



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

Miscellaneous Civil Application 9 of 2007

REPUBLIC.....APPLICANT

VERSUS

**DOROTHY WAWIRA MURIUKI.....1ST RESPONDENT
MERCY NJERI MURIUKI.....2ND RESPONDENT
DOUGLAS KINGANGI MURIUKI.....3RD RESPONDENT
JASON MBOGO MURIUKI.....4TH RESPONDENT
JACK MATHAGU MURIUKI.....5TH RESPONDENT
JANE WANGARI MURIUKI.....6TH RESPONDENT**

RULING

This ruling is in respect of the Notice of Motion dated 6/2/2007. The ex parte applicant is one Njagi Samson. The Respondents are 7 in number. They are all brothers and sisters. Their mother was Gladys Wandia Muriuki (deceased).

Gladys Wandia and Njagi Samson the Ex-parte applicant herein have litigated over parcel No.

NGARIAMA/RUNGETO/76 for many years. When Gladys died in 2004, her son, the 7th Respondent, Jack Mathagu Muriuki was granted the letters of administration for her estate. He appears to have carried on the fight Annexures to this notice of motion show that these parties have litigated before several courts over the same subject matter culminating in the Court of Appeal Civil Appeal No.87/2001.

In that appeal the Court of Appeal Judges stated;

“ As far back as 25th April 1999, Tunoi J, as he then was, told this appellant or those through whom she claimed that the suit which was repeatedly being brought in various courts was res-judicata..... There was an appeal to this court in confirming the decision of Tunoi J, this court stated;

“It is clear that the appellant filed her suit at Embu in 1982, 10 years after the dismissal of her suit on the same issues filed at Nyeri in 1973, the matter was already Res Judicata.”

Civil Appeal on 87/2001 therefore dismissed her Appeal –for a second time before the Court of Appeal for the same being Res Judicata. The Court went further to state;

1. *“We must once again tell the appellant that this matter is res judicata and irrespective of the number of times it is brought to court, it will be dismissed on the same ground.”*

That Appeal was between Jack Mathagu Muriuki, who took over from his late mother Gladys and the Ex-parte applicant

herein.

Even after that clear admonishment by the Highest Court in the land, the appellant and his siblings regrouped and one year later filed a complaint before the Gichugu Lands Dispute Tribunal over the same land. This time, 2 sisters, Dorothy and Lucy were used as the complainants. This did not nonetheless change the nature of the claim or the subject matter. The previous courts in dismissing the other matters referred to the appellant and those claiming through her. The fact that 2 other sisters now attempted to resurrect the same claim did not give it any life. It had been long dead and it ought to have been left at that. I do not wish to dilute what was said by the Court of Appeal in respect of the litigation between the parties herein.

I can only add that if the matter was Res Judicata before the High Court and before the Court of Appeal, it would still remain Res Judicata even before the Land Dispute Tribunal. Section 13(3) of the Land Disputes Tribunal Act clearly states:-

“ For avoidance of doubt it is hereby provided that nothing in this Act shall confer jurisdiction on the tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of action or TO ANY PROCEEDINGS WHICH HAD BEEN HEARD AND DETERMINED BY ANY COURT.”

Need I say more? I find it particularly vexing to have to deal with such matters which unjustifiably consume resources that should have been applied to more deserving cases.

The Notice of Motion dated 6/2/2007 succeeds. The Award of the Gichugu Land Disputes Tribunal in Case No. 48/2005 which was adopted as the Judgment of the court in Land Disputes Tribunal 52/2006 on 7/8/2006 is called into this court and the same is hereby quashed.

Costs of this motion are awarded to the Ex-parte applicant.

Costs herein be taxed and paid before the court can entertain any future applications by the Respondents herein.

W. KARANJA
JUDGE

Delivered, dated and signed Embu this 9th day of June 2010.

In presence of:-

1st, 2nd & 3rd Respondents – Present.

W. KARANJA
JUDGE