



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

ELC NO. E020 OF 2021 (O.S)

CATHERINE MWASHI.....APPLICANT

-VERSUS-

KIPLAGAT BIRECH.....1ST RESPONDENT

UASIN GISHU LAND REGISTRAR.....2ND RESPONDENT

THE HONORABLE ATTORNEY GENERAL.....3RD RESPONDENT

RULING:

1. This is a ruling in respect of a Preliminary objection dated 2nd August, 2021 in which the 1st Respondent contends that this suit is res judicata. The 1st Respondent contends that the Applicant and the 1st Respondent litigated over the same subject matter in **Eldoret HCCC No. 16 of 1998 (Salome Mwashu & another –Vs- Javan Mwashu & another**.

2. The 1st Respondent therefore argues that the issues being raised in this suit touching Ngelel Tarit farm LR 10927 measuring 14.56 acres were determined by the High Court on 21st February, 2003.

3. The parties were directed to file written submissions in respect of the preliminary objection. The 1st Respondent filed his submissions dated 27th October, 2021. The Applicant filed her submissions dated 11th November, 2021. I have gone through the submissions with a view to determining whether this suit is res judicata or not. Though the Counsel for the 1st Respondent mentions of a judgment delivered on 21st February, 2003 in Eldoret HCCC No. 16 of 1998 being annexed to the submissions, no such judgment was annexed. The said judgment was also not annexed to the notice of preliminary objection.

4. In the absence of the said judgment, the Court is left with no option other than to dismiss the preliminary objection as having no basis. I wish to state that it is important for advocates to cross check what they file in Court because they have a duty to assist the Court in administration of justice. I do not think it will be proper for the Court to ask parties to put their house in order or to go digging out files from the Archives in matters which were determined over two decades ago. The preliminary objection is dismissed with costs.

It is so ordered.

Dated, Signed and Delivered at Eldoret on this 3rd day of March, 2022.

E. OBAGA

JUDGE

In the virtual presence of;

Ms. Rutto for 3rd Defendant.

Court Assistant –Albert

E. OBAGA

JUDGE

3RD MARCH, 2022