



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 14 OF 2020

NJOMBUKA INVESTMENTS LIMITEDPLAINTIFF

VERSUS

OBADIAH MUTISYA KITONYI.....1ST DEFENDANT

THE CHIEF LAND REGISTRAR.....2ND DEFENDANT

NATIONAL LAND COMMISSIONS.....3RD DEFENDANT

RULING

1. The plaintiff herein filed a plaint dated 27th January 2020, together with a Notice of Motion dated the same date. In response the 1st defendant filed a replying affidavit sworn on the 19th March 2021.

2. He also filed a Notice of Preliminary Objection dated 23rd November 2020 on the grounds that this suit is *res judicata* as the issues herein were determined in ELC 1145 of 2013.

3. On the 24th November 2020, the court directed that Preliminary Objection be heard first. It also directed that the same be canvassed by written submissions.

4. It appears the 1st defendant did not file his submissions. The plaintiff's submissions are dated 15th December 2020 and filed on 15th February 2021.

5. I have considered the preliminary objection and the submissions filed on behalf of the plaintiff herein. The issue for determination is whether the preliminary objection is merited.

6. **Section 7** of the Civil Procedure Act provides that:-

“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.”

7. In the plaint herein the plaintiff seeks among other prayers:-

“(a) A declaration that the title of the 1st defendant being LR No 209/1354 Nairobi was created irregularly, illegally and in total contravention of the provisions of the Government Land Act (Cap 280) The Registered Titles Act (Cap 281) (both repealed). The Physical Planning Act (Cap 286) as read together with the Land Act No 6 of 2012 and should be cancelled”.

8. One of the prayers in ELC 1145 of 2013 was:-

“A declaration that LR No 209/13541 is public land and that the title over this plot is null and void”.

The court after hearing all parties came to the conclusion that LR No. 209/13541 exists and dismissed the plaintiff's suit with costs to the

defendant.

9. In the case of **John Florence Maritime Services Ltd & Another vs Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR**, the importance of *res judicata* was successfully reiterated by an excerpt from the case of **Kamunye & Others vs Pioneer General Assurance Society Ltd [1971] EA 263** where it was stated:-

“The rationale behind res judicata is based on 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 of 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 unravelling uncontrollably”.

10. In my view, the main issue in ELC 1145 of 2013 was in relation to title over LR No 209/13541 which the court declined, to declare it null and void. The instant suit is therefore *res judicata* as it raises the same issue.

11. It is an attempt to relitigate the issues in ELC 1145 of 2013 notwithstanding that the plaintiff herein has a different name from the plaintiff in ELC 1145 of 2013. There is nothing to show that the directors in the two plaintiffs are different.

12. It would be a waste of the judicial time if this suit was to be heard. It is an abuse of the court process. The plaintiff ought to have appealed against the judgment in ELC 1145 of 2013 if they were dissatisfied.

13. In conclusion, I find merit in the preliminary objection herein. The same is upheld. Consequently, the suit herein is struck out for being *res judicata*, with costs to the 1st defendant.

It is so ordered.

Dated, signed and delivered in Nairobi on this 17th day of June 2021.

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L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance for the Defendants

Phyllis - Court Assistant