



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC NO. 198 OF 2018

SAID ALI MWALESO..... PLAINTIFF

VERSUS

ABDALLA ALI MWANGAO.....1ST DEFENDANT

ABDALLA ALI MWAKUTUNZA.....2ND DEFENDANT

RULING

(Preliminary objection that suit is res judicata; previous suits cited being awards of the Land Disputes Tribunal; the awards quashed meaning that they do not qualify as previous suits; preliminary objection dismissed)

1. This ruling is in respect of a preliminary objection raised by the defendants. The defendants contend that this suit is res judicata and contrary to Section 6 of the Civil Procedure Act, Cap 21, Laws of Kenya. Three previous suits are cited, that is, Kwale SRMCC Land Case No. 4 of 2003 and Kwale SRMCC No. 363 of 2010, and High Court Miscellaneous Application No. 58 of 2011 (JR).

2. To put matters into context, this suit was commenced through a plaint which was filed on 7 September 2018. The plaintiff has claimed that he is the registered owner and entitled to possession of the land parcel Kwale/Maweche/89 measuring 30 Ha. He has averred that the defendants have trespassed into the suit land and in the suit, he wants vacant possession of the land and an order of permanent injunction against the defendants. Within the plaint, he actually cited the three suits mentioned in the preliminary objection.

3. I have come to understand that the matter was previously before the Msambweni Land Disputes Tribunal which made an award that was adopted in Kwale SRMCC Land Case No. 4 of 2003. An appeal was filed before the Coast Province Appeals Committee pursuant to the Land Disputes Tribunal Act (now repealed). These decisions were quashed in Mombasa High Court Miscellaneous Application No. 58 of 2011 (JR) where the court, in a ruling delivered on 14 September 2012, held that the Land Disputes Tribunal and the Appeals Committee had no jurisdiction to determine the dispute. I have not been shown any pleadings in respect of Kwale SRMCC No. 363 of 2010.

4. Given the above, is this case res judicata? Certainly not. The past decisions that the defendant is claiming are previous suits which were all declared a nullity. It is as if they were never filed and decided *ab initio* and do not qualify as previous suits for res judicata to apply.

5. There is no need of saying more.

6. There is no merit in this preliminary objection and it is dismissed with costs.

7. Orders accordingly.

DATED, SIGNED and DELIVERED at MOMBASA this 12th day of November 2019.

MUNYAO SILA,

JUDGE.

IN THE PRESENCE OF:

Mr. Ajigo holding brief for Mr Mwarandu for the plaintiff.

Ms. Naliaka holding brief for Mr Mutubia for the defendants.

Court Assistant; David Koitamet.