

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
ELC. CASE NO. 167 OF 2016

DAMARIS WAYUA MUSEE *alias*

DAMARIS MUSEE KIMANTHI.....PLAINTIFF

VERSUS

KENYA INDUSTRIAL ESTATES.....DEFENDANT

RULING

1. What is before me is the Notice of Preliminary Objection dated 23rd February, 2017 and filed by the Defendant.
2. In the said Notice of Preliminary Objection, the Defendant has averred that this suit is *res judicata* because there was a similar suit, involving the same parties and acting in the same capacity in “*Civil Case No. 78 of 1999 Sparkle Foods Products Limited and Wayua Musee Kimanthi vs Kenya Industrial Estates Limited*”.
3. Although the court granted to the Plaintiff leave to file an Affidavit in response to the said Notice of Preliminary Objection, she did not do so.
4. In the same breath, the Defendant did not exhibit evidence to show that the matters in issue in this suit have been directly and substantially been in issue in HCCC No. 78 of 1999 between the same parties in a competent court and that the issues were heard and finally decided.
5. In the absence of a complete record in Nairobi HCCC No. 78 of 1999, I strike out the Notice of Preliminary Objection dated 23rd February, 2017 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE