

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Case 71 of 2004

M'ARIMI M'MUNA PLAINTIFF

VERSUS

BEATRICE KANYUA M'NKANATA DEFENDANT

RULING

Briefly, the applicant was sued by the respondent in the Land Disputes Tribunal No. 49 of 2002 claiming 2.9 acres from parcel No.Nyweri/Abothuguchi/499.

The tribunal awarded the claim to the respondent. The applicant being aggrieved filed Misc.Application No.181 of 2002 for leave to file a judicial review application. Leave was granted which was ordered to operate as a stay pending the bringing of the motion. Due to sickness, according to the applicant, the motion was not filed within the time allowed. Stay was subsequently discharged after which the respondent applied to have the award confirmed as judgment.

The applicant moved the court with application dated 20th August, 2004 for stay of proceedings in LDT No.49 of 2002 pending the hearing of the suit herein.

That application was dismissed by this court (Sitati, J). The applicant did not relent. He has now brought the present application praying that proceedings in LDT No.49 of 2002 be stayed pending hearing and determination of this suit.

The respondent in reply to the application has raised the doctrine of *res judicata*, among other grounds. I intend to deal with that ground alone as I believe it is capable of disposing of this application.

There is no dispute that the applicant brought an earlier application dated 20th January, 2006. Is the present application *res judicata* the earlier one?

Section 7 of the Civil Procedure Act bars a court from trying any suit or issue in which the matter directly and substantially in issue therein was a matter directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim and the said matter was heard and determined by a court of competent jurisdiction.

Applying these strictures to the present application, it must be noted that the earlier application was made in this very file hence the parties are the same.

The matter in issue in the former application is a prayer to stay LDT No.49 of 2002. That is the same prayer sought in the present application. The grounds on the face of the application are word for word similar in the two applications. Again the averments in the two affidavits in support of both applications are substantially the same.

The application for stay dated 20th August, 2004 was heard and determined by a court of competent jurisdiction. This application is not only *res judicata* but also a gross abuse of this court's process.

Besides, the award of the Tribunal being sought to be stayed was filed on 15th October, 2002, nearly five (5) years ago.

With that length of delay, a stay cannot be granted. In the result this application must fail and is dismissed with costs to the respondent.

DATED AND DELIVERED AT MERU THIS 3RD DAY OF October, 2007

W. OUKO

JUDGE