



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC CASE NO. 125 OF 2016

GEOFFREY KIPKEMBOI LELEI.....PLAINTIFF

VERSUS

ALICE JEPKOECH YANO.....DEFENDANT

RULING

1. This is a ruling in respect of a Preliminary Objection raised by the Defendant. The Preliminary Objection is based on the following grounds: -

1. The suit herein is bad in law and therefore fatally and incurably defective.
2. The suit is bad in law, incompetent, scandalous, vexatious lacks any legal basis or foundation.
3. The suit does not raise any reasonable cause of action and triable issues against the defendant.
4. The suit is a gross abuse of the court process.
5. The allegation and depositions laid out in the plaintiff's application, suit and affidavits are misplaced, untrue, unfounded vague and not supported by any material particular's
6. The suit offends the provisions of the law.
7. The application is frivolous and vexatious.
8. The application is untenable in law
9. The suit and the application is untenable in law
10. The suit and the application is re-judicata.

2. The parties were directed to dispose of the Preliminary Objection through written submissions. The parties were to file written submissions within 14 days from 21st June, 2021. The Defendant filed her submissions on 23rd June, 2021. The Plaintiff did not file any submissions.

3. I have considered the submissions by the Defendant. Grounds 1 to 9 of the Preliminary Objection do not raise any pure point of law and as such they do not qualify to be preliminary points of law. The only ground which will be dealt with is ground 10 and the issue for determination is whether this suit is *re-judicata*.

4. 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”.

5. The Defendant contends that the issues which the Plaintiff is seeking in this suit are the same ones which were raised in Eldoret. **ELC No.608 of 2021 [Alice Chepkoech Yano & others =vs= Samson Kiprop & 6 others]** which have been fully determined.

6. In the **Alice Chepkoech & 2 others case (supra)**, the Plaintiffs had sued the Defendants claiming the following reliefs: -

a. A declaration that the Plaintiffs are the owner of the whole of that parcel of land known as **ELDORET / MUNICIPALITY/ BLOCK 15/2051** and that the Defendants are trespassers on the said parcel of land.

b. A permanent injunction restraining the Defendants, their servants and agents from entering into, occupying, constructing upon, transferring, encumbering, wasting and or otherwise interfering with the plaintiff's quiet possession use and enjoyment of land parcel number **ELDORET/MUNICIPALITY/BLOCK 15/2051**

c. Costs of this suit

d. Any other or further relief as the court may be pleased to grant.

7. The plaintiff in the current suit was the 6th Defendant in the Alice Chepkoech Yano case which I shall hereafter refer to as the former suit. The Defendants in the former suit were duly served but they neither entered appearance nor filed a defence. The hearing proceeded ex-parte and a judgment was delivered in favour of the Plaintiffs on 5th March, 2015.

8. On 10th April, 2015, the 6th Defendant in the former suit filed an application in which he sought among other orders that the County Land Registrar and District Land Surveyor do visit LR Nos. **ELDORET/MUNICIPALITY/ BLOCK 15/1889** and **ELDORET/ MUNICIPALITY/ BLOCK 15/2051** and mark the boundary between the two parcels. This application was compromised through a consent recorded in court on 20th April, 2015 in which the County Land Registrar and District Land surveyor were directed to visit the two parcels and mark the boundaries and file a report in court.

9. The District Land Surveyor complied with the court order and filed his report in court on 16th July, 2015. The Defendants in the former suit were subsequently evicted from **ELDORET/MUNICIPALITY/BLOCK 15/2051** which belongs to the Defendant in the current suit with two others.

10. In the current suit, the Plaintiff is seeking the following reliefs:-

a. A permanent injunction restraining the defendant, her agents, servants and/or assigns from entering into, encroaching, occupying, evicting, carrying out further demolitions and/or otherwise interfering with the plaintiff's quiet possession and/or enjoyment of part of the portion of land parcel namely **ELDORET/MUNICIPALITY/BLOCK 15/1889**.

b. An order do issue authorizing the County Land Registrar and District Land Surveyor to mark the boundary between the land registration No. **ELDORET/MUNICIPALITY/BLOCK 15/1889** and **ELDORET /MUNICIPALITY/BLOCK 15/2051** and a report be furnished before this Honourable court.

c. Special and general damages arising thereto

d. Costs and interest incidental to the suit

e. Any such other or further relief as this Honourable Court may deem fit and just to grant.

11. It is clear from the reliefs in the current suit that the Plaintiff is seeking what was already granted in the former suit. The District Land Surveyor went to the ground and re-established the beacons marking the boundary between the two parcels. The filing of the current suit is therefore res-judicata.

12. In the case of **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 who 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 =vs= the Attorney General and Others [2005] 1 EA 83”.

13. The Court of Appeal went on to state in the **John Florence maritime Service & 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 the 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 unravelling uncontrollably”.

14. From the above analysis, it is clear that the Plaintiff’s suit is res judicata and this was rightly observed by my brother Justice Ombwayo when he dismissed the Plaintiff’s application for injunction in a ruling he delivered on 24th November, 2017. I therefore proceed to uphold the Preliminary Objection. The Plaintiff’s suit is hereby dismissed with costs to the Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 5TH DAY OF OCTOBER, 2021

E.O. OBAGA

JUDGE

In the virtual presence of;

M/S. Kibichy for Plaintiff

Court Assistant – Mercy

E.O. OBAGA

JUDGE