



**Bore v Chebet (Land Case 221 of 2014) [2023] KEELC 21048 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21048 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
LAND CASE 221 OF 2014  
FM NJOROGE, J  
OCTOBER 26, 2023**

**BETWEEN**

**KIPROTICH BORE ..... PLAINTIFF**

**AND**

**NANCY CHEBET ..... DEFENDANT**

**RULING**

1. This is a ruling arising from a preliminary objection filed by the defendant on 8/6/2023 stating as follows:
  - a. That this court lacks jurisdiction to entertain the suit;
  - b. That the suit is *res judicata*;
  - c. That there exists a valid final judgment and decree over the same subject matter herein in Molo PMCC no 3 of 1993;
  - d. That the suit is fatally incompetent unsustainable and scandalous, vexatious, oppressive and an abuse of the process of the court;
  - e. That a judgment and decree of one court and or the execution thereof cannot in law be challenged by lodging a fresh suit over the same subject matter.
  - f. On the above stated grounds the defendant sought that the present suit be dismissed and/or struck out with costs.
2. The main issue that arise for determination in the instant application and the preliminary objection are as follows:
  - a. Whether the deponent of the affidavit in support of the motion has demonstrated authority given to him by the applicant;



- b. Whether the application is fatally defective for being supported by an affidavit of a non-party;
  - c. whether this suit is *res judicata*.
  - d. Who should pay the costs of this application?
3. In a motion dated 25/5/2022 which was dismissed on 23/11/2022 the defendant had raised the issue of *res judicata*. That application had been filed pursuant to leave of court granted on 7/2/2022. The fact that the preliminary objection was not argued as a stand-alone objection but in an application is indicative of what this court thought of the matter: that the matters raised preliminary objection could not be successfully raised without an application supported by affidavit evidence.
4. There is no good ground upon which I would diverge from that view in respect of the present preliminary objection as it would require that its limbs be supported by way of evidence which is now lacking. It can not be argued as a stand-alone preliminary objection.
5. The upshot of the foregoing is that the preliminary objection dated 6/6/2023 lacks merit and it is hereby dismissed with costs to the plaintiff.

**DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 26TH DAY OF OCTOBER, 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

