

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
Civil Suit 655 of 2002

DAVID GITHINJI NJUGUNA PLAINTIFF

VERSUS

MUCHIRI NDIHA DEFENDANT

RULING

This is an application to strike out the suit under Order 1 Rule 13 (1) (d) on the grounds, among others, that the suit is res judicata, and that the reliefs sought are defeasible by virtue of the Limitations of Action Act, Cap 22.

The deposition in support of the application says that the issues in trial here have been determined in Kiambu SPM Miscellaneous Application No. 50 of 2000 where the parties were exactly the same as here.

However, the documents annexed to support this claim relate to an application for an order to sign mutation forms. It has nothing to do with the issues before this Court. Secondly, Kiambu RMCC No. 69 of 2001, also referred to in the application, was withdrawn from that Court, before this suit was filed.

Accordingly, there is no evidence before this Court that this suit is res judicata.

A court's summary powers should not be invoked except in very clear situations. This is not one of those cases where I can exercise my discretion to strike it out. Accordingly, the application dated 7th January, 2005 is dismissed with costs.

Dated and delivered at Nairobi this 30th day of November, 2005.

ALNASHIR VISRAM

JUDGE