



**REPUBLIC OF KENYA**

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

**ELC NO. 17 OF 2016**

**ALICE ARIKO MAKOKHA.....PLAINTIFF**

**VERSUS**

**BENFORD MUSUNGU DISMAS.....DEFENDANT**

**JUDGEMENT**

In summary the plaintiff avers that the defendant has fraudulently without any colour of right encroached and/or registered as the proprietor of 8 acres of land known as E. Wanga/Isongo/174 without the consent of the entire family. The plaintiff further avers that the defendant without any reasonable/justifiable cause interfered with the boundary features on L.R. E. Wanga/Isongo/174 and extended the boundary and grabbed portions of the land parcel. The plaintiff states that she reported the matter to the East Wanga District Officer whereby the defendant was summoned to appear and deliberately ignored. The plaintiff avers that the defendant is adamant and do not want to cooperate in carrying out the right channels. The plaintiff's prayer to the court against the defendant is for an order of permanent injunction restraining him, his agents, servants, employees and/or anybody acting for and on behalf from alienating, cultivating, interfering with boundary features and or interfering/dealing in any way with Land parcel No. E. Wanga/Isongo/174. The plaintiff prays for judgment against the defendant for:-

1. Permanent injunction.
2. Costs.
3. Relief this honourable court shall deed just, fit and expedient to grant.

The defendant avers that he is the registered owner of land parcel No. E/Wanga/Isongo/174 as an administrator and denies that he has encroached on a parcel of land that he owns. The defendant avers that the plaintiff's late husband Francis Sakwa Chitechi was only entitled to two (2) acres as a gift out of land parcel No. E/Wanga/Isongo/174 and the plaintiff's claim of 8 acres is misplaced. The defendant avers that this suit is res-judicata in view of Kakamega High Court Succession Cause No. 372 of 1996 and a preliminary objection is raised on these and other points.

This court has carefully considered this case and the submissions herein. The preliminary issue to determine in the present case is whether this case is properly before the court or if it is res judicata. The defendant avers that this suit is res-judicata in view of Kakamega High Court Succession Cause No. 372 of 1996 and a preliminary objection is raised on these and other points. The plaintiff in cross examination admits that there was the said succession cause and her husband was granted 2 acres of which she is not satisfied. She is now demanding 8 acres.

Section 7 of the Civil Procedure Act 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 find that, Kakamega High Court, a Court of equal and competent jurisdiction determined the dispute between the plaintiff and the defendant in Kakamega High Court Succession Cause No. 372 of 1996. Therefore the claim before me is clearly res judicata and there was even no need for the parties to subject this matter to a trial. I find that this suit is res judicata in view of the said Kakamega High Court Succession Cause No. 372 of 1996 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 this suit is res judicata 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 20<sup>TH</sup> DAY OF SEPTEMBER 2018.**

**N.A. MATHEKA**

**JUDGE**