



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

**AT EMBU**

**CIVIL CASE NO. 22 OF 2011**

**GAKONO GAKENGE.....1<sup>ST</sup>**  
**PLAINTIFF**  
**ANDREW IRERI.....2<sup>ND</sup> PLAINTIFF**  
**VERSUS**  
**JOSHIA NYAGA MURUARE.....DEFENDANT**

**RULING**

The Applicants have filled an originating summons claiming vacant possession in Land No. **Gaturi/Weru/440**. The Applicant then filed this chamber summons dated 10/6/2011 in which he claims that the court should give directions in this case and if possible refer the case to Elders. It is supported by his affidavit.

The Respondent raised ground of opposition saying the matter is *res judicata* and it is an abuse of the due process of the court. I have noted with a lot of concern the submissions by counsel.

I have also read the replying affidavit of the respondent/Defendant. From what is on record it's clear that courts with competent jurisdiction have dealt with the parcel No. Gaturi/Weru/440 and delivered judgments which the Applicant who is the 1<sup>st</sup> Plaintiff hiding behind the 2<sup>nd</sup> Plaintiff has never appealed against.

- In Embu HCCC No. 37/03 the 1<sup>st</sup> Plaintiff was sued over this land by the 2<sup>nd</sup> Interested Party and the court gave judgment in favour of the 2<sup>nd</sup> Interested Party Mary Wanjiru Kiiri. Eviction orders were even issued against him. He never appealed.
- In 2006 he went to the Land Disputes Tribunal over the same land. The Elders made some orders in his favour which were later quashed vide Embu High Court Judicial Review No. 6/2010 as the Tribunal lacked the jurisdiction to do so. The 1<sup>st</sup> Plaintiff now wants this court to issue directions to have the matter heard by this court or it be transferred to the Elders.

- First of all I must point out to the 1<sup>st</sup> plaintiff and his friend posing as the 2<sup>nd</sup> Plaintiff that all their actions have been laid before this court through the annexures filed by themselves and the Respondent/Defendant. Even before the suit HCCC No. 37/03 (Embu) was filed, the 1<sup>st</sup> plaintiff herein had sued the Defendant and the others over this same land in Embu SPMCC No. 145/88. The suit was dismissed on 11/6/97. He never appealed!
- Even as this matter is filed here it's *res judicata*.

Having been evicted from Gaturi/Weru/440 by an order of this court, if he has returned there as he alleges, it's trespass.

I find no merit in this Application which I dismiss with costs. The position being what I have stated above, I find the originating summons filed herein to be *res judicata* and I also dismiss it with costs.

**DATED, DELIVERED AND SIGNED AT EMBU THIS 15<sup>TH</sup> DAY OF NOVEMBER 2011.**

**H.I. ONG'UDI  
JUDGE**