



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC MISC. CASE NO. E1 OF 2020

JOHN ANYANGU MOYI

JOSEPH MOYL.....APPLICANTS

VERSUS

RONALD WERE MWACHI)

DR. FRANCIS MBASIRA)

TERESA AWUOR)

HELLEN INDIMULI)

MARICIANAN CHETI)

HUMPHREY NDENGA)

FRED)

AMBROSE ODUOR)

MARY ORAPIDI)

LINUS M.S. LUMBEMB).....RESPONDENTS

RULING

The respondents herein raised a point of preliminary objection to the application herein in light of an earlier similar application dated 20th September, 2019 in ELC No. 79 of 2013 which was heard and a ruling delivered.

They submitted that the orders of eviction being sought by the applicants are substantive orders and cannot be obtained through a mere application as noted by the court in its ruling dated 23rd June, 2020 in ELC No. 79 of 2013. That whereas the applicants are seeking eviction orders based on the judgment dated 27th February, 2019 in ELC No. 79 of 2013, the court in its ruling dated 23rd June, 2020 in the said case agreed that it never gave eviction orders as eviction orders were never sought for and further that the rest of the respondents were never party to that case hence the said judgment could not be enforced against them and therefore the application is misplaced and is res judicata.

The respondent opposed the preliminary objection and submit that the respondents are trespassers as the applicants obtained judgement in their favour for possession of the suit property. That as the legal owners they have absolute rights to the suit property.

This court has considered the preliminary objection and the submissions therein. Section 6 and 7 of the Civil Procedure Act Cap 21 provides as follows:

Section 6.

“No court shall proceed with the trial of any suit or proceedings in which the matter in issue is directly and substantially in issue in a previously instituted suit or proceedings between the same parties, or between parties under whom they or any of them claim,

litigate under the same title, where such suit or proceedings is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed”

Section 7.

“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.”

I have perused the documents in this case and find that there has been an application of a similar nature dated 20th September, 2019 seeking similar orders of eviction against the respondents in Kakamega ELC No. 79 of 2013 and which was dismissed by this honourable court and I therefore find the present application is res judicata and should be struck out with costs (RWM-1a, 1b, 1c copies of the application, grounds of opposition and the ruling). The applicants were advised that they cannot seek to enforce the right of eviction through an application. . I find the preliminary objection has merit and I uphold the same. This application is struck off with costs to the respondents.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 25TH NOVEMBER 2020.

N.A. MATHEKA

JUDGE