REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELCA NO. 23 OF 2014

KARIUKI ICHUGA .....APPELLANT/APPLICANT

-VERSUS-

KARIUKI WANJOHI..... RESPONDENT/RESPONDENT

RULING

1. By this Notice of Motion dated 31st October, 2018, Kariuki Ichuga *(the Appellant)* prays for orders:

> *1. That judgment be entered in terms of the award (of the) Tetu Land Disputes Tribunal made on the 8th April, 2003 in Tetu Land Dispute Tribunal Case No. 12 of 2002;*
>
> *2. That the consent order recorded in court on 26th April, 2010 by the parties herein be adopted as the further orders of the court; and*

3. That the costs of this appeal be provided for.

2. The application which is supported by an affidavit sworn by the Appellant is premised on the grounds:

> *(i) That the Appellant had instituted a claim before the Tetu Land Disputes Tribunal in case No. 12 of 2002.*
>
> *(ii) The Tribunal made a decision on 8th April, 2003 recommending that a Government Surveyor do visit the disputed boundary and to rectify the same;*
>
> *(iii) That the award was adopted in Nyeri Land Award case No. 10 of 2003 by the consent of both parties on 9th May, 2003;*
>
> *(iv) That on 26th April, 2010, the parties recorded a consent in court as follows:*
>
> > *1. That the District Land Registrar Nyeri do visit and fix the correct boundary with the assistance of the District Surveyor;*
> >
> > *2. Each party at liberty to appoint a private surveyor to accompany the District Land Registrar; and*
> >
> > *3. Report to be filed in court.*
>
> *(v) That subsequently by a Notice of Motion dated 14th January, 2012, the Respondent moved the lower court seeking inter alia to set aside the subsequent consent order. The application was allowed by the court thereby prompting this appeal;*
>
> *(vi) That the appeal was heard and Judgment was delivered on 14th November, 2017 when the same was allowed as prayed.*

3. The Respondent – Kariuki Wanjohi is opposed to the grant of the orders sought in the application. In a short 6 – paragraph Replying Affidavit sworn on his behalf by his Advocate on record Andrew Kariuki, the Respondent avers as follows in the relevant Paragraphs 3 to 5 thereof:

3. That the application dated 31st October, 2018 offends the provisions of Section 7 of the Civil Procedure Act in view of the Ruling made on 2nd October, 2018;

4. That the application is therefore re-Judicata and should be best dismissed with costs; and

5. That the orders sought in the said application are similar to the ones sought in the application dated 3rd August, 2018 which was dealt with on 2nd October, 2018.

4. I have perused and considered the application filed by the Appellant in person as well as the response thereto by the Respondent.

5. The Appellant herein wants the court to enter Judgment herein in terms of an award made by the Tetu Land Disputes Tribunal on 8th April, 2003 in the Tribunal case No. 12 of 2002. He also wants the consent order entered herein by the parties on 26th April, 2010 to be adopted as the further orders of this court.

6. I have gone through this file and it was rather difficult for me to understand why the Appellant made this present application. I say so because the application before me is similar word for word to an application dated 3rd August, 2018 which was also instituted by the Appellant.

7. That application was considered by my Sister the Honourable Justice L. N. Waithaka. In a Ruling delivered on 2nd October, 2018, the Learned Judge dismissed the application having determined that it was *res judicata* as the court had pronounced itself on the issues raised in its Judgment delivered herein on 14th November, 2017.

8. As it were, **Section 7 of the Civil Procedure Act** captures the doctrine of res judicata 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."**

9. That provision captures the fundamental doctrine that there should be an end to litigation. As the Court of Appeal stated in **The Independent Electoral and Boundaries Commission -vs- Maina Kiai & 5 Others (2017) eKLR:**

> **"The rule or doctrine of *res judicata* serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and commonsensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of *res judicata* thus rest in the public interest of swift, sure and certain justice."**

10. In the matter before me, the Appellant had filed the same application on 3rd August, 2018. That application was dismissed on 2nd October, 2018. Some 29 days later he filed the same application, word for word seeking the same orders. That application has already been determined and is therefore res judicata as stated by the Respondents.

11. Accordingly, the application before me has no basis and is filed in abuse of the court process. It is dismissed with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED AT NYERI THIS 2ND DAY OF DECEMBER, 2021.

In the presence of:

Ms Irene Kinyanjui for Kariuki for the Respondent

Mr. Kariuki Ichuga – the Appellant present in person

Court assistant - Wario

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J. O. OLOLA

JUDGE