Abednego v Injairu alias Shem Ombisa Enjairu & another (Environment & Land Case 5 of 2023) [2024] KEELC 6612 (KLR) (9 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6612 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VIHIGA

ENVIRONMENT & LAND CASE 5 OF 2023

E ASATI, J

OCTOBER 9, 2024

BETWEEN

SIMON AKELO ABEDNEGO ..... PLAINTIFF

AND

SHEM OMBISA INJAIRU ALIAS SHEM OMBISA ENJAIRU .... 1ST DEFENDANT

THE LAND REGISTRAR, VIHIGA ..... 2ND DEFENDANT

RULING

1. The Plaintiff herein vide the Plaint dated 5th December, 2023 sued the Defendant over a parcel of land known as South Maragoli/Madzuu/1048 alleging that the same was his father's property which the Defendants caused to be fraudulently transferred to the 1st Defendant and another. He sought for cancellation of title issued to the 1st Defendant by the 2nd Defendant and cancellation of entry numbers 2, 3 and 4 in respect of the suit land so that the land could revert to Apetweli Mudagi to enable the Plaintiff register Grant of Letters of Administration and a further order that the DCI Vihiga to investigate the matter and act accordingly.

2. In response to the suit, the 1st Defendant filed a Notice of Preliminary Objection dated 4th January, 2024 on the grounds that that the suit was res judicata.

3. The Preliminary Objection was canvassed by way of written submissions. Counsel for the 1st Defendant relied on the provisions of section 7 of the *Civil Procedure Act* and the case on *Christopher Kenyariri v Salama Beach* [2017]eKLR and submitted that the lower court case in Vihiga CMCELC No.150 of 2018 was heard and determined wherein the Plaintiff herein being dissatisfied filed an appeal NO.19 of 2021 in Vihiga High Court which appeal was dismissed. That on the basis of the lower court

judgement, eviction was done on 9th May, 2023. Counsel relied on the case of *E.T v Attorney General & Another* (2017)eKLR where it was held that;

> " the court must always be vigilant to guard against litigants evading the doctrine of res judicata by introducing new cause of action so as to seek the same remedy before the court".

4. The Plaintiff in his submissions dated 16th September, 2024 did not address the issue of res judicata.

5. I have considered the Preliminary Objection and the submissions made by the parties. The Plaintiff has not denied the existence of the former suit, the appeal which was dismissed or the fact that execution of the judgement in the former suit has taken place by way of eviction.

6. A plaint dated 10th July, 2018 in respect of the former suit was exhibited. It shows that the Plaintiff herein was the 4th Defendant and the defendant herein the Plaintiff in the former suit. It further shows that the subject matter was the suit land herein namely South Maragoli Madzuu/1048. It further shows that the claim and orders sought related to ownership of the suit land which is the subject matter of the current suit. I find that the suit herein is res judicata and strike it out with costs to the 1st Defendant.

   Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 9TH DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi- Court Assistant.

Plaintiff in person

Neriko for the 1st Defendant