



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KITALE
LAND CASE NO. 110 OF 2013
FORMERLY ELDORET ELC NO. 320 OF 2013
SAMUEL KISANG CHEBOI AND 2 OTHERS.....PLAINTIFFS
VERSUS
ELISHA KIPLETING MUREI AND 4 OTHERS.....DEFENDANTS
R U L I N G

1. At the hearing of this suit a Preliminary Objection was taken on behalf of the defendants on the ground that this suit is res-judicata. Mr. Aseswa argued that there was an originating summons filed in Eldoret High Court being No. 190 of 1999. He contended that that suit was concluded but that the plaintiffs did not attach a ruling which determined that case.

2. The Preliminary Objection was opposed by Mr Nyairo for the plaintiffs who argued that it was the duty of the defendants to place the ruling before the court to enable the court decide whether this present suit is res-judicata. As this was not done, Mr Nyairo argued that there is no basis upon which the court can proceed to determine the issue.

3. In response to Mr Nyairo's submissions, Mr Aseswa argued that it is the obligation of both counsel to place before the court all materials available. He contended that the plaintiff's have failed to disclose the position of the suits which had been filed earlier on.

4. I have considered the rival submissions and I must now determine whether this suit is res-judicata or not. Section 7 of the Civil Procedure Act provides as follows;-

“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 subsequently raised, and has been heard and finally decided by such court.”

5. In the present case there was no ruling or judgement placed before me to enable me determine whether the issues in the present case had been determined by a competent court in the former case. Mr Aseswa only referred to proceedings in Civil case No. 190 of 1999 which had been annexed to the plaintiff's list of documents. It was upon Mr Aseswa to place before the court the ruling which determined Civil Case No. 190 of 1999 if he wanted the court to address the issue. Without the said ruling or judgement, I am unable to determine whether this suit is res-judicata. I think Mr Aseswa was not serious enough when he

decided to argue the Preliminary Objection. It would appear he was not ready for the hearing. The issue of the Preliminary Objection was meant to secure him an adjournment through the back door.

6. I find that the Preliminary Objection lacks merit. The same is hereby dismissed with costs to the plaintiffs.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of April, 2014.

E. OBAGA,

JUDGE

In the presence of Miss Chege for Mr Nyairo for plaintiff and Mr Aseswa for defendants. Court Clerk – Kassachoon.

E. OBAGA,

JUDGE

30/4/2014