



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERICHO**

**ELC CASE NO 83 OF 2013**

**HENRY CHEPKWONY LANGAT.....PLAINTIFF**

**VERSUS**

**ELIZABETH AKINYI MUTAI.....DEFENDANT**

**R U L I N G**

This Ruling determines the Preliminary Objection raised by the Defendant/Respondent through her notice dated 7<sup>th</sup> January, 2017. The Preliminary objection is to the effect that the suit ought to be struck out on the following grounds:

- 1. The matters pleaded by the Plaintiff are res judicata and this court has no jurisdiction to try them, the same having been directly substantially in issue in issue, in KERICHO HCC Misc Application No. 40 of 1998 and KERICHO PMCC NO 50 OF 1984, whereupon orders were granted accordingly by the two courts.*
- 2. The suit herein seeks to circumvent the orders and directions of Justice Muga Apondi issued in HCC Misc Application No 40 of 1998, which is a clear abuse of the process of this court.*
- 3. No appeal has been preferred at all against the two previous cases cited above, nor was a review proffered.*
- 4. In furtherance of the overriding objective of the Civil Procedure Act and the rules made there under, and for the timely disposal of proceedings, this court ought to look at the decisions made by the High Court in HCC Misc Application No 40 of 1988 and Kericho PMCC Misc 50 of 1984 and dismiss this suit as an abuse of the process of the Court, since the matters pleaded in this suit are panel beaten, recast and settled issues, that were previously determined.*
- 5. The Plaintiff lacks the locus standi to sustain the instant case.*

The Plaintiff filed this suit against the Defendant on 25<sup>th</sup> November, 2013 seeking vacant possession and an order of eviction against the Defendant by removal of the Defendant's structures or developments and livestock from the Plaintiff's land known as KERICHO/GETARWET/702. The Plaintiff in her Plaint also seeks a perpetual injunction restraining the defendant from remaining on, returning to, working on, developing, grazing and /or in way dealing with the Plaintiff's parcel land.

In their written submissions counsel for the Defendant submitted that the suit land has been the subject of two cases i.e H.C.C Misc Application No 40 of 1998 in which the Plaintiff sued Victor Mutai, Moses Chepkurui Langat and John Kipkorir Siele and P.M.C.C No 50 of 1984 in which the Plaintiff sued one

Ruth Cheptonui Kikwai, the mother in law of the Defendant herein. The Plaintiff is presently represented in court by his son Patrick Kipngetich Chepkwony through a power of attorney. He therefore submitted that this amounts to litigating over the same parcel of land by the same people through proxies.

He further submitted that pursuant to a ruling made in H.C.C.C No 40 of 1998 the court made the following orders:

- i. A declaration that L.R no KERICHO/GETARWET/210 solely belongs to the Plaintiff.
- ii. That a sub-division be issued rectifying the title in respect of L.R No KERICHO/GETARWET/726 and 727 in the name of the Plaintiff in lieu of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants in the register relating to the said title.
- iii. That the 2<sup>nd</sup> and 3<sup>rd</sup> defendant's to sign documents of transfer relating to L.R N 726 and 727 to the plaintiff and in default the Honourable court or its authorized officers do sign the same on their behalf.
- iv. The defendants be jointly and severally condemned to pay the costs of the suit.

After hearing the case Justice Muga Apondi in his Ruling dated 30<sup>th</sup> May, 2003 stated that the matter was *res judicata*, having been heard and determined in **Kericho P.M.C Misc. Application No 50 of 1984** where the plaintiff's mother in law and the husband were the plaintiffs. Counsel also submitted that the plaintiff's son who represents him in this suit swore an affidavit on 12<sup>th</sup> June, 2014 in which he stated that sometime in 1998 he discovered that his father was misguided into filing a fresh suit No 40 of 1998 which the court held to be *res judicata*. He further averred in the same affidavit that the parties and the subject matter have been the same including litigating twice and losing twice over the same suit land KERICHO/GETARWET/210 which was subsequently and illegally sub-divided to land parcels no 701 and 702, 726 and 727.

Regarding the issue of *locus standi* it has been submitted on behalf of the defendant that the power of attorney donated by the plaintiff is for a specific suit and is therefore defective.

The plaintiff on his part submits that this case is not *res judicata* as the suit property in controversy is L.R. No KERICHO/GETARWET/702 which is registered in the name of the plaintiff. The said parcel was derived out of a sub-division of land parcel number KERICHO/GETARWET/210. The sub-division was effected pursuant to the judgment in R.M.C.C Misc. Application No 50 of 1984 therefore the Defendant is a trespasser on the plaintiff's land which is separate and distinct from the subject matter in **H.C.C Misc. Application No 40 of 1998**.

The doctrine of *res judicata* is anchored in Section 7 of the Civil Procedure Act which states that:

***“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially 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 decided finally by such court”***

The case of **Karia & Another Vs Attorney General and Others, 2005 1 EA** captures the essence of *res judicata* 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 in dispute in the suit where the doctrine is pleaded as a bar. Secondly, the former suit should be in respect of the same parties or parties under whom they or any of them claim, litigating under the same title and lastly, the court or tribunal before which the former suit was litigated must have been competent and it must have determined the***

***suit finally.***

The principle of *res judicata* is premised on the public interest that there should be an end to litigation, coupled with the interest to protect a party from facing repetitive suits over the same subject matter. It ensures the court's optimum use of its limited resources and promotes uniformity in decisions issued by courts of concurrent jurisdiction or equal status.

In a suit filed in **Kericho PMC Misc Application No. 50 of 1984** and a subsequent similar suit filed by the Plaintiff in HCC Misc Application No 40 of 1998 the Plaintiff sued the defendant's mother-in-law Ruth Cheptonui Kikwai in respect of the same subject matter and the court ruled against the Plaintiff, with Justice Muga Apondi holding that the matter was *res judicata*. The Plaintiff has to date never filed an appeal against the said judgment and cannot therefore re-open the case through a similar case claiming under a different person.

For the going reasons, the Plaintiff's case is incompetent as it is *res judicata*. I therefore strike it out with costs to the Defendant.

Dated, signed and delivered at Kericho this 14th day of March, 2017.

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**JANE M. ONYANGO**

**JUDGE**

**In the presence of:**

1. Mr. Bii for Koske for the Plaintiff.
2. N/A for the Defendant.