

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 1143 of 2001

GUCHU MUIRURI PLAINTIFF

VERSUS

LABAN NJUGUNA DEFENDANT

RULING

ON A PRELIMINARY OBJECTION

I: BACKGROUND

1. The defendant herein has raised a Preliminary Objection in this suit, namely that the plaintiff had filed a similar suit in the past. That this suit before this court be struck out as being

res judicata (30 May 2006).

2. The Preliminary Objection was heard before this court on 7 May 2008. In reply the plaintiff/applicant stated that this point had been taken up before another judge and is spent.

3. The two parties had a dispute over land being Plot 55 and 19. All along the plaintiff had stated that the defendant had encroached onto his land. The plaintiff further admitted that a suit was filed by him being Hccc2489/77 which was thereafter determined and dismissed by Cockar J (as he then was)

4. Being dissatisfied with the decision the plaintiffs appealed to the Court of Appeal CA166/90. The said appeal was struck out.

5. In the year 2006, the plaintiff filed this present suit Hccc1143/06. The defendant raised a Preliminary Objection during an application before Hayanga J for the amendment of the plaint. The said judge dismissed the objection raised that the matters was res judicata and proceeded to rule that the suit proceed to hearing after he allowed amendments sought.

II: Application on Preliminary Objection

6. The said Preliminary Objection application was then taken up once again by the def endant. That this matter was Res Judicata in this file.

III: Opinion

7. This is the second time the matter is being raised. Once Hayanga J. made a ruling, the court is not permitted to hear the decided issue again. This means that the only option the defendant had was to appeal to the Court of Appeal. They did not. The High Court is functus officio on the said point. Subsequently, the said Preliminary Objection is rejected with costs to the plaintiff.

DATED THIS 8TH DAY OF MAY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

D.K. Osoro instructed by Osoro Juma & Co. Advocates for the defendant/applicant – present

M.M. Nzari instructed by Nzari & Co. Advocates for the plaintiff/respondent - present