

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 1232 OF 2015

GEORGE WAWERU NJUGUNA.....PLAINTIFF

VERSUS

PAULINE CHESANG GITAU KAMUYU.....DEFENDANT

JUDGEMENT

1. The Plaintiff filed suit on 02/12/2015 claiming that he was the registered proprietor of the land known as Escarpment/Kinari/Block 1/1440 (“the Suit Property”) and that the Defendant had trespassed on his property, thereby interfering with his rights to the Suit Property. He sought an eviction order against the Defendant and an order barring her from interfering with the Suit Property, and the costs of the suit.
2. The Defendant denied the Plaintiff’s claim vide her defence dated 15/01/2018 and contended that she is the owner of the suit land. She averred that the Plaintiff’s suit is *res judicata* and an abuse of the court process since the Plaintiff had previously sued her husband in **Nairobi HCCC No.1636 of 1996- George Waweru Njuguna v Stephen Gitau Kamuyu** over the same parcel of land and that the matter was determined by the court.
3. The court has considered the claim, evidence produced, parties’ oral testimonies in court, as well as submissions. While the Defendant filed her written submissions, the Plaintiff did not file as directed by the court on 01/10/2019.
4. It is necessary to go into the history of this dispute because it forms the basis for this court’s determination. The Plaintiff has filed several suits over the Suit Property in which the courts have rendered several rulings and a judgement, all of which this court has perused. The Plaintiff filed **Nairobi HCCC No. 1636 of 1996- George Waweru Njuguna v Stephen Gitau Kamuyu** against the Defendant’s husband in 1996. E. M. Githinji J. (as he then was) entered judgement on 25/09/1988 vide which he struck out the defence and entered summary judgement against the Defendant restraining him from interfering with the Plaintiff’s property, which is the Suit Property herein. From the evidence and submissions of the Defendant, it would seem that the Plaintiff did not serve the decree on the Defendant and the Defendant continued to stay on the suit land.
5. The Plaintiff filed the present suit in 2012 seeking to enforce the judgement of the court entered on 25/09/1988. On 10/09/2015, Mutungi J. dismissed the Plaintiff’s application. The Plaintiff filed **Nairobi HCCC No. 924 of 2015**. He stated during cross-examination that he had withdrawn the latter suit in which he sought to restrain the Defendant from burying her late husband on the Suit Property.
6. The most recent ruling in this Suit Property was made by S. Okong’o J. on 15/09/2017 where the learned judge found that the Defendant’s preliminary objection dated 10/12/2015 that this suit was *res judicata* and statute-barred was premature. His finding was that in order to determine whether or not a matter was *res judicata*, it had to be proved at a hearing or through affidavit evidence.
7. Having considered the entire matter and evidence, this court is persuaded that the issue in this suit was already determined by the court in **Nairobi HCCC No.1636 of 1996** and this court has no jurisdiction to retry the same matter. The doctrine of *res judicata* is provided for in Section 7 of the Civil Procedure Act which bars any court from trying 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.
8. In **Nairobi HCCC No.1636 of 1996**, the Plaintiff sued the Defendant’s husband over the same Suit Property. As the widow of the late Stephen Gitau Kamuyu, the Defendant claims under her late husband. The court is barred from trying a suit that has been determined between parties or anyone claiming under them. The issue for determination in the former suit was trespass, which is also the Plaintiff’s claim in this case. It would seem that the Plaintiff filed this suit to go around difficulties he encountered when he tried to enforce the judgement in in **HCCC No. 1636 of 1996** due to his own indolence. The suit is dismissed with costs to the Defendant.

Dated and delivered at Nairobi this 28th day of October 2019

K.BOR

JUDGE

In the presence of: -

Ms. P. Njoroge holding brief Mr. Mutiso for the Plaintiff

E. N. Mugu for the Defendant

