

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Civil Case 39 of 2006

MWAI MURONDO.....PLAINTIFF

VESUS

STEPHEN MUCHIRA NYAGA.....DEFENDANT

R U L I N G

The Application dated 20.09.2007 is seeking an order that this suit is Res Judicata and the same should therefore be dismissed. According to counsel for the Applicant, the issues raised herein were heard and determined **vide Kerugoya PMCC No. 265 of 1992** between the same parties.

The Plaintiff/Respondent has actually admitted that the matter was heard in Kerugoya court and determined on 23.03.06 but he filed **Civil Appeal No. 14 of 2006** which is still pending before the High Court in Nyeri. Although the Respondent claims to have annexed the proceedings and judgment in that case, he has only annexed the pleadings and the memorandum of Appeal. The judgment is nonetheless not annexed. He does not therefore deny that the same suit has been heard and determined and an Appeal could be pending before the High court. That admission in itself does not need any qualification. It is evident that the subject matter herein has been determined. Execution can therefore only proceed in those other files and there was no option for the Respondent herein to file a fresh suit before this court. That contravenes Section 7 of the Civil Procedure Act and amounts to a gross abuse of this court's process. The Application before me has merit. I allow the same, declare the suit herein to be Res Judicata and dismiss the same with costs to the Applicant/Defendant. He is advised to seek any orders related to the subject matter herein in PMCC No. 265/92 or if the Appeal is still pending in the Appeal file.

W. KARANJA

JUDGE

Delivered, dated and signed at Embu this 29th day of September 2010.

In presence of:- Mr. Wambugu for Applicant and Mr. Kariuki for Ngigi for Respondent.