



**Kigoro & 2 others v Kigoro (Miscellaneous Civil Application
E021 of 2020) [2022] KEHC 3072 (KLR) (26 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 3072 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS CIVIL APPLICATION E021 OF 2020**

LM NJUGUNA, J

APRIL 26, 2022

BETWEEN

JOSEPH NJERU KIGORO 1ST APPLICANT

AGNES NGUI KIURA 2ND APPLICANT

EUPHRAITH MBANDI NJOGU 3RD APPLICANT

AND

PETERSON MURIUKI KIGORO RESPONDENT

RULING

1. The summons (General) dated 19th day of October 2021 has been brought by the 1st applicant Joseph Njeru Kigoro on behalf of himself and the other two applicants. It seeks for the following orders;
 - i. spent
 - ii. spent
 - iii. That the respondent herein Peterson Muriuki Kigoro, his agents servants or anybody claiming through him be restrained from demarcating, subdividing, causing acts of wastages or in any way dealing or intermeddling with the deceased's properties namely land parcel No. Embu/ Kithunthiri/1965, 1963 and Plot No. 25B Kiritiri Market pending the hearing and determination of the summons for revocation of grant.
 - iv. That this honourable court do inhibit any dealings in respect to the said deceased land parcel No. Embu/Kithunthiri/ 1965, 1963 and Plot No. 25B Kiritiri Market.
 - v. That the cost of this application be provided for.
2. It is premised on the grounds on its face and it's supported by the annexed affidavit sworn by the 1st applicant, on the 19th day of October, 2021.



3. He avers that the certificate of confirmation of the grant issued to the respondent, on the 5th day of June, 2016 was obtained fraudulently by the making of a false statement and by concealment from the court of material facts; that it was obtained by means of untrue allegation of a fact essential in a point of law being that the chief Mavurori Location authored the letter instead of their area chief Kithunthiri location and that the letter failed to disclose the two wives, two sons (by then who were alive) and nine daughters of the deceased; that the respondent to whom the grant was made, had full and detailed information within his own knowledge that the proceedings that led to obtaining of the grant were forged, fraudulent and defective and its effect was meant to completely disinherit the nine (9) daughters of the deceased and orphaned children of the said two sons who belong to the 3rd house who by then were alive.
4. That the respondent has sub-divided part of the deceased estate known as Embu/Kithunthiri/1965 into resultant land parcel Nos. 3255 and 3260 and have disposed off some and has already made a unilateral decision to sub-divide it further which has created fear that he may dispose the whole parcel of land which may render the 1st, 3rd and 4th house beneficiaries of the estate of the deceased, landless.
5. He also contended that the respondent has been intermeddling with the estate namely plot No. 25B Kiritiri market and rental houses built on land parcel No. Embu/Kithunthiri/1963, to his own and the 2nd houses members' benefits.
6. The application is opposed by way of the grounds of opposition dated the 10th day of December, 2021 and a replying affidavit sworn by the respondent, on even date.
7. The respondent avers that the summons is res judicata, it is an abuse of the court process and that the court lacks jurisdiction to entertain the same.
8. He deposes that the 1st applicant did not annex any evidence to demonstrate that he has authority to act on behalf of his co-applicants.
9. Further that the applicants filed an objection and protest in Siakago Succession Cause No. 19 of 2020 which were heard and dismissed. They later filed summons in High Court Misc. Succession Cause No. 5 of 2015 for annulment and revocation of the grant that was confirmed on the 5th day of June 2014 in Siakago Succession Cause No. 19 of 2020 and on the 27th April 2017 parties agreed that the estate be distributed as per the certificate of confirmation of grant dated the 5th day of June 2014. A consent dated 27th April, 2017 was recorded to that effect and the court, on 15th June, 2017 ordered by consent that the estate be distributed as per the said grant.
10. The respondent deposes that, the applicants filed an application to set aside the consent order but their application which is dated 24th September, 2018 was dismissed. That on the 20th February, 2019 they filed summons for revocation and annulment of the grant confirmed on the 5th June, 2021 but the same was found to be res judicata and it was dismissed. He averred that the applicants did not appeal against the said ruling dated 21st day of March, 2019.
11. The respondent further deposed that on the 6th September, 2021 the applicants filed summons for revocation of the grant confirmed on 5th June, 2014, in Succession Cause No. 19 of 2020 at Siakago which was also dismissed on the 4th day of November, 2021 for want of prosecution. Further that the applicant's allegations of fraud and forgery are unfounded and untenable as the same were reported to the police, following which, he was prosecuted in Criminal Case No. 6 of 2020 at Siakago but he was acquitted.



