



**Oduor & another v Otero (Environment & Land Case
E008 of 2022) [2023] KEELC 18063 (KLR) (8 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18063 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & LAND CASE E008 OF 2022**

AY KOROSS, J

JUNE 8, 2023

BETWEEN

MORNICA AGOLA ODUOR 1ST PLAINTIFF

CONSOLATA ATIENO ODUOR 2ND PLAINTIFF

AND

MELITUS OLUOCH ODERO DEFENDANT

RULING

1. By way of a notice of motion dated February 06, 2023 made pursuant to Sections 1A, 1B, 3A and 7 of the *Civil Procedure Act* and Order 2 Rule 15 (1) (b), (c) and (d) of the Civil Procedure Rules, the defendant moved this court and sought the following orders:
 - a. That the plaintiffs' originating summons be struck out.
 - b. That costs be awarded to the defendant.
2. The application was premised on the grounds enumerated on the face of the motion and on the annexed affidavit of the defendant Melitus Oluoch Otero deposited on February 07, 2023.
3. The defendant contended that the suit was *res judicata* since the issues had been determined on August 19, 2013 in Kisumu HCCC no 69B of 1996 between him as the plaintiff against several defendants. One such defendant was Wilson Oduor Ouma who was the plaintiffs' husband. The dispute was over land parcel no. Uholo/Ugunja/264 (hereinafter referred to as "the suit property").
4. The plaintiffs filed grounds of opposition dated March 18, 2023. They stated that they had not been parties in the previous suit, they were not the legal representatives or administrators of the estate of Wilson Oduor Ouma, their claim was different and they were litigating under different titles. Consequently, their claim was not *res judicata*.



5. Mr Onyango, counsel for the defendant, filed written submissions dated April 11, 2023 while Mr Omollo, counsel for the plaintiffs filed his submissions dated March 10, 2023.
5. I have considered the notice of motion, the affidavit in support together the several annexures. I have also considered the grounds of opposition and parties' submissions.
5. I have taken all relevant facts into account. For the reason I am at this point uncertain if the plaintiffs are the widows of Wilson Oduor Ouma, I have deferred determination of the issue of *res judicata*. This issue shall be determined when this court renders its final determination. This matter shall be fast tracked for main hearing.

DELIVERED AND DATED AT SIAYA THIS 8TH DAY OF JUNE 2023.

HON. A. Y. KOROSS

JUDGE

08/06/2023

Ruling delivered in the Presence of:

Mr. Omollo Kennedy for the plaintiffs

Mr. Onyango for the defendant

Court assistant: Ishmael Orwa

