



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KERUGOYA**

**ELC CASE NO. 75 OF 2016**

**MONICA WAMBUI MUCHIRA.....1<sup>ST</sup> PLAINTIFF**

**JEREMIAH MUGO MUCHIRA.....2<sup>ND</sup> PLAINTIFF**

**JAMLECK KINYUA MUCHIRA.....3<sup>RD</sup> PLAINTIFF**

**CYRUS NJUKI MUCHIRA.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**STELLA GICHUGU MUCHIRA.....1<sup>ST</sup> DEFENDANT**

**PATRICK MWENDIA MUCHIRA.....2<sup>ND</sup> DEFENDANT**

**JUSTIN NYAMU MUCHIRA.....3<sup>RD</sup> DEFENDANT**

**RULING**

[1] The parties in this case are wives and daughter of the late Muchira Kagema. The plaintiffs in this case prays for cancellation of Title number KABARE/MUTIGE/765, 766, and 767 and that the sub-division herein be declared null and void and the same do revert to the original parcel KABARE/MUTIGE/17 and be sub-divided into 9 equal portions and costs of the suit.

[2] The defendants who are a widow of the late Muchira Kagema and her two sons denied the claim. He states that the first plaintiff filed Kerugoya S.P.M.C.C No. 414 of 2009 seeking the determination of the trust and sub-division of KABARE/MUTIGE/17 into 9 equal portions. This suit was dismissed and the Court held that the said Muchira Kagema was at liberty to do with his land what he wished. There was no appeal preferred. The land was then sub-divided into KABARE/MUTIGE/765, 766 and 767 settling his three houses.

The defendant further aver that sometime after sub-division and the registration of parcel number KABARE/MUTIGE/766 in the names of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, the 3<sup>rd</sup> plaintiff started interfering with parcel 766 forcing the 2<sup>nd</sup> and 3<sup>rd</sup> defendants to file Kerugoya C.M.C.C No. 19 of 2016 for declaration that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants are the owners of KABARE/MUTIGE/766. The Court declared them as the lawful owners. There was no appeal preferred by anyone.

The defendants in their defence paragraph 11 state that the issues raised regarding the subject matter in this suit have previously been litigated in Kerugoya S.P.M.C.C. No. 414 of 2009 and Kerugoya C.M.C.C No. 19 of 2016 and that therefore this matter is res-judicata and that they would raise a Preliminary Objection in that respect.

[3] A Preliminary Objection was raised in that respect and it was supposed to be canvassed by written submissions. It was only the defendants who filed their submissions. The plaintiffs did not file any.

In the Preliminary Objection, the Court was referred to *Section 7 of the Civil Procedure Act* on res-judicata. The two suits were referred to and orders given therein that are filed in Court were referred to. I was also referred to the case of *Giella Vs Cassman Brown* on orders of injunction. I was requested to dismiss the Notice of Motion filed in the suit as being vague and incapable of being granted.

I am wholly convinced by the documents filed herein that this case is res-judicata. The Preliminary Objection is merited. I strike out the plaint filed herein together with the Notice filed herein on 21<sup>st</sup> September 2016 with costs to the defendants.

**S.N. MUKUNYA**

**JUDGE**

**20<sup>TH</sup> JULY, 2018**

20/7/2018

Before

S.N. Mukunya – Judge

Okatch – C/A

Plaintiffs

Defendants

Ms Njoka for Maina Kagio for the Defendants

Mr. Igati Mwai for the Plaintiffs absent but plaintiffs present

Ruling read in open Court in the presence of the parties.

**S.N. MUKUNYA**

**JUDGE**

**20<sup>TH</sup> JULY, 2018**