



**Njogu v Ndembu & another (Environment and Land Case Civil Suit E011 of 2022) [2023] KEELC 16690 (KLR) (21 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16690 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT AND LAND CASE CIVIL SUIT E011 OF 2022  
EC CHERONO, J  
MARCH 21, 2023**

**BETWEEN**

**JAMES NJOGU ..... PLAINTIFF**

**AND**

**NDEGE NDEMBU ..... 1<sup>ST</sup> RESPONDENT**

**MURITHI KAREU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant's notice of motion dated March 7, 2022 seeks the following orders;
  - a. spent.
  - b. That the Honourable court be pleased to place a temporary order against the respondent either by themselves, their agents or anyone claiming under them from evicting the applicant from land parcel Baragwi/Raimu/237 pending inter partes hearing of the application and thereafter the main suit.
  - c. Costs of the application.
2. The application is supported by an affidavit where the applicant depones that he has been in occupation of 3 acres of the suit parcel of land for over 30 years and has put up a permanent house, fenced and planted trees. That the respondents are threatening to evict him after he served them with a chamber summons application for threatening to sell the parcel. That if the threats are put to action, he stands to lose his coffee plantation and houses.
3. The 2<sup>nd</sup> respondent opposed the application by way of a replying affidavit sworn on May 9, 2022 in which he deposed inter alia that the suit parcel of land belongs to his deceased father. That by a ruling of the court given on November 12, 2021, the suit parcel of land was divided into 2 portions; one for himself and the other for the applicant. That after the judgement, the applicant placed a caution on



the land to prevent him from accessing the parcel even after survey was conducted on 28/02/2022 for purposes of sub-division. He therefore urges the court to dismiss the application.

4. The parties agreed to canvass the application by way of written submissions. The applicant as well as the 2<sup>nd</sup> respondent filed their respective submissions. The applicant's submissions are dated July 25, 2022 and the 2<sup>nd</sup> Respondent's submissions are dated June 30, 2022. They have all been considered.
5. Having perused the documents filed herein, it is clear that the 1<sup>st</sup> applicant died and was substituted with the 2<sup>nd</sup> respondent. At the time of his death, he was the registered owner of the suit parcel of land. This court issued orders on December 7, 2021 ordering the subdivision of the suit parcel into 2 portions; one for the applicant and the other for the 2<sup>nd</sup> respondent. The court further issued orders on September 17, 2021 directing the land Registrar Kirinyaga to lift all encumbrances on the parcel.
6. From the chronology of events tendered by the 2<sup>nd</sup> respondent, I am persuaded that this matter has been litigated upon by the applicant and the 2<sup>nd</sup> respondent resulting in the court issuing orders that settled all the issues in contention to finality. I also note that the orders alluded to were issued before the summons in the present suit were taken out.
7. From my analysis of the application as well as the chamber summons, I am satisfied that the orders issued by the court directing the sub-division of the land have not been set aside, varied, vacated and or appealed against and the instant application together with the originating summons are *res judicata*.
8. The doctrine of *res judicata* prevents parties from bringing back suits which have already been determined in earlier proceedings. The same was explained in The *Independent Electoral and Boundaries Commission V Maina Kiai & 5 others* (2017) eKLR thus; -

The rule or doctrine of *res judicata* serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and commonsensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of *res judicata* thus rest in the public interest for swift, sure and certain justice.

9. It is clear that the parties herein have litigated over the subject matter herein earlier and final orders issued. I therefore find that the application and originating summons offend the rules of procedure.
10. The orders sought by the applicant are no available at this point in time having been dispensed with by the court earlier. I find that the applicant is trying to re-introduce the same subject matter in court through the back door.
11. In the end, I find no merit in the application which is hereby dismissed with costs to the 2<sup>nd</sup> respondent. The interim order earlier issued in the matter are hereby vacated and or set aside and the land registrar Kirinyaga county to be notified accordingly.

**READ, DATED AND DELIVERED AT BUNGOMA VIRTUALLY AT BUNGOMA THIS 21<sup>ST</sup> DAY OF MARCH, 2023**

**HON. E.C CHERONO**

**ELC JUDGE**



**In the presence of;**

**M/s Waweru for the 2<sup>nd</sup> Respondent**

**Plaintiff/Appellant - absent**

