



**REPUBLIC OF KENYA**

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

**ELC CAUSE NO. 483 OF 2017**

PRISCILLAH CHEPKEMOI KIMETO.....PLAINTIFF

-VERSUS-

JACKSON CHELOGOI.....DEFENDANT

**RULING**

The Application before me is the Notice of Motion dated 7<sup>th</sup> November, 2017 seeking for the dismissal of the suit. The Application is made on the grounds that the suit before the court is res judicata in that the Plaintiff had earlier filed a suit being Nakuru ELC No. 171 of 2015 which was later transferred to Narok that is, Narok Elc No. 136 of 2017 which the same was dismissed on 6<sup>th</sup> April, 2017.

The Application was further based on the grounds that the Plaintiff's husband had a similar suit being Nakuru HCCC NO. 97 of 2018 which was dismissed on 21<sup>st</sup> September, 2012 and because of the above, the Applicant contends that the instant suit is res judicata.

The Respondent has opposed the Application and has filed grounds of opposition to the Application and in the grounds, the Respondent states that the Application is not supported by any Affidavit and that the issues between the parties have not been heard on merit and dismissed for want of prosecution and this does not constitute res judicata.

I have read the application before me and grounds of opposition and the issue for determination before me is whether the suit before me is res judicata or not.

The issue of res judicata has been settled although the parties have not cited any authorities. The provision of order 8 are sufficient.

In the instant issue I find that this court had on 6<sup>th</sup> April, 2017 dismissed a similar suit in respect of the same subject matter between the parties and from the above I find the suit herein is res judicata and I dismiss the same with costs to the plaintiff.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this 27<sup>th</sup> day of **September, 2018**.

**Mohammed Noor Kullow**

**Judge**

27/9/18

In the presence of:

CA:Chuma/Timothy

N/A for the parties