



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 119 OF 2017**

**JOSHUA ALUMASI ABOYI:.....:PLAINTIFF**

**VERSUS**

**ALFRED IVUSA LABAN :.....: 1<sup>ST</sup> DEFENDANT**

**SAVALA SECONDARY SCHOOL:.....:2<sup>ND</sup> DEFENDANT**

**RULING**

The defendants counsel hereby raise preliminary objection dated 20<sup>th</sup> June 2017 on matters of law herein in that the plaintiff's suit is res judicata as the issues raised herein ought to have been raised in succession cause No. 120 of 1987 wherein the court distributed the deceased's title in dispute and no objection was raised. That this court lacks jurisdiction to overturn the decision of the high court in Kakamega Succession Cause No. 120 of 1987.

The plaintiff submitted that, the applicant has served them with an application filed under certificate of urgency dated 3<sup>rd</sup> April, 2017. The application stated that, the disputed land on whose the claims herein is over land belonging to the a deceased Laban Avuyi Vuyiya and succession proceedings were determined in Kakamega High Court vide ruling filed herewith and marked annex AIL 1. The court of succession shared deceased's property into two equal shares thus land title number KAKAMEGA/LUGARI/569. The applicant was not appointed as one of the Administrators but unfortunately his mother who was one of the deceased's wife, the co-administrator died before finalization of the administration on the estate. The applicant therefore does not have locus standi to bring up this suit and is not entitled to the orders sought herein. The applicant opposes an application as it stands filed by the applicant as it is an abuse of the court process and meant to waste its time. That the suit should be struck out.

The applicant/plaintiff in this case admits to the facts above and stated that he was told to file his application in this court.

This court has considered the submissions before it. On perusal of the court file and from the annexed documents I find that indeed suit land belonged to the a deceased Laban Avuyi Vuyiya and succession proceedings were determined in Kakamega High Court vide ruling filed herewith and marked annex AIL 1. The applicant was not appointed as one of the Administrators but unfortunately his mother who was one of the deceased's wife, the co-administrator died before finalization of the administration on the estate. I find that the applicant therefore does not have locus standi to bring up this suit.

The provisions of proving res judicata are clearly spelt out in section 7 of the Civil Procedure Act 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 suitor the suit in which such issue has been subsequently raised, and has been heard and subsequently decided by such court”.***

I find that in the succession case Kakamega High Court succession Cause No. 120 of 1987 the subject matter (land) is the same. Any issues submitted to be new issues raised in this matter ought to have been

raised in the previous suit. This was also held in the case of John Omolo Oracha & 3 Others v Kenya Petroleum Refineries Ltd & 3 Others (2016) eKLR. I am satisfied that the respondents have proved the doctrine of res judicata in regard to this suit and the application dated 3<sup>rd</sup> April 2017. I find merit in the objection that this suit and the application dated 3<sup>rd</sup> April 2017 is res judicata in view of the fact that Kakamega High Court succession Cause No. 120 of 1987 was heard and determined by a court of competent jurisdiction. The exercise of jurisdiction of this court in this matter amounts to sitting on an appeal arising from Kakamega High Court Succession Cause No. 120 of 1987. If any new issues have arisen regarding this land subsequent to the determination of the succession cause then a person with locus standi should file the suit as the co administrator who was the applicant's mother has since died. Consequently I strike out the suit and the application dated 3<sup>rd</sup> April 2017 with costs to the respondents.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 10<sup>TH</sup> DAY OF OCTOBER 2017.**

**N. A. MATHEKA**

**JUDGE**