



**REPUBLIC OF KENYA**

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

**ELC NO. 575 OF 2008**

**PETER GITHIYI WANJIRU..... 1<sup>ST</sup> PLAINTIFF**

**JOHN KINYANJUI KINUTHIA.....2<sup>ND</sup> PLAINTIFF**

**JOSEPH KARARA KINUTHIA.....3<sup>RD</sup> PLAINTIFF**

**NENE BENSON GITHIYI.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**KIOI GITHIYI.....1<sup>ST</sup> DEFENDANT**

**GEORGE GITHIYI KIOI.....2<sup>ND</sup> DEFENDANT**

**RULING**

What is before me is an application brought by way of Notice of Motion dated 30<sup>th</sup> March 2016 in which the Defendants have sought vacant possession and eviction of the Plaintiffs from L.R No. Githunguri/Githiga/T.326 (“the suit property”). The application has been brought on the grounds that the Plaintiffs suit is *res judicata* and that the Plaintiffs are trespassers on the suit property.

I have considered the Defendants’ application together with the affidavit filed in support thereof. I have also considered the replying affidavit sworn by the 1<sup>st</sup> Defendant and the submissions which were made before me by the Defendants’ advocate. I am of the view that the Defendants’ application has no merit and must fail. I am not persuaded that this suit is *res judicata*. Kiambu Civil Suit No. 505 of 1993 was brought by the 1<sup>st</sup> Plaintiff in his personal capacity and he sought an order for the transfer of the suit property to his name. That suit was not heard on merit. The same was struck out on a preliminary objection. The present suit has been brought by four Plaintiffs three of whom were not parties to Kiambu Civil Suit No. 505 of 1993. The Plaintiffs have brought the present suit in their capacity as the administrators and beneficiaries of the estate of one, Mary Wanjiru Githiyyi (deceased). I am not persuaded that the issues raised in this suit were directly and substantially in issue in the Kiambu Civil Suit No. 505 of 1993 or that the parties in this suit are the same as those who were in Kiambu Civil Suit No. 505 of 1993. For the foregoing reasons, I am of the opinion that the conditions for a plea of *res judicata* have not been met by the Defendants.

The upshot of the foregoing is that the Defendants’ Notice of Motion application dated 30<sup>th</sup> March 2016 fails wholly and is dismissed with costs to the Plaintiffs.

**Delivered and Dated at Nairobi this 27<sup>th</sup> day of June, 2017**

**S. OKONG'O**

**JUDGE**

**In the presence of**

N/A for the 1<sup>st</sup> Plaintiff

N/A for the 2<sup>nd</sup> Plaintiff

N/A for the 3<sup>rd</sup> Plaintiff

N/A for the 4<sup>th</sup> Plaintiff

N/A for the 1<sup>st</sup> Defendant

Mr. Omolo for the 2<sup>nd</sup> Defendant

Kajuju Court Assistant