



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KAKAMEGA.

MISC. CIVIL CASE NO. 20 OF 2016.

MAXWELL GEORGE MURUNGARO.....APPLICANT.

VERSUS

ATTORNEY GENERAL.....RESPONDENT.

RULING

INTRODUCTION.

1. The application for determination is the notice of motion dated 28th April, 2016. The applicant MAXWEL GEORGE MURUNGARO MBUGUA appears in person and it seems that he prepared the application alone without any advice from counsel.
2. The application is brought under order 40 rule (1) (2) and (9) of the Civil Procedure Rules Section 1A, 3 and 3A, 63(C) of the Civil Procedure Act.
3. The applicant seeks for compensation from the defendant who is the government of the Republic of Kenya. His application is supported by his own affidavit.
4. He depones that he was a victim of the post election violence which occurred in the year 2007-2008 when his property was damaged. He was registered as an I.D.P. and was given Ksh. 10,000/= for upkeep by the Government of the Republic of Kenya to start a livelihood.
5. He claims to have taken a loan of Ksh. 50,000/= from Mega Micro-Finance Company to assist him to file this application. He further explains what he went through as he sought compensation from the government. (see paragraphs 8-13)

Respondent's response.

6. In response to the application GILBERT C. TARUS, state counsel filed his replying affidavit dated 20th June, 2016.
7. He depones that the applicant's application is res judicata having been determined and a final decision having been given in Kakamega in **Kakamega High Court Constitutional Reference No. 8 of 2013, Maxwel George MurungaroMbugua vs. Attorney General** which dismissed the applicant case.
8. He claims that the facts, parties and reliefs sought by the applicant in this instant application are one

and the same thing as those in Kakamega Constitutional Reference No. 8 of 2013.

9. He adds that the Kakamega Constitutional Reference No. 8 of 2013 also held that case was Res Judicata because of earlier case that was filed by the applicant with the same facts being Kakamega High Court Case No. 160 of 2010 **Maxwell George Murungaru vs. District Commissioner Vihiga, The Permanent Secretary office of the President and the Attorney General.**

10. He maintains that the applicant is abusing the court process by making same claims even after the said cases have been dismissed.

Determination.

11. The application herein was canvassed by filing and exchanging written submissions. I note from the record that the applicant is the only one who filed his written submissions.

12. This court has gone through the submissions by the applicant. The only issue for determination is whether the applicant's application is res-judicata in view of the many cases he has filed.

13. The applicant in his submissions admits that he has filed four cases in court but states that the respondent cannot rely on those decisions because they were litigating on different issues.

14. The court in the case of **E.T. VS. ATTORNEY GENERAL & ANOTHER [2012] eKLR** held that:-

“The court must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in a form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi vs. National Bank of Kenya Limited and Others (2001) EA 177 the court held that ‘parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.’ In that case the court quoted Kuloba J. in the case of Njangu vs. Wambugu and another Nairobi HCCC No. 2340 of 1991 (unreported) where he stated, “If parties allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata.”

15. The substantive law on res judicata is found in section 7 of the Civil Procedure Act Cap 21 which provides that:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been consequently raised, and has been heard and finally decided by such court.”

16. This court has looked at the cases filed by the applicant herein which are:-

(1) Kakamega HC. Const. No. 8 of 2013;

(2) Kakamega HCCC. No. 160 of 2010;

(3) Kisumu C.A.CA. No. 46 of 2015 (UR 31/2015)

17. From the above cases, it is clear that the issues raised herein and determined are the same with the issues now raised by the applicant in this particular case. The parties and jurisdiction are also the same except for the appeal that was filed in Kisumu and dismissed.

18. The application by MAXWELL GEORGE MURUNGARO MBUGUA is therefore res judicata and is dismissed.

SIGNED, DATED and DELIVERED this .22ND day of **SEPTEMBER**, 2016.

C. KARIUKI

JUDGE.

In the presence of:-

.....**for the Applicant.**

..... **for the Respondent.**

.....**Court Assistant.**