



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

**Civil Case 91 of 2005**

**RAPHAEL MURIITHI WATHIRINJE ..... PLAINTIFF**

**VERSUS**

**VERONICA WANJIKU KARIUKI ..... DEFENDANT**

**R U L I N G**

By a notice of motion brought under section 7 of the civil Procedure Act Veronica Wanjiku Kariuki hereinafter referred to as the Defendant/Applicant seeks to have the Plaintiff's suit struck out for being res judicata. It is the applicant's contention that the parties and the issues raised in this suit are the same as those in Nyeri High Court Civil Case Number 11 of 1996.

The plaintiff Respondent objects to the application contending that the application lacks merit as the issues raised in the present suit are completely different from those in High Court Civil Case No. 11 of 1996.

It is evident that the parties in both HCCC 11 of 1996 and HCCC 91 of 2005 are the applicant and the Respondent and that the subject matter of both suits is a piece of land known as Tetu/Ihururu/464. While the Respondent accepts this to be the position, he maintains that the issues now being raised in this suit are different. In order to understand the Respondent's argument one needs to look at paragraph 3 of the plaint in this suit wherein it is pleaded as follows:-

**"3 The plaintiff states that he is in (sic) law Section 24 Cap 281 RTA and Constitution Section 75 (2) allowed to bring this suit without it being affected by Section 7 Cap 21 Civil Procedure Rules as no court had heard HCCC No. 11/96 and it is under fraudulent award in it that plaintiff is defrauded his land by the defendant which while it had been made by elders who had no regard of custom law and common law as they enforcing what had been done on 17<sup>th</sup> June 1995 in assistant chief's Kangaroo court before defendant fabricated her HCCC No. 11/96 while it is in Constitution Section 82(1) no law shall give discriminatory effects and dismissal of civil appeal No. 241/2001 did not preclude plaintiff from tracing his property compulsorily taken in there having been contravened constitution section 77(9) by D.O. who fabricated defendant's husband had opted to get 3 acres from plaintiff while the respondent's husband was already dead."**

Although rather gibberish, it is evident that the Plaintiff/Respondent is in this suit challenging the legality of the judgment in HCCC No. 11 of 1996. This is not however the appropriate forum for him to challenge that judgment. Indeed the Plaintiff/Respondent did bring an application for review of the judgment in the Court of Appeal in civil Appeal No. 241 of 2001 which application he lost. I can do no better than repeat the words of the court of appeal.

**"Taking into account the history of this dispute we are of the view that this appeal has been brought**

**without any valid ground but merely to open up a dispute which had been resolved by way**

of arbitration as agreed upon by the parties. The process of arbitration was in accordance with the rules and the respondent is already registered proprietor of the land awarded to her. It is time this litigation was brought to an end.”

That indeed sums up the position even as of now. I concur with Mr. Wachira who appeared for the applicant that the Plaintiff's suit is res judicata and a total abuse of the process of the court. It is accordingly dismissed with costs.

*Dated signed and delivered this 18<sup>th</sup> day of October 2006.*

**H. M. OKWENGU**

**JUDGE**