



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**

**CIVIL SUIT NO 135 OF 2009 (OS)**

**JOSEPH MUTHURI IKUNYUA .....PLAINTIFF**

**VERSUS**

**JAMES MWITERI KINYUA & 3 OTHERS.....DEFENDANT**

**RULING**

This Preliminary Objection is dated 17th April, 2015.

It states:-

**“TAKE NOTICE:-** that Counsel for the Defendant shall prior to the hearing of this suit raise and urge the following Preliminary Objection on a point of law.

1. ***THAT the entire suit is fatally defective and bad in Law for being res judicata MERU H.C SUCCESSION CAUSE NO 339 of 2005.***

**REASONS WHEREFORE:-** The defendants pray that this suit be dismissed with costs”.

On 17/02/2015 when the Preliminary Objection was to be heard, Mr. Muriithi asked the Court to have it marked withdrawn and settled so that the suit could be heard on its merits. There was no objection to the withdrawal.

It is ordered as follows:-

1. ***The Defendants Preliminary Objection dated 17/4/2015 is marked as withdrawn and settled.***
2. ***The Plaintiff is awarded today's costs assessed at Kshs. 1000/= to be paid before the matter is next mentioned in Court.***
3. ***Parties to fully comply with orders 3, 7, and 11, CPR, as the case may be within the next 60 days***
4. ***Directions on 17/5/2016.***

Delivered in open Court at Meru this **17th day of February, 2016** in the presence of:

CC: Daniel/Lilian

Joseph Muthuri for Plaintiff

Muriithi for Defendants

**P.M NJOROGÉ**

**JUDGE**