



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO.56 OF 2012

PHILIP KAMUNYA.....	1 ST PLAINTIFF
IBRAHIM ONGIRI.....	2 ND PLAINTIFF
NELSON IKHUTA.....	3 RD PLAINTIFF
SAMSON SAGWE.....	4 TH PLAINTIFF
JOSEPH KAMAU.....	5 TH PLAINTIFF
ROBERT MAINA.....	6 TH PLAINTIFF
ALICE GATHONI.....	7 TH PLAINTIFF
SIMON PETER WERU.....	8 TH PLAINTIFF
JAMES MAKORI.....	9 TH PLAINTIFF
GEOFREY MUIGAI.....	10 TH PLAINTIFF
PIUS SEIF.....	11 TH PLAINTIFF
RICHARD ATAMBO.....	12 TH PLAINTIFF
JAMES MWANIKI.....	13 TH PLAINTIFF
GEORGE ONSONGO.....	14 TH PLAINTIFF
ALOYCE ONGOTO.....	15 TH PLAINTIFF
JOYCE ABADIA.....	16 TH PLAINTIFF
EUNICE NJOKI.....	17 TH PLAINTIFF
MIRIAM ONYANGO.....	18 TH PLAINTIFF
NATHAN NYAKUNDI.....	19 TH PLAINTIFF
CATHEIRNE NDUKU.....	20 TH PLAINTIFF
CHARLES GITHUI.....	21 ST PLAINTIFF

CHARLES YEWA OLOO.....22ND PLAINTIFF

DAVID MAINGI.....23RD PLAINTIFF

EVANS MUNYISA.....24TH PLAINTIFF

ALEX ODHIAMBO.....25TH PLAINTIFF

VERSUS

PATMWA LIMITED.....DEFENDANT

RULING

1. The Defendant/Applicant filed a Notice of Motion dated 2nd January 2020 in which it seeks to strike out the Plaintiffs/Respondents suit on the ground that it is res judicata. The Applicant contends that there was ELC 335 of 2010 (OS) which had been filed by officials of Airport View Neighbors Group touching on the suit property herein. This suit was heard fully and it was dismissed vide a Judgement delivered on 7th April 2017.

2. The Applicant states that the Respondents herein were members of Airport View Neighbors Group and as such this suit is res-judicata. The Applicant prays that the suit be struck out and the Respondents be ordered to move out of the suit property.

3. The Applicant's application was opposed through a replying affidavit sworn by Philip Kamunya on behalf of his Co-Respondents. The Respondents contend that they were not members of Airport View Neighbours Group and that they did not authorize the group to file the suit on their behalf and that in any case, what they are seeking is not exactly what was being sought in ELC 335 of 2010(OS). The Respondents state that they were not aware of the case and that they only came to learn of it when this application was filed.

4. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. I have also considered the submissions filed. The only issue for determination is whether this suit is res-judicata. Also to be determined is whether an order of eviction should issue.

5. The principle of res-judicata is predicated on Section 7 of the Civil Procedure Act which states as follows: -

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”.

6. In ELC 335 of 2010 (OS), the officials of Airport View Neighbours Group had sued the Applicant herein together with six others in which they claimed that they had acquired LR No. 9042/126 together with three other parcels through adverse possession. In a judgement delivered on 7th April 2017, Lady Justice Gacheru dismissed the suit.

7. The suit herein is also seeking the same relief which was sought in ELC 335 of 2010 (OS) i.e adverse possession. Though the Respondents deny knowledge of ELC 335 of 2010 (OS), the Applicant has annexed a list of members of Airport View Neighbours Group which was filed in the previous suit. The name of the deponent of the replying affidavit in this application appears at number 240, Ibrahim Ongiri number 248, Alice Gathoni, number 252, Simon Peter Weru, number 216, George Onsongo, number 267, Aloyce Ongoto, number 270, Miriam Onyango, number 255 and Evans Munyisa, number 215.

8. In **John Florence Maritime Services Limited & Another Vs Cabinet Secretary for Transport and Infrastructure & 3 Others (2015) eKLR** the Court of Appeal stated as follows:-

“the ingredients of res judicata are firstly, that the issue in dispute in the former suit between the parties must be directly or substantially be in dispute between the parties in the suit where the doctrine is pleaded as a bar. Secondly, that the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title and lastly that the court or tribunal before which the former suit was litigated was competent and determined the suit finally (see Karia & Another v the Attorney General and Others [2005] 1 EA 83”.

9. The Court of Appeal went on to state in the **John Florence maritime Services Limited & Another (Supra)** as follows: -

“The rationale behind res judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res judicata ensures the economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably”.

10. It has been demonstrated that the Respondents in this suit were Plaintiffs in ELC 335 of 2010 (OS). They were litigating under the umbrella of Airport View Neighbors Group. The litigation was over the same suit property. The Applicant herein was a party to that suit. This suit is therefore res-judicata.

11. The Court finally determined the issues. A finding was made that the Respondents had not acquired the suit property by way of adverse possession. That decision has not been overturned. Litigation has to come to an end. It is on this basis that I find that the Applicant's prayer for eviction ought to be granted. I therefore allow the Applicant's application and proceed to strike out this suit. The Respondents should vacate the suit property within 60 days failing which they should be evicted with the assistance of the OCS Embakasi Police Station. Each party to bear their own costs.

It is so ordered.

Dated, Signed and Delivered at Nairobi on this 4th day of March 2021.

E.O.OBAGA

JUDGE

In the Virtual presence of:-

Mr Kathee for Mr Makori for Plaintiff

M/s Shikali for Mr Kiprop for Defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE