



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC CASE NO. 245 OF 2017**

**MAURICE OLWAL OLWA.....PLAINTIFF**

**VERSUS**

**MICHAEL OTIENO WAGUDE.....1<sup>ST</sup> DEFENDANT**

**THE REGISTRAR LANDS KISUMU.....2<sup>ND</sup> DEFENDANT**

**RULING**

The Preliminary Objection is dated 17<sup>th</sup> September, 2018 filed by the defendant on grounds that the matter is res-judicata and that the plaintiff has no locus standi and that he is meddling with the property of the deceased.

The 1<sup>st</sup> defendant submits suit number ELC 13 of 2015 was between the plaintiff and defendant herein. The parties were litigating under the same title. The issues herein were determined in suit No. ELC 13 of 2015. The court in ELC No. 13 of 2015 was competent to try the suit and subsequent suit. The plaintiff on his part submits that the two cases present two different causes of action. One was based on eviction and the other on fraud.

I have considered rival submissions and do find that in ELC No. 13 of 2015, the parties were Michael Otiemo Wagunde, plaintiff and Morris Olwal, defendant. The dispute revolved on ownership of parcel number Kisumu/Dago/566. The court found the plaintiff to be the absolute and indefeasible owner of the property and that no challenge to his title has been mounted as required by law. He was ordered to enjoy the full right of the property.

In ELC no. 245 of 2017, the parties are the same thus Maurice Olwal Olwal as plaintiff and Michael Otiemo Wagunde as the 1<sup>st</sup> defendant and the Land Registrar, Kisumu as the 2<sup>nd</sup> defendant. The dispute revolves on ownership of Kisumu/Dago/566. The issues of ownership raised in suit No. 245 of 2017 were supposed to be raised in ELC No. 13 of 2015.

I do find that the issues raised in 245 of 2017 which is the ownership of have technically been determined in ELC 13 of 2015. The plaintiff has come before the same court that determined the ownership of the same property, thus parcel number Kisumu/Dago/566.

I do find that the suit herein is res-judicata and an abuse of court process and is hereby struck out. Costs to the defendant.

**DATED, DELIVERED and SIGNED THIS 22<sup>nd</sup> .DAY OF MAY, 2020.**

**A.O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**

This judgment is hereby delivered to the parties by electronic mail due to the measures restricting court operations due to COVID -19 pandemic and in light of directions issued by the Honourable Chief Justice and with the consent of the parties.

**A.O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**