



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 1818 of 2002**

1. Land and Environmental Law Division
2. Subject of main suit: Land
  - i) Original LR 82614
  - ii) Fraud
3. Application 19 September 2007 for injunction
  - i) Preliminary Objection –

That application res judicata

4. Held: Application of 19 September 2007, Res judicata

But not on Interlocutory Judgment on counter claim, struck out for a new one to be brought.

5. Case Law
6. Advocate:

J. Guserwa for J.A. Guserwa & Co. Advocates for the defendant/applicant

A.N. Mbugua for Mburu Mbugua & Co. Advocates for plaintiffs/respondent

**SIMON KAMANU.....PLAINTIFF**

**VERSUS**

**MWANGI JAMES NJEHIA.....1<sup>ST</sup> DEFENDANT**

**JANETTA WANJIKU MWANGI.....2<sup>ND</sup> DEFENDANT**

**RULING**

**ON A PRELIMINARY OBJECTION TO THE APPLICATION ON 19 SEPTEMBER 2007 AS BEING**

## RES JUDICATA

### 1: Background of application.

1. The advocate for the plaintiff seeks an injunction against the defendant from interfering and or having any dealings with the suit premises original LR826/14 or at all till the determination of this suit.
2. The advocate for the respondent raises the issues of the application being Res Judicata.
3. The plaintiff is said to have had his property taken away from him fraudulently. The one who did this is now deceased but managed to sell the same to the defendants who are now in occupation.
- 4) By an application of 16 December 2002 the said applicant filed for an injunction orders. On 10 March 2003 Kuloba, J declined to issue an injunction and dismissed the same.
- 5) The advocate for the applicant filed this present application to this court on 20 July 2007 for pre-trial mention. It was noted there was an Interlocutory Judgment to a counter claim against the plaintiff. This was in effect to be first dealt with before the matters would continue. Instead the applicant plaintiffs brought an application for an injunction together with an application to set aside the judgment.
6. The respondent raised a Preliminary Objection.

### II: Preliminary Objection.

7. The objection raised was to the effect that this matter was heard by Kuloba J who declined to issue an injunction. The applicant seek the same prayers before this court.

### III: Finding

8. The application of 19 September 2007 seeking orders of injunction is Res Judicata. It is hereby struck out.
9. There is a prayer for Interlocutory Judgment be set aside. This has to be filed a fresh. The application should not have had two distinct prayers in one application. The same is struck out with leave for the applicant to file a new application on the issue of the counter-claim against them.
10. I award costs to the respondent/defendant.

Dated this 17<sup>th</sup> day of October 2007 at Nairobi.

**M.A. ANG'AWA**

## JUDGE

J. Guserwa for J.A. Guserwa & Co. Advocates for the defendant/applicant

A.N. Mbugua for Mburu Mbugua & Co. Advocates for plaintiffs/respondent