/Olopito/493, which parcel of land was later subdivided into various parcels of land. The Plaintiffs invites the court to declare the said subdivision as illegal, irregular and fraudulent.
25. The Judgment on 6<sup>th</sup> August 2024, in CMELC NO 120 OF 2018, was delivered by a court of competent jurisdiction, which Judgement allowed the Plaintiffs case; and among the prayers sought and orders granted was; declaration that the transfer of the suit land Cis-Mara/Olopito/493, was fraudulent and the same was reversed to the estate of Sururu Turere( deceased).
26. A Decree was issued, and if the said Decree was enforced through execution, then the Land Registrar Narok, would have reverted the proprietorship of the said land to the name of Sururu Turere( deceased), and that would mean cancellation of any consequential transactions emanating from the said fraudulent transfer.
27. Therefore, this court finds that the issues raised herein are directly and substantially the same as the former suit( CMELC 120/ 2018), and parties are litigating under the same titles, and the former suit was determined by a competent court with jurisdiction.
28. It does not matter that the Plaintiffs herein have added new Defendants the courts have severally held that a court should be wary of parties who bring in new parties to a suit to disguise it as a new suit and escape the doctrine of res judicata. See the case of Diocese of Eldoret Trustees (Registered) v Attorney General (on behalf of the Principal Secretary Treasury) & another [2020] eKLR  

“Courts must always be vigilant to guard against litigants who metamorphosize to bring suits as new litigants or add others to circumvent the doctrine of res judicata. Adding or subtracting litigants in a suit that is substantially or directly related to a previous suit with the same subject matter does not sanitize the suit to make it a fresh suit. It actually worsens the situation by making the suit terminate prematurely vide a preliminary objection.”
29. In the instant case, the court finds that the Plaintiffs after extracting the Decree, should have gone ahead and executed or enforced it, which Decree is in their favour, instead of filing a new suit over the same parcel of land, and which suit involves same parties apart from the additional Defendants.
30. Consequently, this court finds the suit herein is res judicata, and therefore, the Preliminary Objection dated 21<sup>st</sup> November, 2024 is merited and allowed entirely. Consequently, the suit herein is struck out entirely with costs to the Defendants.



It is so ordered

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 27<sup>TH</sup> DAY OF MARCH, 2025**

**L. GACHERU**

**JUDGE**

**27/3/2025**

Delivered online in the presence of

Meyoki – Court Assistant

Ms Naiponoi for the Plaintiffs

Mr Dikkir for 1<sup>st</sup> Defendant and H/B for Mr Okinyi for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants.

N/A for 5<sup>th</sup> Defendant.

**L. GACHERU**

**JUDGE**

**27/3/2025**

