



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 21 OF 2012

JANE GACHUI MWANGI PLAINTIFF

VERSUS

NDERI MWANIKI1ST DEFENDANT

BANARD KINYUA2ND DEFENDANT

MURIUKI MWANGI 3RD DEFENDANT

JUDGMENT

The plaintiff **JANE GACHUI MWANGI** filed this suit on 13th November 2012 seeking a perpetual injunction restraining the defendants, whether by themselves, their agents and/or servants from remaining on or continuing in occupation or use of land parcel No. INOI/THAITA/1001 (the suit land). She also sought an order for General damages for trespass, costs and interest. Her claim was premised on the pleading that wherein she is the registered proprietor of the suit land, the defendants have been committing acts of waste and occupying it which acts are inconsistency with her interest therein.

The 1st and 2nd defendants filed a defence in which they stated, inter alia, that there is pending a Civil Appeal Case No. 14 of 1999 relating to the same suit land and the plaintiff had also filed Civil Case No. 169 of 1995 seeking similar orders. The defendants similarly contend that they occupy the suit land and have done so for over 50 years and the plaintiff cannot therefore dispose them of the same.

The plaintiff's case as per her evidence in Court and her statement which she asked the Court to adopt is that she is the registered proprietor of the suit land and the defendants whose land parcel is INOI/THAITA/1003 have also occupied her land. That she filed **CIVIL SUIT No. NYERI C.M.C.C. 169 of 1995** and a decree was issued in her favour yet the defendants have continued to occupy her land.

The evidence of the 1st defendant who testified on behalf of the 2nd defendant and also asked the Court to adopt his statement is that the plaintiff lived on the suit land with his (1st defendant's) father for some four years prior to his death. That the defendants live on the suit land since 1958 and have 12,000 tea stems thereon. That there was another case in Nyeri where an order of status quo was made by **Justice Makhandia** and the same was later dismissed and so the plaintiff has no right to file this suit.

I have considered the evidence by both parties and submissions by Mr. Wandaka counsel for the defendants and the plaintiff who was in person.

In the course of this trial, the issue of res-judicata kept coming up and ideally, that ought to have been determined as a Preliminary issue prior to the hearing. However, nothing stops this Court from

addressing it even at this late stage because if this suit is res-judicata, then I must down my tools. This is because **Section 7 of the Civil Procedure Act** provides 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”

For res-judicata to apply, the dispute must have been heard and determined by a competent Court, the dispute in the former suit must be directly or substantially the dispute in the new suit and the parties in the former suit should be the same parties or those under whom they or any of them claim litigating under the same title. The essence of the doctrine of res-judicata is to bring an end to litigation so that parties are not vexed continuously over the same cause.

From the documents produced herein, it is clear that the plaintiff is the registered proprietor of the suit land. The dispute between the parties over the suit land was first heard by the **KIRINYAGA LAND DISPUTES TRIBUNAL** with the plaintiff being the applicant and the 2nd defendant the respondent and apart from the suit land, the dispute also involved other parcels of land being L.R No. INOI/THAITA/1002 and 1003. In its award, the Tribunal ordered that the suit land remain with the plaintiff while the other parcels were awarded to the 1st and 2nd wives of the late **MWANGI MWANIKI SIMON** the original owner of land parcel No. INOI/THAITA/77 before its sub-division to give rise to the suit land.

The 2nd defendant, being dissatisfied with the award of the **KIRINYAGA LAND DISPUTES TRIBUNAL** filed an appeal at the **PROVINCIAL LAND DISPUTES APPEAL TRIBUNAL in APPEAL CASE No. 68 of (1998)?** which up-held the decision of the **KIRINYAGA LAND DISPUTES TRIBUNAL**. Both decisions were adopted by the **PRINCIPAL MAGISTRATE’S COURT NYERI** in their case No. 169 of 1995 and on 8th January 2014, an order was made to evict the defendants from the suit land and the Officer Commanding Station Kerugoya Police Station (OCS) directed to provide security. It is not clear whether that eviction was ever carried out. What is clear however is that the defendants filed **CIVIL APPEAL No. 14 of 1999** at the **HIGH COURT IN NYERI**. According to the plaintiff’s oral evidence, that appeal was dismissed and the matter proceeded to the Court of Appeal. Those proceedings were however not availed to this Court. All the above proceedings were no doubt in compliance with the now repealed **Land Disputes Tribunal Act (Chapter 303 A Laws of Kenya)** which provided under **Section 8** that a party aggrieved by the decision of the Land Disputes Tribunal could appeal to the Provincial Appeals Committee whose decision would be final although a party could still file an appeal to the High Court on points of law.

That is the route that this dispute has taken. It is common knowledge that the parties in this suit have been the same parties in the previous suit litigating over the same subject matter. This suit is therefore res-judicata. The plaintiff ought to have executed the decree issued in the earlier suit and not filed a fresh suit as she has done.

In view of all the above, this Court finds that this suit is res-judicata as the same was heard and finally determined in accordance with the provisions of the then **Land Disputes Tribunal Act** and a decision made in favour of the plaintiff.

This suit is therefore struck out with an order that each party meet their own costs.

B.N. OLAO

JUDGE

3RD JUNE, 2016

Judgment delivered, dated and signed in open Court this 3rd day of June 2016.

Plaintiff present in person

Mr. Wandaka for the 1st and 2nd Defendants present

Right of appeal explained.

B.N. OLAO

JUDGE

3RD JUNE, 2016