



Kamau & another (Suing as the representatives of the Estate of Esther Watiri Kahora) v Nyambura & 2 others (Environment & Land Case 176 of 2018) [2023] KEELC 18027 (KLR) (8 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18027 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 176 OF 2018**

FM NJOROGE, J

JUNE 8, 2023

BETWEEN

FRANCIS KAHORA KAMAU 1ST PLAINTIFF

JAMES MWANGI KAHORA 2ND PLAINTIFF

**SUING AS THE REPRESENTATIVES OF THE ESTATE OF ESTHER WATIRI
KAHORA**

AND

PHILISIA NYAMBURA 1ST DEFENDANT

MICHAEL WAWERU 2ND DEFENDANT

LAND REGISTRAR NAIVASHA 3RD DEFENDANT

RULING

1. The 1st and 2nd defendants through a notice of motion dated April 3, 2023 seeks the following orders:
 - a. That this honourable court be pleased to find that this suit is *res judicata* and dismiss the same.
 - b. That the costs of this application and suit be provided for.
2. The basis for the application is that the 1st and 2nd defendants filed a suit Nakuru ELC 40 of 2013 seeking eviction orders against Grace Nyokabi Kinuthia who is in occupation of land parcel numbers Naivasha/ Mwachiringi Block 2/771 and 772; that Grace responded in an affidavit in that suit that she owns the land and called the plaintiff herein as a witness; that judgment was delivered in that case in favour of the 1st and 2nd defendants herein on October 12, 2017; that it is not correct for the deponent of the verifying affidavit to state that there has not been any previous suit relating to the suit land; that Esther Watiri Kahoro mentioned in the instant case and Grace Nyokabi is one and the same person;



that Grace failed in the earlier suit and Esther is now seeking in the present suit to succeed where Grace failed and the suit is hence an attempt to re-litigate the matters relating to the suit land.

3. The court had on March 16, 2023 given clear time frame, 14 days, for the filing of the application since counsel for the defendants had intimated that he intended to file it. The application was filed on April 20, 2023 long after the deadline had passed. The application has never been mentioned before as the matter has never been listed again since that date when those directions were issued. No response was filed by the plaintiffs. However, there is no evidence that the application was ever served upon the plaintiffs as there is no affidavit of service.
4. Consequently, as there was no extension of time to file the application, and there is no evidence that it was ever served, the same is improperly before court and it is hereby struck out with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 8TH DAY OF JUNE 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

