

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 3 of 2002

JOSPHAT WARUI MWANGI.....1st PLAINTIFF

LOISE WACHEKE BORO 2ND PLAINTIFF

JAMES KIMANI BORO.....3RD PLAINTIFF

versus

MBUGUA MWENJA KAGIRI..... 1st DEFENDANT

SIMON KAGIRI MBUGUA 2ND DEFENDANT

FELIX KIMANI MBUGUA 3RD DEFENDANT

RULING

The Second and Third Defendants/Applicants have moved this court by way of a Chamber Summons application dated and filed on the 24th March 2004 for orders that the suit herein be struck out. They rely on the grounds set out in the application which are supported by the affidavit of the 2nd Applicant also made on the 24th March 2004.

The Plaintiffs/Respondents have opposed the application upon the four grounds filed on the 28th April 2004.

In his submissions, Mr. Wambugu Kariuki, learned counsel for the Applicants contended that the issues and prayers contained in the Plaint dated the 11th March 2002 having already been canvassed fully before, and determined by, the Kiambu Land Disputes Tribunal leading to an award made on the 23rd March 2000, which award was subsequently quashed by an order of this court made on the 20th December by Ransley, CA (as His Lordship then was) in Miscellaneous Civil Application No. 975 of 2000, the suit herein is *res judicata* and therefore incompetent and should be struck out. Mr. Kariuki referred me to what appears to be an undated Ruling of Githinji, J (as His Lordship then was) in **James Ng'ang'a Kamau v Isaack Wairagu Kariuki and Another** (HCCC No. 772 of 2001) (unreported) which for the reasons set out hereunder, and with respect, I find irrelevant to the application before me.

Mr. Nyang'au, learned counsel for the Respondents, argued that the issue of ownership of the suit property is yet to be determined as all this court had done in Misc. Civil App. No. 975 aforesaid was to quash the award of the said Tribunal which in purporting to make an award is a dispute as to the ownership of the suit property, had exceeded its jurisdiction as conferred by section 3(1) of the Land Disputes Tribunals Act [No 18 of 1990].

I would respectfully agree with Mr. Nyang'au and do so hold.

Accordingly, and as the Respondents are entitled to pursue their claim as instituted by Plaint filed on the 12th March 2002, it is ordered that the Chamber Summons application dated and filed on the 24th March 2004 be and is hereby dismissed with costs to the Plaintiffs/Respondents.

Dated and delivered at Nairobi this 22nd day of October 2004,

P. Kihara Kariuki

Ag. Judge