



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CIVIL SUIT NO. 68 OF 2010**

JANET MWARANIA .....1ST PLAINTIFF

JOSEPH GATOBU M'IKIUGU.....2ND PLAINTIFF

MONICAH KAJUJU M'IKIUGU.....3RD PLAINTIFF

JANE KANANU M'IKIUGU.....4TH PLAINTIFF

**VERSUS**

FRANCIS MURITHI IKIUGU .....DEFENDANT

**RULING**

This ruling is on the Preliminary Objection filed on 10:03:17 raised by Defendant. He avers that:-

- (1) The suit is *Res Judicata* in light of High Court Civil Appeal No. 41 of 2003.
- (2) That the parties herein have no locus to bring the suit on behalf of the estate of deceased.

Parties have filed submissions in respect of the Preliminary Objection.

On the part of defendant, it is submitted that the parties as well as the subject matter herein is the same, same one in H.C.C. Appeal No. 41 of 2003 and in Meru Central District Land dispute case appeal No. 2 of 2001. It is averred by the defendant that if the Plaintiffs were not satisfied with the decision in H.C.C No. 41 of 2003 they ought to have appealed but they didn't. It is further submitted by Defendant that Plaintiffs are claiming what belonged to a deceased person and hence they have no *Locus Standi* as they have no limited grant.

Plaintiffs on the other hand aver that the decision of the H.C Appeal No. 41 of 2003 was only to set aside the tribunal award, and therefore the dismissal of the provincial Tribunal award was neither a decision of finality on the issues in dispute nor a substitution for the decision of the Provincial Tribunal.

I have weighed all the arguments raised herein. I have also read the decision in H.C.C. No. 41 of 2003. I find that indeed the parties are the same. The suit land is the same, (ABOTHUGUCHI/KITHIRUNE/91). The 1st plaintiff had filed a case before the Land Dispute Tribunal against Defendant. She won the case. Defendant had then appealed to the Provincial Land Disputes Appeals Committee. The appeal was dismissed and he, (defendant) then appealed in the High court, (H.C.C. No. 41 OF 2003).

The case before the Provincial Land Disputes Appeals Committee had been dismissed on account of defendants failure to attend the case and failure to file a memorandum of appeal. The High Court in

H.C.C NO. 41 of 2003 ruled that defendant had not been given an opportunity to be heard and that he was not required to file a Memorandum of Appeal.

The High Court went further ahead to analyze and determine the merits of the appeal that defendant had lodged before the Provincial Land Disputes Appeals Committee. . Defendant had challenged the decision of the Land Dispute Tribunal on basis of jurisdiction. The High Court ruled that the **Land Dispute Tribunal** had no jurisdiction to hear the matter and proceeded to set aside the initial decision in Land Dispute Tribunal. Case No. 105 of 2000.

From the foregoing, it is clear that in the High Court case No. 41 of 2003, the Court did not determine the substantial dispute which had been lodged in Land Dispute Tribunal 105 /2000.

Section 7 of the Civil Procedure Rules states;

***“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, ligating 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”.***

***In ELC No. 58/12 Malindi Enock Muhanji Versus Hamid Abdalla***, an issue arose as to whether the suit was Res-judicata in view of a decree in RMCC No. 711 of 2006. The lower Court case had been dismissed for want of jurisdiction. The Judge observed that;

***"The Court should look at circumstances of each case to arrive at a decision. For me to determine if the current suit is Res- judicata, the only question that I have to ask myself is whether the issues which were before the Lower Court ---were determined "***

In the present case, it is apparent that the decision of Land Dispute Tribunal case No. 105/00 became invalid on account of jurisdiction. It therefore follows that the parties are in the position they were in before the matter was lodged before the tribunal. In short, the dispute has never been determined or resolved.

On the issue of the Letters of Administration the argument by the defendant is unfounded since the property in issue is not registered in the name of a deceased person. The suit land is apparently registered in the name of the defendant.

It is my finding that the Preliminary Objection is unmerited. The same is dismissed with costs to Plaintiffs.

**DELIVERED, DATED AND SIGNED AT MERU THIS 20TH DAY OF SEPTEMBER, 2017 IN THE PRESENCE OF:**

CA Janet

Mwanzia for Plaintiff

Gatari Ringera h/b Ondieki for defendant

**HON. L. N. MBUGUA**

**ELC JUDGE**