



**Korio & another v Korinko & 6 others (Petition E005 of 2024)  
[2025] KEELC 6413 (KLR) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6413 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
PETITION E005 OF 2024  
MN MWANYALE, J  
SEPTEMBER 29, 2025**

**BETWEEN**

**JAMES LESHAN KORIO ..... 1<sup>ST</sup> PETITIONER  
JOAB LEPOSE ..... 2<sup>ND</sup> PETITIONER**

**AND**

**MOSES L. KORINKO ..... 1<sup>ST</sup> RESPONDENT  
MUJAID KUROMONGI ..... 2<sup>ND</sup> RESPONDENT  
SIMEON TIEPOON ..... 3<sup>RD</sup> RESPONDENT  
DAVID OLE NTUKAI ..... 4<sup>TH</sup> RESPONDENT  
LAND ADJUDICATION & SETTLEMENT OFFICER, TRANSMARA SUB-  
COUNTIES ..... 5<sup>TH</sup> RESPONDENT  
THE LAND REGISTRAR, TRANSMARA SUB-COUNTIES . 6<sup>TH</sup> RESPONDENT  
HON ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

1. Vide their Notice of Motion Application dated 16/9/2024 the Applicants seek the following prayers:
  - i. the Honourable court be pleased to strike out and /order struck out the Petitioners/ Respondents petition lodged and/or filed in court on the 21<sup>st</sup> June 2024 vide the Petition dated 20<sup>th</sup> July 2024 on account on being Resjudicata, Sub judice. Scandalous, frivolous, and an abuse of the court process;
  - ii. Costs of this Application and the Petition be borne by the Petitioners /Respondents.



- iii. The Honourable court be pleased to grant such further order and/or other orders be made as the court may deem fit just and expedient.
2. The grounds in support of the Application are interalia that:
  - i. The 1<sup>st</sup> Respondent/ Applicant is the former Chairman of Shartuka Group ranch now dissolved , and some members of the defunct group ranch sued him and other group officials vide court of Appeal Civil Application number 195 of 1998, Kisumu HCC no 237 of 1998(hitherto NAKURU HCCno252 of 1998), Court of Appel Civil Appel no 237 of 1998 Kakamega HCC Misc Application no103 of 2003 vid e Court of Appeal Civil Appeal no 5 of 2004 and recently Kilgoris Elc Petition No. 7 Of 2021(formely Nakuru Hc Petition 38 Of 2013 And Norok Elc No 3 Of 2017) all in respect of Transmara/Shartuka/1 seeking revocations of Titles and injunctive orders against the Applicants.
  - ii. The later suit sought to challenge the process of subdivision of the original suit property and cancellation of various titles and the said petition was heard and dismissed as Resjudicata by dint of previous suits and being dissatisfied members of the Group ranch filed an appeal being Nakuru Civil Appeal no E34 of 2023seeking injunctive orders.
  - iii. That this suit is a replica of Kilgoris Petition No 7 Of 2021where the petitioners therein were challenging the process of subdivision of the original suit property and registration to members of the defunct Group ranch hence rendering this petition Res judicata the previous petition itself having been found Res judicata in the first instance.
  - iv. In view of the pendency of Nakuru Civil Application no E034 of 2023 at the Court of Appeal renders this petition subjudice.
3. The Application was supported by a supporting affidavit of Moses Lemashon Korinko who reiterated the grounds in support of the application and annexed the following , an authority to plead, copies of the Certificate of incorporation and minutes of elections, Rulings and orders in respect of Kilgoris ELC Petition 7 of 2021 (formerly Nakuru High Court Petition no 38 of 2013 and Narok ELC NO 3 of 2017), copy of Notice of Appeal , copy of Nakuru Court of Appeal Civil Application no E034 of 2023.
4. The first Petitioner/ Respondent, Mr. James Korio, filed a Replying affidavit dated 18<sup>th</sup> June 2025 with a whopping 49 paragraphs which essentially depones that the issues raised in this petition are not Subjudice and/or Resjudicata as they are new issues not raised previously and that there was mix up in issues of representations as the officials of Shartuka Group Ranch had not authorized the firm of Oguttu Mboya & Ochwal Partners Advocates to file the application and that the issues raised in this Application relate to Olomismis Group ranch and not Shartuka Group ranch, and further that a 3 judge bench decision is binding to a single judge.
5. The petitioners had vide the application dated 18/9/2024 sought to bar the firm of Ogutu Mboya and Ochwal advocates from representing the respondents in this petition on the grounds interalia that the said firm of Advocates had acted for the first petitioner in Kisii ELC No. 21 of 2013 and a ruling dismissing that application was delivered on 29<sup>th</sup> January 2025.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Petitioners / Applicants filed the petition as well as the replying affidavit to the application subject of this ruling in person , they then in the course of the proceedings instructed the firm of Nyariki and Co. Advocates to act for them and at which point the court directed that the application to proceed by way of oral submissions but the Petitioners/ Respondents immediately



