



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KERICHO**

**CIVIL SUIT NO 45 OF 2017 (O.S)**

**RICHARD KIPLANAGAT SIGEL.....APPLICANT**

**VERSUS**

**GRACE SANG.....RESPONDENT**

**RULING**

**Introduction**

1. What is before me is a Notice of Motion dated 25<sup>th</sup> April, 2017 brought pursuant to Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules and section 3A of the Civil Procedure Act. The Applicant seeks the following prayers:

*a) That an injunction do issue forthwith restraining the respondent herein either by herself, her servants, agents assigns, representatives or nominees from trespassing into, constructing any structure or erecting any building, cultivating, farming, surveying, erecting beacons, sub-dividing or in any other way interfering with the applicant's quiet use of 1.1 acres of the parcel of land known as land parcel number KERICHO/RORET/1388 pending the hearing and determination of this suit.*

*b) That the Respondent be condemned to pay the costs of this application.*

2. The application is based on the ground stated in the Notice of Motion and the applicant's supporting affidavit sworn on the 25<sup>th</sup> April, 2017. In the said affidavit, the applicant depones that he purchased the suit property from the respondent's late husband in 1992 and was allowed to occupy 1.1 acres of the suit property thereafter. He depones that following her husband's death, the respondent took out Letters of Administration and had the land registered in her name in 1998. He further depones that he remained in peaceful occupation of the suit property until 2014 when the Respondent's sons started encroaching on the same.

3. The application is opposed by the Respondent through his Replying affidavit sworn on the 17<sup>th</sup> November, 2017. The Respondent depones that the applicant's suit is *res judicata* as the applicant filed a similar suit against her vide Kericho CMCC No 112 of 2014 seeking the same prayers and the application for injunction was dismissed by the court's ruling delivered on 5<sup>th</sup> March, 2015. A copy of the said Ruling has been attached to the affidavit.

4. The Respondent denies that her late husband sold the suit property to the applicant and states that she only heard that her late husband had leased a portion of the suit property to the applicant. She depones that she renewed the lease from time to time upto 2013. In the meantime, the applicant planted assorted trees, sugarcane, bananas and pineapples on the suit property. She depones that they have tried to resolve the dispute between her and the applicant through the chief, to no avail.

**Issues for Determination**

5. The following issues emerge for determination:

- i. Whether the applicant's application is *res judicata*
- ii. Whether the applicant has met the threshold for the grant of an injunctive relief.

**Analysis and Determination**

6. It has been submitted on behalf of the applicant that the applicant has a right to own the suit property having purchased it from the

respondent's late husband. The applicant has either by design or inadvertently failed to address the issue as to whether the suit is *res judicata* even though the respondent raised it in his replying affidavit.

7. On the other hand, the Respondent's counsel has submitted that the application is fundamentally defective, limping and incurable in law as it is *res judicata*, the same having been heard and determined between the same parties by a court of competent jurisdiction in Kericho CMCC No 112 of 2014.

8. With regard to the first issue it is important to appreciate the doctrine of *res judicata* which is found in section 7 of the Civil Procedure Act. The said section provides as follows:

*“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 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.”*

9. In **E.T V Attorney General & Another, (2012) eKLR** the court held as follows:

*“The courts must always be vigilant to guard against litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way or in form of a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi V National Bank of Kenya Limited and others 2001 EA 1778 the court held that parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit. In that case the court quoted Kuloba J in the case of Njangu V Wambugu and another Nrb HCCC No 2340 of 1991 (unreported) where he stated “if parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic fact lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata.”*

10. The Ruling attached to the Respondents Replying Affidavit is self –explanatory. Suffice is to say that the orders mentioned in the said ruling are exactly the same as the ones sought in the instant application. I therefore find and hold that this application is *res judicata* and this court has no business entertaining it.

11. On that ground alone, the application fails and is hereby dismissed.

12. The costs of the application shall be in the cause.

**Dated, signed and delivered at Kericho this 16<sup>th</sup> day of March, 2018.**

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**J.M ONYANGO**

**JUDGE**

**In the presence of:**

1. Mr. Kemboi for the Plaintiff/Applicant.
2. Miss Kitur for the Defendant/Respondent.
3. Court Assistant - Rotich