



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**  
**CHUKA ELC CASE NO. 61 OF 2017**  
**FORMERLY MERU ELC CASE NO. 47 OF 2015**

**SISTO MARANGURIA MIGWI.....1<sup>ST</sup> PLAINTIFF**

**CHARLES MWINDI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**THE DISTRICT LAND OFFICER.....1<sup>ST</sup> DEFENDANT**

**THARAKA NITHI COUNTY GOVERNMENT.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Notice of Preliminary objection in this matter states:

1. This suit offends the provisions of section 12(1) Cap 40 Laws of Kenya.

2. This suit offends the provisions of section 7 of Cap 21 Laws of Kenya.

2. The parties filed written submissions.

3. The Respondents have submitted that the provisions of Cap 40 Laws of Kenya require the Attorney General to be sued on behalf of Government officers. This is a correct statement and I agree that this point was eruditely elaborated in the case of Johnson Kobia M'Iproi versus Kenya Revenue Authority & Another [2008] eKLR.

4. The respondents say that this suit is Res Judicata Meru HCC Petition NO.14 of 2012 which is being heard by this court. They say that the parties in this suit and in the petition are similar.

5. The plaintiffs submit that the court is mandated by Article 159 (2) (d) of the Constitution to eschew procedural technicalities and dispense justice without undue regard to such technicalities. They raise the issue of misjoinder saying that it cannot necessarily defeat a suit. I opine that they have not brought out this issue clearly.

6. The plaintiffs say that this suit is not res judicata petition 2 of 2012. They also say that the preliminary objection does not raise pure points of law as envisaged by the case of Mukisa Biscuit Manufacturing Co Ltd versus West End Distributors Ltd (1969) EA 696.

7. I have carefully examined the pleadings, the submissions and the authorizes proffered by the parties in

support of their respective propositions.

8. I do note that on 19.4.2016, Mr. Otieno for the plaintiffs indicated that he was considering withdrawing this suit as his client agreed that there was another case [Petition 14 of 2012] involving the same parties with the only difference being that the County Government of Tharaka Nithi had been included in this case.

9. A party ought to be bound by his pleadings and pronouncements in court.

10. Although this suit is not res judicata Petition No. 14 of 2012 at Meru, the parties are essentially the same and the issues are the same. Adding one or two parties when some of the parties have an ongoing suit does not change the fact that the issues are the same. Filing another suit in these circumstances amounts to forum shopping and this should not only be discouraged but also be deprecated. There are procedures for enjoining new parties to a suit.

11. I agree that the plaintiffs should have sued the Attorney General on behalf of the respondents. I find forum shopping a bad practice which raises a veritable point of law. Parallel legal processes cannot be allowed to proceed at the same time.

12. This suit merits dismissal.

13. This suit is dismissed.

14. Costs are awarded to the respondents.

15. It is so ordered.

**Delivered in open court at Chuka this 15<sup>th</sup> day of March, 2017 in the presence of:**

**CA: Ndegwa**

**Kiongo for the defendants**

**Otieno for the plaintiffs – absent**

**P. M. NJOROGE,**

**JUDGE.**