withdrew instructions from the said firm of advocates after one court appearance necessitating change in directions on proceedings with the matter from oral submissions to written submissions.

7. Submissions were filed and exchanged between the Petitioners/Respondents and the Applicants herein, the 5<sup>th</sup> to 7<sup>th</sup> Respondents represented by the Attorney General's Office Kisii supported the application but did not file submissions, the parties' respective submissions are summarized as herefollows:

### **Applicants' Submissions**

8. The Applicants framed and submitted on 4 issues. on issue number 1 as to whether this petition is resjudicata and/or subjudice, it is the Applicants submissions that the petition herein is Resjudicata as a similar petition being Kilgoris ELC petition no 7 of 2021(formerly Nakuru HC Petition Number 38 Of 2013 and Narok ELC NO.3 OF 2017)in respect of the process of subdivision of Transmara/Shartuka/1 and revocation of the resultant titles was heard and determined to be Resjudicata by dint of the previous suits and an appeal was preferred against the said decision which appeal is pending before the Court of Appeal and a Civil application seeking injunctive orders being Civil Application no E034 of 2023 is yet to be determined by the Court of Appeal .the Applicants rely on section 7 of the Civil procedure Act as well as the decision in the case of Bank of Africa Limited Another VS T.SS Investment Limited and 2 others which decision quotes another decision in the case of Gladys Nduku Nthuki vs Letshego Kenya Limited, Mueni Charles Maingi (2022) eKLR.
9. On issue number 2 as to whether the Court has jurisdiction to hear and determine the Petition, the Applicants submit that the prayers sought in the petition would be available in a normal suit and the claim on fraudulent subdivision is time barred hence the petition so as to circumvent the limitations of time yet the reliefs sought were available in a normal suit. In support of this position the Applicants place reliance in the decision in the case of Gabriel Mutava and 2 others vs Managing Director Kenya Ports Authority and Another 2016 eKLR, Fortis Tower Management vs Trendmark Limited (2016) eKLR, and Speaker of National Assembly vs Njenga Karume. 1992(eKLR)
10. The Applicants further submit that the petition herein is scandalous and an abuse of the court process. They submit that the pleading is an abuse of the court process if it is frivolous or vexatious or both and in support of this argument, they place reliance on the decision in the case of Madison Insurance Co. Ltd vs Augustine Kamanda Gitau (2020) eKLR). On the strength of the above submission the Applicant prays that the Application be allowed.

### **Respondents' Submissions**

11. On their part the respondents framed and submitted on 5 issues, the 1<sup>st</sup> to the 3<sup>rd</sup> Issue relate to the merits or otherwise of the main petition including capacity of the Applicants to file the application while the 5<sup>th</sup> issue relates to the issue of the firm of Ogutu Mboya and Ochwal partners advocates and their participation in this matter. only the fourth issue relates to the issue of whether or not the petition is Resjudicata. Which is the main issue in this application. Consequently the court shall not consider the other issues raised in the submissions of the respondents as the same dwell on the issues of the merits or otherwise of the main petition as well as the issue of the representation of the Applicants by the firm of Ogutu Mboya Advocates as the former issues are premature the petition having not been heard while the latter issue was heard substantively and a ruling thereof delivered as observed at paragraph 4 of this ruling.
12. On Resjudicata the respondents submit that petition is different from a Complaint and that the petition herein seeks different remedies and is based on different causes of actions. The respondents submit



that the pendency of an appeal in itself does not bar a fresh suit on the same property from being lodged. The respondents submit that the petition involves new set of facts and issues that were not in the previous suit, and that the parties are also not the same in the two cases hence the same ought to be heard on its merits. In support of this proposition the respondents cite the decision in the case of *Mitu-Bell Welfare Society v. Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae)* [2021] eKLR.

