



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

CIVIL CASE NO. 10 OF 2019

SMN.....PLAINTIFF

VERSUS

MWS.....1ST DEFENDANT

ZMS.....2ND DEFENDANT

RULING

1. The Defendants herein MWS. and ZMS (hereafter referred to as the 1st and 2nd Defendants) filed a Notice of Motion dated 25.9.2019 seeking the following orders:

(i) THAT this suit be struck out in limine

(ii) THAT costs of this Motion and the suit be awarded to the defendants.

2. The Application is based on the grounds that the suit is debarred by the doctrine of res-judicata and/or issue estoppel and further that it is an abuse of Court Process to subject the defendants to multiple proceedings arising from the same facts and/or series of frivolous complaints.

3. The Application is supported by the Affidavit of the 1st Defendant/Respondent in which she stated that on 8.11.2012, the Plaintiff herein filed Mis. Criminal Application No. 117 of 2012 seeking leave to commence private prosecution against her on the allegation that she had abducted the plaintiff's son on 31st September, 1988.

4. The 1st defendant further deposed in the supporting Affidavit that the case was heard and determined and the High Court found that the 2nd defendant was a different person from the Plaintiff's son.

5. The 1st defendant further stated that the issue the plaintiff is seeking in this case of having the 2nd defendant subjected to DNA test was conclusively addressed and a determination made at paragraph 40 of the Ruling delivered on 16.5.2014.

6. The Plaintiff was dissatisfied with the said ruling and orders and he filed civil Appeal No. 205 of 2014 in which judgment was delivered on 9.6.2017 dismissing the Plaintiffs Appeal.

7. The Plaintiff filed grounds of opposition to the 1st and 2nd defendants Notice of Motion dated 25.9.2019 in which he stated that the Notice of Motion is premature, null and void and further that the same is grossly misconceived in law, fatally defective and the same should be struck out.

8. The parties filed written submissions in the Notice of Motion which I have duly considered. I find that it is not in dispute that the Plaintiff herein filed Petition No. 529 of 2012 and subsequently Civil Appeal No. 205 of 2014 which were dismissed.

9. The issues for determination in this Notice of Motion are as follows:

(i) Whether this suit is barred by the doctrine of res judicata and/or issue estoppel.

(ii) Whether this suit is an abuse of the Court process.

(iii) Who pays the costs of this Application.

10. On the issue as to whether this suit is barred by the doctrine of res-judicata section 7 of the Civil Procedure Act states as follows on the said issue....
11. I find that the parties in both suits are the same and the subject matter was the paternity of the 2nd defendant.
12. I find that the Court reached a determination on the said issue and therefore the matter was conclusively determined.
13. The Plaintiff in the current suit is seeking to re-open the issue of seeking DNA.
14. I find that the plaintiff is seeking a second bite in an issue that has been conclusively determined by a court of competent jurisdiction.
15. On the issue as to whether this suit is an abuse of the court process, I find that the answer is in the affirmative.
16. The plaintiff is out to ruin the life of the 2nd defendant who is now an adult and no longer a child and who is legally able to give his input on the issue for determination.
17. I accordingly find that this suit is brought in bad faith since the plaintiff failed to secure authority to prosecute the 1st defendant over the paternity of the 2nd defendant and the issue of the paternity was investigated and determined.
18. It is the duty of this Court to prevent abuse of the court process and to maintain the integrity of the process of administration of justice.
19. The Plaintiff's suit amounts to an abuse of the court process and the same is barred by the doctrine of res-judicata and for that reason, I strike out the suit in limine and award costs to the 1st and 2nd defendants.

DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 6TH DAY OF MARCH, 2020

ASENATH ONGERI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.