

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO.210 OF 2015

HASSAN SHERAMO.....1ST PLAINTIFF

ADAN ABDI EMOI.....2ND PLAINTIFF

NAOMI MUTURI.....3RD PLAINTIFF

KARANJA NGEMA.....4TH PLANITIFF

VERSUS

ERIC GITONGA BENGL.....DEFENDANT

RULING

The Defendant raised a preliminary objection to the Plaintiff's suit which is dated 16/3/2018 to the effect that the matter before this court is *res judicata*, having been determined in the **Chief Magistrate's Court Civil Case No. 6028 of 2011** and that the Plaintiffs ought to have appealed against that decision and not filed this suit. The Plaintiffs did not file a response to the preliminary objection.

On 23/10/2018 when this matter came up, the Plaintiffs' counsel indicated that he would make oral submissions on the date the objection would be heard. The court fixed the hearing of the preliminary objection for 13/2/2019. The Plaintiffs' advocate did not attend court when the preliminary objection was argued in court on 13/2/2019.

The Defendant's counsel submitted that paragraph 5 of the plaint complains of eviction which was carried out following a decree in **Chief Magistrate's Court Civil Case No. 6028 of 2011** and that the decree has not been set aside and no appeal was lodged against that decision.

The court has considered the preliminary objection, submissions by counsel for the Defendant, pleadings and documents filed in this suit and the law applicable. It has not been shown that the court which passed the decree lacked jurisdiction. The decision of that court determined the issues now sought to be litigated upon. The decree issued in **CMCC NO.6028 of 2011** is valid. Section 7 of the Civil Procedure Act, prohibits the court from trying any suit or issue which was directly or substantially determined in a previous suit between the same parties by a competent court.

The Defendant's preliminary objection dated 16/3/2018 is allowed. The suit is dismissed with costs to the Defendant.

Dated and delivered at Nairobi this 11th day of March 2019

K.BOR

JUDGE

In the presence of:-

Mr. E. Njeru for the Defendant

Mr.Owuor-Court Assistant

No appearance for the Plaintiffs