



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 418 OF 2017

FORMERLY NAKURU ELC CAUSE NO. 20 OF 2016

SAMUEL K. NGERECHI.....1ST PLAINTIFF

RICHARD K. BOSEK.....2ND PLAINTIFF

WILSON K.SANG.....3RD PLAINTIFF

JOSEPH MOSONIK.....4TH PLAINTIFF

-VERSUS-

DISTRICT LAND REGISTRAR OF NAROK.....1ST DEFENDANT

JOSPEH KIPKOECH NGERECHI.....2ND DEFENDANT

RULING

The Application before me is for consideration on the 2nd Respondents Notice of Preliminary Objection dated 10th March, 2016 where the 2nd Respondent seeks to have the entire suit struck out. The 2nd Respondent contends that the Plaintiff does not have the authority to swear affidavit and other pleadings on behalf of the other plaintiffs. He further contends that the entire suit is resjudicata and that the plaintiff should not be allowed to revive a suit that has been decided.

When the matter came before me for hearing parties agreed that the same shall be disposed off by way of written submissions. The Respondent filed their submissions but the Plaintiffs/Applicants have declined to do so.

It is the Respondents contention that the suit herein was heard and determined and judgement delivered on 28/4/15 and that upon the same the 1st Plaintiff was granted stay for a period of 30 days.

I have read the Preliminary Objection and the submissions filed and the original pleadings. A matter is resjudicata when the matter was effectively determined as between the parties as per the provisions of section 7 of the Civil Procedure Act. In the instant case there was a suit that was **Narok PMCC No. 1 of 2007** which involved the same parties and on the same subject. In the said case the court delivered its judgement. The Plaintiff in the instant case rather than Appeal against the said decision filed the instant suit and I therefore find that the suit herein is resjudicata.

I will not address the other grounds of the Preliminary Objection since the above finding determines the entire suit.

The upshot of the above is that I will sustain the Preliminary Objection and I order that the plaintiff's suit be struck out with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 18th day of APRIL, 2018

MOHAMMED NOOR KULLOW

JUDGE

18/4/2018

In the presence of:

Ms Cheptoo for the 2nd Respondent

N/A for the Plaintiff

CA:Chuma

MOHAMMED NOOR KULLOW

JUDGE

18/4/2018