13. On costs the respondents submit that this is a public interest Litigation hence each party should bear its own costs.
14. Before framing issues for determination, the court notes that from the submissions of the Respondents that there is a subtle admission to the extent of the existence of the previous suit, but the respondent argues that the issues therein and the parties were not the same

### **Issues For Determination**

15. Having analysed, the application, the supporting and replying affidavits, and annexures thereto and considered the law the court frames the following as issues for determination:-
  - i. Whether or not the suit is Resjudicata in view of the previous suit to wit Kilgoris ELC Petition 7 of 2021 (formerly Nakuru High Court Petition no 38 of 2013 and Narok ELC NO 3 of 2017)?
  - ii. Whether or not the application is merited generally?
  - iii. What orders ought to issue?
  - iv. Who bears the costs of the application?

### **Analysis and determination**

16. In the main petition the Petitioners have sought for:
  - i. a declaration that the subdivision of Narok/Transamara/Shartuka/1 and the subsequent transfers of all the subsequent numbers in favour of non-members was fraudulent illegal and the same be revoked.
  - ii. An eviction order be issued against the other non-members either by themselves, their agents or any other persons claiming any right through them in land parcels in the names of the individuals not in the original register.
  - iii. The court be pleased to issue a permanent injunction restraining the respondents either by themselves, their agents, invitees, employees, servants and/or anyone under their instructions or authority from entering and interfering with the Land Affairs of Shartuka Group ranch.
  - iv. the court be pleased to issue such further orders and/or order as it may deem just and expedient from the ends of justice,
  - v. costs of the suit and interest.
17. In the previous suit being Kilgoris ELC Petition 7 of 2021 (formerly Nakuru High Court Petition no 38 of 2013 and Narok ELC NO 3 of 2017) the reliefs sought therein from annexure MLK 4, were as follow:
  - i. A declaration that the Shartuka Group Ranch was duly dissolved pursuant to the provisions of section 13 of the Land (Group Ranch Representation Act) Cp 287 and the minutes of



7<sup>th</sup> January 1992 and the consent issued thereof by the Director of Land Adjudication and in accordance to Article 36 of [the Constitution](#).

- ii. A permanent injunction do issue against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents their agents, employees or any person acting under the direction and/or with their cooperation restraining them from issuing any illegal title deeds based on the purported new register for Shartuka group ranch, alienating, wasting disposing off or selling any of the following parcels of land known 512-514, 518, 524, 545-569, 570, 571, 573-593, 595-611, 620, 639, 641-674, 676-693, 695, 700-714, 719-739, 743, 744, 746, 748, 753-759, 762-771, 774-787, 789, 791, 794, 818-821, 823, 824, 826, 835, 852, 854, 857, 858, 859, 17, 18, 26, 29, 36, 45, 63, 85, 92, 103, 111, 112, 117, 126, 127, 130, 147, 149, 155, 180, 182, 206, 213, 221, 223, 240, 251, 254, 258, 297, 319, 316, 332, 320, 370, 369, 359, 362, 350, 388-400, 386, 385, 372-382, 401-407, 411-416, 418-511 respectively and have the status quo maintained thereafter.
  - iii. an order that the only 334 bona fide membership register of the group ranch to be relied upon by the time of the dissolution of the group ranch and as ordered by the decision of the Court of Appeal on 15<sup>th</sup> September 1998.
18. Resjudicata is provided for under Section 7 of the [Civil Procedure Act](#) while subjudice is provided for under Section 6 of the [Civil Procedure Act](#).
- The elements to be proven in the case of a plea of Resjudicata were restated by the Supreme Court in its decision in the case of [John Maritime Florence Services Limited and Another Vs. Cabinet Secretary and Transport and Infrastructure 2021 \(KESC\) 39](#) where the court held inter alia “for the doctrine to apply the following must be demonstrated
- a. There is a former judgment or order which is final.
  - b. The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties.
  - c. There must be between the first and second suits, identical parties, subject matter and cause of action”.
19. The court shall apply each of the elements above to the suit herein.
20. On the issue of the identical parties, subject matter and cause of action, the Petitioners herein are different from the Petitioners in the previous petition, The Respondent submission on this limb, is that the Petitioners being a different party; and hence the petition herein is not Resjudicata.
21. In its decision the case of [Bank of Africa Kenya Limited and Another Vs. TSS Investment Limited and 2 Others Civil Appeal E055 of 2022 \(2024\) KECA 410 \(KLR\)](#) the court of appeal at paragraphs 33 and 40 as follows: -

