

GEORGE ROMBO PLAINTIFF/RESPONDENT

VS.

JONES GIBSON MWANGI DEFENDANT/APPLICANT

RULING

This is an application by the defendant Jones Gibson Mwangi essentially seeking an order that the court vacates the decree made on 5th June 2002. This application dated 9th October, 2008 is supported by several grounds set out on the face of the application and also an affidavit sworn by the defendant/applicant.

It is important to set out the basic order sought by the applicant herein and this appears as No.1 of the prayers sought by the applicant. It reads as follows:

“1. That this court be pleased to set aside in total the decree referred to hereabove for review due to its gross irregularity and illegality of being given on a day contrary to the one ordered by this honourable court of 5th June, 2002 from the court proceedings of 24th April 2002 which decree is annexed hereto.”

He has solely relied on his grounds and the affidavit annexed thereto. The application is opposed by the respondent on the ground that it is *res judicata*.

That submission is based on the fact that the applicant herein filed two applications on 9th July, 2003 and 6th October, 2003 seeking essentially the same orders. On 22nd March, 2004, Ochieng J dismissed the two applications. In particular, in the Notice of Motion dated 9th July, 2003, the applicant sought an order to set aside the judgment and the order he now seeks to set aside. That being the case, therefore this court should declare that, the matter is *res judicata* and dismiss the application.

The proceedings herein were recorded by Kubo J who reserved the ruling to 7th May, 2009 but the learned judge retired before he delivered the said ruling.

I have taken some time to go through the record and in particular the ruling by Ocheing J in respect of the two applications that he handled. In the application dated 9th July, 2003, prayer No.1 reads as follows:

“This honourable court may be pleased to vacate eviction orders granted in favour of the plaintiff/respondent herein and set aside the judgment thereto, and order full hearing of this case inter-partes.”

The learned judge heard and wrote a detailed and well reasoned ruling in respect of that application and dismissed the same. The wording of that order sought by the applicant then, and now, are more or less the same, however different the approach may have been. I am persuaded that what Justice Ochieng addressed then and what is being sought by the applicant in the present application, are one and the same orders.

Going by the provisions of **Section 7** of the **Civil Procedure Act** which applies to both suits and application, I have no doubt in my mind that the issue has been conclusively addressed and determined and there is nothing remaining to be determined. I therefore find that the present application is *res judicata* and as such this court lacks jurisdiction to revisit the same.

One last observation I must make going by the record that I have read is that, the defendant/applicant is an extremely litigious person. One can only guess that is because of the subject matter herein which is a house he claims he was fraudulently dispossessed. That notwithstanding, litigation must come to an end.

It follows therefore that the application must be and is hereby dismissed with costs to the plaintiff/respondent.

Orders accordingly.

Dated, signed and delivered at Nairobi this 26th day of October, 2009

A. MBOGHOLI MSAGHA

JUDGE