

REPUBLIC OF KENYA
IN THE ENVIRONMENT LAND COURT
AT KAKAMEGA

ELC CIVIL APPEAL NO. 148 OF 2010

SILAS WANYONYI NYONGESA

STEPHEN WEKESA MATA

ROBERT MURIMI.....PLAINTIFF/RESPONDENTS

VERSUS

PAUSTINA NAMALWA SIMIYU.....:DEFENDANT/APPLICANT

RULING

This application is dated 16th February 2015 and is brought under Section 7 & 8 of the Civil Procedure Act seeking the following orders;

1. That this appeal be dismissed for being Res-judicata Kakamega Civil Appeal No. 83 of 2016
2. Costs.

It is supported by the sworn affidavit of Paustina Namalwa Simiyu and based upon the following grounds; that on the 19th April 2010 Kakamega Civil Appeal No. 83 of 2006 was determined. That Kakamega Civil Appeal No. 83 of 2006 arose out of the Western Provincial Appeals Committee's decision No. 33 of 2003 between the parties herein adopted vide the Chief Magistrate at Kakamega Award No. 6 of 2003. That the appeal herein is also against the same decision. The appeal herein is res-judicata the decision and/or judgment delivered in Kakamega Court Civil Appeal No. 83 of 2006. That thus this appeal is an abuse of the due process and hence the same should be dismissed with costs.

The respondent submitted that, vide Kakamega High Court Civil Appeal No. 83 of 2006, which appeal arose out of the award by the Western Provincial in No. 33 of 2003 and same was adopted vide Chief Magistrate Award No. 6 of 2003 (Hereto marked PNS1 is copy of the judgment). That the appellants despite the above judgment have gone ahead and filed the present appeal arising from same award (Hereto marked PNS II a & b are copy of the appeal and proceedings in Kakamega CMCC Award No. 6 of 2003). That thus the appeal herein should be dismissed on the above grounds among others.

The respondents were served but failed to attend court during the hearing or file any grounds of opposition. Under Section 7 of the Civil Procedure Act Chapter 21 Laws of Kenya provides; ***“No court shall try any suit or issue in which matter directly or substantially in issue has been directly and substantially in issue in a former suit between the 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 files in great detail and I find that, on the 19th April 2010 Kakamega Civil Appeal No. 83 of 2006 was determined against the same parties. That Kakamega Civil Appeal No. 83 of 2006 arose out of the Western Provincial Appeals Committee's decision No. 33 of 2003 between the parties herein adopted vide the Chief Magistrate at Kakamega Award No. 6 of 2003. The appeal herein is also against the same decision. The subject matter of both appeals is the same. I find therefore, that the

appeal namely, Kakamega Civil Appeal No. 148 of 2010 herein is res-judicata the decision and/or judgment delivered in Kakamega Court Civil Appeal No. 83 of 2006. This application has not been opposed. I find this application has merit and grant it as prayed with costs to the applicant.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 18TH DAY OF JULY 2017.

N.A. MATHEKA

JUDGE