



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KITALE**

**Civil Case 84 of 2007**

**EZEKIEL NGARI WANJOHI =====PLAINTIFF**

**V E R S U S**

**DOUGLAS KAHARA GAKENGE =====DEFENDANT**

**R U L I N G**

The defendant has asked this court to strike out and also to dismiss the plaintiff's suit, on the grounds that it is res judicata, as well as being an abuse of the process of the court.

Although the plaintiff was served with the application, he did not file anything in response thereto. The plaintiff also failed to attend court for the hearing of the application.

First, the defendant demonstrated that he was the registered proprietor of the suit property **L.R. NO. KAISAGAT/MAKHONGE BLOCK 2/KARAUS/129.** He did so by providing the court with a copy of a Title Deed dated 7/11/2003. He therefore was not the owner of the property cited in the plaint, which is **L.R. NO. KAISAGAT/KIPSAINA/BLOCK 10 KARAUS/129.**

As the evidence adduced by the defendant is uncontroverted, I find and hold that pursuant to the Kwanza Division Land Disputes Tribunal, in Land Case No.61 of 1986, the plaintiff bought a total of 5.5 acres of land, and not 8.5 acres, as he had claimed.

As the plaintiff was dissatisfied with that award, after the same had been adopted as a judgment of the Senior Resident Magistrate's Court, Kitale, the plaintiff filed an appeal before the High Court. The said appeal was **EZEKIEL NGARE Vs DOUGLAS KAHARA, ELDORET HIGH COURT CIVIL APPEAL NO.10 OF 1987.**

On 6/5/1988 the **Hon. Aganyanya J.** delivered his judgment, after he had given full consideration to the appeal. The learned judge made an express finding that the plaintiff herein was only relying on the error on the letter of consent, which purported to give him 8.5 acres. As the son of the person who had sold the land had confirmed that his father had sold no more than 5.5 acres to the plaintiff herein, the appeal was dismissed with costs.

Following the dismissal of that appeal, the defendant herein reverted to Kitale SRM Land Case No.61 of 1986, and had the plaintiff evicted, in execution of the decree issued in that case.

After the plaintiff had been evicted from the suit property, a lady named Leba Muhonja entered the suit property forcibly, on the grounds that she had purchased it from the plaintiff.

In the light of that development, the defendant herein was constrained to institute proceedings, with a view to re-asserting his claim to the suit property. The case he filed was **DOUGLAS KAHARA Vs LEBA MUHONJA, KITALE HCCC NO.123 OF 1998.**

After a full trial, the **Hon. Nambuye J.** delivered her judgment on 11/11/1999. In the said judgment the learned judge declared that the defendant, Leba Muhonja, was a trespasser on suit property. The court ordered that the said defendant be evicted from the suit property, if she had not vacated by 31/12/1999.

Subsequent to that judgment, and in execution of the decree emanating therefrom, the defendant herein evicted Leba Muhonja, and took possession of the suit property.

As if that was not enough, the plaintiff herein instituted another suit, being **EZEKIEL NGARA WANJOHI Vs LABO INYANGANA & THE ATTORNEY GENERAL, ELDORET HCCC NO.218 OF 1996.**

After a full trial, the court held that the 3.5 acres which the plaintiff was claiming in that case;

***“ were taken away from the plaintiff through the process of the law and vested them in Douglas Kahara.***

***Before these orders are set aside there is no way this court can, through another forum, vest these rights in the plaintiff. What the plaintiff herein is asking this court to do is to take these non-existent rights from the defendants and give to him. As per the said proceedings even the first defendant has no interest in the suit land.”***

Consequently, the plaintiff's case was dismissed with costs.

As is evident from the facts set out above, the issue as to the ownership of the suit property has already been determined by a court of competent jurisdiction, after a full hearing. Therefore, I hold and find that it is not open to the plaintiff to bring yet another suit, through which he seeks a declaration that he is the legal owner of the suit property.

By virtue of the provisions of section 7 of the Civil Procedure Act, I hold that this suit res judicata. Accordingly, this suit is struck out, with costs to the defendant. The defendant is also awarded the costs of the application dated 8/8/2007.

Dated and Delivered at Kitale, this 27<sup>th</sup> day of November, 2007.

**FRED A. OCHIENG**

**JUDGE**