12. The court has carefully considered the summons for annulment of the grant together with the affidavit in support as well as the replying affidavit.
13. When the application came up for hearing, the court gave directions on filing of submissions but the applicants did not comply with the court directions in that regard.
14. The respondent in his submissions has urged the court to dismiss the summons mainly for the reason that the same is *res judicata* and that, it is an abuse of the court process. He avers that for that reason, the court has no jurisdiction to entertain the summons. I have carefully perused the replying affidavit filed herein by the respondent and the annexures thereto. The succession cause herein was first filed in Siakago being Succession Cause No. 19 of 2020 wherein the applicants filed an objection and a protest but both were dismissed. The grant was confirmed on the 5th day of June, 2014.
15. The applicants brought an application to annul the said grant and vide a consent dated 5th June 2014 parties agreed to distribute the estate of the deceased as per the certificate of confirmation of the grant dated 5th day of June, 2014. Their attempt to set aside that consent was not successful. Their other two attempts to revoke the grant were unsuccessful as both summons were dismissed by the court as one was found to be *res judicata* and the other one was dismissed for want of prosecution.
16. The principle of *res judicata* is anchored in Section 7 of the [Civil Procedure Act](#) which provides;

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly or substantially in issue in a former suit 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.
17. In the case of [Njue Ngai vs Ephantus Njiru Ngai & another](#) [2016] eKLR the Court of Appeal had this to say about the principles of *Res Judicata*;

What is *res judicata* and when does it apply? The Latin of it simply, “a thing adjudicated”. But it has over time received extensive judicial interpretation in various jurisdictions of the globe which we shall not be tempted to explore here.
18. Suffice is to adopt the definition in [Black’s Law Dictionary](#), Ninth Edition, as;

“(1) an issue that has been definitively settled by judicial decision;

An affirmative defence barring the same parties from litigating a second law suit on the same claim or any other claim arising from the same transaction, or series of transactions and that could have been but was not raised in the first suit.
19. The logic behind the principle was discussed by the court in the case of [Ukay Estate Ltd & ano. vs Shah Hirji Manek Ltd & 2 others](#) [2006] eKLR in which the court stated as follows;

“The doctrine is not merely a technical one applicable only on records. It has a solid base from considerations of high public policy in order to achieve the twin goals of finality to litigation and prevent harassment of individual twice over the same account of litigation. Put another way, there must be an end to litigation and no man shall be vexed twice over the same cause”.



20. The same principle was espoused in the case of *Lal Chand Vs Radha Kishan*, AIR 1977 SC 789 in which the Indian supreme court held that;

“The principle of *res judicata* is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue. The practical effect of the *res judicata* doctrine is that it is a complete estoppe against any suit that runs afoul of it, and there is no way of going around it not even by consent of the parties because it is the court itself that is debarred by a jurisdictional injunct, from entertaining such suit.”

21. In view of the foregoing, I find and hold that this court is bereft of jurisdiction to entertain this matter as the same is *res judicata*.

22. The summons dated the 19th October, 2021 is hereby dismissed with costs to the respondent.

23. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 26TH DAY OF APRIL, 2022.

L. NJUGUNA

JUDGE

.....for the Applicants

.....for the Respondent

