

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 254 OF 2016

MARY NYONGESA ALOKA.....PLAINTIFF

VERSUS

LAZARUS SIRENGO MUKOYANI.....DEFENDANT

RULING

The defendant named herein, has raised a preliminary objection on matters of law against the plaintiff's res judicata claim which is only not fictitious, frivolous, vexatious and scandalous, but also an abuse of court process as well as a waste of this Hon. Court's time. The case is res judicata Succession cause No 316 of 1988 in the matter of the estate of Wafula Aloka Opara touching on the same parcel of land and the same parties.

The plaintiff submitted that the matter was never adjudicated by a competent court as this is a land matter and is emotive in nature and the preliminary objection should not be allowed.

This court has considered the preliminary objection and the submissions therein. Section 7 of the Civil Procedure Act Cap 21 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 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”

I have perused the court file, the plaintiff seeks to recover land from the defendant's piece of land title No. N. Kabras/Kivaywa/1210. The plaintiff discloses at paragraph 4 of the said claim that there have been previous proceedings between her and the defendant over the same subject matter namely Succession Cause No. 316 of 1988. I find that this suit is res judicata in view of the said Kakamega Succession Cause No. 316 of 1988 which has been decided. The doctrine of res-judicata requires that there should be an end to litigation where a court of competent jurisdiction has rendered a conclusive decision. I find the preliminary objection has merit and I strike out this suit with costs to the defendant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 24TH DAY OF JULY 2018.

N.A. MATHEKA

JUDGE