“However, it is trite the mere addition of parties in a subsequent suit does not necessarily render the doctrine of Resjudicata in application since a party cannot escape the said doctrine by simply undertaking a cosmetic surgery to his pleadings. If the added parties peg their claim under the same title as the parties in the earlier suit; the doctrine will still be involved since the addition of the party would in that case be for the sole purpose of decoration and dressing nothing else...”

22. In his final orders in the previous Petition to wit – Kilgoris Petition No. 7/2021 Washe J observed that the said petition was Resjudicata in view of previous proceedings.



23. The Petitioner herein is litigating on the subdivision and transfer of Transmara/Shartuka/1 to non-members while the previous Petition equally sought for similar reliefs as set out at paragraph 17 of this ruling. Indeed, the titles sought to be cancelled in this petition emanate from the subdivision of Transmara/Shartuka/1 while some of the titles that sought to be cancelled in the previous petition equally emanate from Transmara/Shartuka /1 and are thus deemed to have formed part of the same subject matter.
24. On the issue of the cause of action, the Petitioners suit herein as can be glared at paragraph 17 of the Petition is that due process in registration was not followed.
25. It follows from the above that the cause of action, and subject matter in the present suit is identical to the previous suit. Though the plaintiff herein is different, it has been held by various dictas, that the mere addition and/or substitution of parties does not make it a fresh suit. In the decision in the case of Diocese of Eldoret Trustees (Registered) Vs. Attorney General (On behalf of the Principal Secretary Treasury and Another (2020) eKLR the court observed as follows: -

“ 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 Resjudicata.

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.”
26. Having found the cause of action, and subject matter to be similar, and guided by the decision in the Diocese of Eldoret Registered Trustees as well as Court of Appeal decision in the Bank of Africa Kenya Limited and Another Vs. TSS Investment Limited, the court finds no hesitation in making a finding that the parties, subject matter and cause of action are the same between this case and the previous suit. More so because vide Section 43 of the Evidence Act, the previous judgment conferred ownership to the owners thereof, and save for an Appeal, before the Court of Appeal this court cannot make a contrary finding.
27. On the remaining elements of Resjudicata as espoused in the John Florence Maritime Case, the judgment in Kisii ELC Case NO. 249/2013 was delivered by a court of competent jurisdiction and although the said judgment is on appeal, it suffices being a final judgment for purposes of Resjudicata under Explanation 2 of Section 7 Explanation 2 provides “for the purposes of this Section the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court”.
28. The court is thus satisfied that this Petition is Resjudicata and the court is barred from hearing and determining the same, the issues of Membership of the Shartuka group ranch and the subdivision of Transmara/Shartuka /1 were heard and determined in previous suits and were found to be Resjudicata in Kilgoris Petition No. 7 of 2021.
29. The inevitable conclusion is that this suit is thus Resjudicata and court shall not determine the other issues on its merit as the same is hereby struck out.
30. This matter is definitely not a public interest litigation as is submitted by the Petitioners/Respondents hence the costs of the Application and the main petition are awarded to the 1<sup>st</sup> to 4<sup>th</sup> Respondents / Applicants as costs follow the event; in any event.

**DATED AT KILGORIS THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2025.**



**HON. M.N MWANYALE**

**JUDGE**

In the presence of

CA – Emmanuel/Sylvia/Sandra

Mr. Mulisa for the Applicant

Mr. James Leshan Korio Respondent/Petitioner acting in person

