



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

Civil Case 137 of 2010

ZEBNISHA M.

BACHOO.....PLAINTIFF

~VRS~

**SOPHIA SHABRAM.....1ST DEFENDANT
 (DECEASED)**

**ASHIRAF MURUNGA SHABRAM.....2ND
 DEFENDANT**

**HASSANNALI BABU SHABRAM.....3RD
 DEFENDANT**

**RAZIA SHABRAM.....4TH
 DEFENDANT**

**SHENANZI SHABRAM.....5TH
 DEFENDANT**

**NOOR M. ABDUL.....6TH
 DEFENDANT**

**ASHIRAF MURUNGA SHABRAM (Sued on behalf of ROSHAN M. ABDUL (MINOR).....7TH
 DEFENDANT**

RULING

On 21/12/2010 the Plaintiff filed this suit seeking land parcels nos. South Teso/Osurette/1155 and 1161 from the Defendants. In respect of parcel 1155 the complaint was that she was gifted it by her late father following which she became the registered owner but that her late mother fraudulently transferred it to herself and subsequently quietly subdivided it into six portions which she transferred to the respective Defendants. As for parcel 1161, her case was that it belonged to her late husband who was forced to transfer it to the 2nd and 3rd Defendants and three other people who are now deceased. She sought a declaration that she was the lawful owner of the parcels whose present registrations she sought to be cancelled and be restored to her or to the original owner (as for 1161). The Defendants entered appearance and filed a defence.

On 9/2/2011 the Plaintiff filed an application to amend the plaint. She was basically asking that she

abandons her claim to parcel 1155 and be left to pursue the claim to parcel 1161. On the face, this was a harmless request. However, the Defendants defended it and on 30/5/2011 filed their own application seeking to have the entire suit struck out for being an abuse of the process of the court and an effort to embarrass the court. It was also claimed the suit was *res judicata*. It was agreed that the two applications be taken together. Counsel filed respective submissions which I have considered.

Proceedings in **Busia SPMCC no.35 of 1989** were availed by the Defendants to show that the 1st Defendant successfully sued the Plaintiff and others over land parcel 1155. An effort was unsuccessfully made in **HCCA no.200 of 2011 at Busia** to appeal the decision. It follows that any subsequent suit between the parties, or those claiming under them, over this parcel would be *res judicata*.

Regarding parcel 1161, the Defendants annexed an affidavit sworn on 31/10/2011 by the Plaintiff in which she had deponed as follows in paragraph 2:

“2. That after carefully going through the letter of parcels from Busia Land Registrar, I found out that indeed my late husband Musafarali Bachoo Ruplal signed the transfer of the land parcel no. South Teso/Osurette/1161 to his late brother Omar Shabram Ruplal children willingly, freely and voluntarily on 23rd of May 1986 as per the records.”

In paragraph 10 of the plaint herein the Plaintiff claimed parcel 1161 belonged to her late husband Muzafarali M. Bachu Ruplal which he was forced to transfer to the 2nd and 3rd Defendants, among others. That plea runs against her sworn evidence and would therefore be unsustainable. To allow such a plea to proceed to hearing would be a waste of time and an abuse of the process of the court.

The result is that the Plaintiff's application dated 9/2/2011 has no merit and is dismissed with costs. The Defendants' application filed on 30/5/2011 is allowed with costs. The Plaintiff's suit is struck out with costs for being *res judicata* and an abuse of the process of the court.

Dated, signed and delivered in open court this 1st day October, 2012.

A. O. MUCHELULE

JUDGE