



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC CASE NO. 565 OF 2014**

**ROSE NALIAKA ..... PLAINTIFF**

**VERSES**

**DISHON KHISA SIRENGO ..... DEFENDANT**

**RULING**

The defendant, raised a preliminary objection in point of law that this suit is res judicata Kakamega Chief Magistrate CMCC No. 321 of 2005 which was heard and determined involving the same parties and same suit land. The plaintiff does not dispute that the parties are the same but submits that the issue of eviction never arose in that case.

This court has considered the preliminary objection and the submissions therein. The doctrine of res-judicata requires that there should be an end to litigation in that where a court of competent jurisdiction has rendered a conclusive decision on a matter, parties should not be allowed to litigate over the same issues again. Res Judicata helps avoid conflicting decisions over the same issues and gives finality to judicial decisions. 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 an eviction of the defendant from the suit land. The plaintiff discloses at paragraph 3 of the said plaint that there have been previous proceedings between her and the defendant over the same subject matter namely CMCC Case No. 321 of 2005 where she was declared the registered proprietor of the suit land namely land parcel number North Kabras/Luandeti/2395. I find that this suit is res judicata in view of the said Kakamega CMCC Case No. 321 of 2005 which has been decided. Any other further orders required ought to be pursued through the same file. 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 17<sup>TH</sup> DAY OF JULY 2018.**

**N.A. MATHEKA**

**JUDGE**