



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CIVIL SUIT NO 202 OF 1995

NTARANGWI M'KIARA.....PLAINTIFF

VERSUS

JACKSON MUNYUA MUTUERA.....DEFENDANT

RULING

This application is dated 21st October, 2014 and seeks Orders:-

1. **THAT the suit be struck out for being Res-Judicata Meru CMCC NO. 21 of 1973.**
2. **THAT costs of this application and the entire suit be awarded to the Defendant/Applicant.**

The application is supported by the affidavit of JACKSON MUNYUA MUTUERA, the applicant. It has the following grounds:-

1. **THAT the matter in issue in this suit was the similar matter that was conclusively determined in Meru CMCCC NO. 21 of 1973.**
2. **THAT the parties are the same parties in Meru CMCC NO. 21 of 1973.**
3. **THAT the application is merited.**

I have carefully gone through proceedings in this suit and in other related suits. This suit was filed in 1995. The applicant claims that the suit is *Res Judicata* MERU CMCC No. 21 of 1973. A Consent Judgement was entered in the latter suit on 18/1/1974, 41 years ago. At some point the original suit land was compulsorily acquired by the Government.

Having looked at the authorities proffered by the Parties, I find that they are good authorities in proper contexts and circumstances, However, It is clear to me that this application that this suit is *res-judicata* a suit in which a Consent was entered by the Parties 41 Years ago is *sui generis*. I am not comfortable that this application is being filed 41 Years later. I do note that this suit is part heard. I am also apprehensive that the Compulsory acquisition of the suit land may have altered the subject matter, although the parties may remain the same. I am unable, at this stage, to definitively pronounce myself on the issue of *res-judicata*.

In the circumstances, **I dismiss the application with costs to be in the cause.**

The parties are directed to have this suit set down for hearing within 90 days of the delivery of this ruling.

It is so ordered.

Delivered in Open Court at Meru this **7th day of July, 2015** in the presence of:-

CC: Lilian /Daniel

Manases Kariuki for Defendant/Applicant

Kioga Absent for Plaintiff

P.M. NJOROGÉ

JUDGE