



**Kihara & another v Sharifow (Environment & Land Case
E041 of 2023) [2023] KEELC 18890 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18890 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E041 OF 2023**

LN MBUGUA, J

JULY 13, 2023

HE

**PLAINTIFF SHOULD FOCUS ON THE EXPEDITIOUS DISPOSAL OF THE
SUBSTANTIVE SUIT**

BETWEEN

BENSON NGURA KIHARA 1ST PLAINTIFF

FREDRICK KAMIRI KARUMBA 2ND PLAINTIFF

AND

ABDIRASHID ABDUL SHARIFOW DEFENDANT

RULING

1. This ruling relates to the issue as to whether this suit is subjudice and or resjudicata to the case 127 of 2009. The issue was canvassed orally on 25.5.2023. On the said date, counsel for the Defendant was absent.
2. Counsel for the plaintiff submitted that case 127 of 2009 was dismissed by the High Court on a date they did not manage to establish. That while the subject matter is the same, the parties are different in that Plaintiffs in the former suit are deceased while in the instant suit, the current Plaintiffs are the children of the Plaintiffs in the former suit.
3. It was further submitted that the incidents of trespass herein occurred in March 2019, and that the suit was not filed then as the Plaintiffs were investigating ownership of the trespasser.
4. He urged the court to review its orders issued on 25.5.2023 dismissing the Plaintiff's application dated 9.2.2023.



5. The plaint in Civil suit No. 127 of 2009 was placed before this court. The plaintiffs in the said matter alleged to be registered owners of the parcel of land known as LR No. 36/VII/503. They claimed that the owners of the adjacent parcel LR No. 36/VII/285 had entered into their land and built an access road between the 2 parcels. Those issues are similar to the issues raised herein.
6. There is no evidence as to how the former suit was determined, but again, there is also no evidence that the suit is pending determination. Thus the plaintiffs have not tabled sufficient evidence for the court to rule on the issue of subjudice/resjudicata. The same remains outstanding.
7. However, in view of the averments that the incidents occurred in 2018, the court will put the issue to rest as at now, the same to be revisited during the trial.
8. The court however, declines to review its earlier orders of 25.5.2023 in view of the findings set out at paragraph 13 to the effect that the prayers sought form major reliefs. The plaintiff should focus on the expeditious disposal of the substantive suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JULY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

