



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

**ELC CASE NO 16 OF 2002**

**GODFREY MUGUNA KIRIMA.....APPELLANT**

**VERSUS**

**MICHAEL KUNGU KIGIA .....RESPONDENT/APPLICANT**

**HESBON KIMOTHO GACHOGU.....PROPOSED INTERESTED PARTY**

**RULING**

This Ruling is in respect of two Preliminary Objections. The first one was filed on 13.12.16 by the proposed Interested Party (one Hesbon Kimotho Gachogu). The second one was filed on 22.12.16 by the Respondent herein. On 09.02.17, the Court gave directions for the preliminary Objections to be dealt with simultaneously. Submissions to that effect were to be filed.

In respect of the Preliminary Objection filed on 22:12:16 by Respondent, his documents contain numerous grammatical errors making it difficult for the Court to discern what the issue in the Preliminary Objection is all about. It appears that that Respondent desires that the application of 06.12.16 by proposed interested party be dismissed as the same is Res -judicata. The basis upon which the Preliminary Objection is made is that a similar application was filed on 30.07.03 and was dismissed. The proposed Interested Party has not made any comment on this issue in his Submissions.

As for the Preliminary Objection of 13.12.16, the proposed Interested Party avers that the Court has no jurisdiction to hear the application of 11.11.16 (by Respondent) as the Court is functus officio following the judgment delivered on 03:10:06 (over 10 years ago).

Further, the proposed Interested Party avers that the Court is Res-Judicata as the application raises similar issues to the application brought before the Court dated 09.10.06.

Further, it is submitted for the proposed Interested Party that as the appeal was dismissed, the interlocutory application cannot stand alone.

**Determination:**

I find that Hesbon Kimotho Gachogu is not a party in these proceedings. In the application of 06.12.16, he seeks to be enjoined as a party to these proceedings. However, as rightly indicated by the Respondent, a similar application was filed way back on 31.07.03 (dated 20.07.03). The Respondent avers that the application was dismissed (see paragraph 4 of Respondent's affidavit of 22.12.16). This Court is not able to ascertain this averment from the record. However the proposed interested party ought to have commented on the fate of the earlier application. There is no plausible explanation as to why the applicant has filed the present application (of 06.12.16) when he had filed another one 14 years ago.

I hence conclude that Respondent's Preliminary Objection of 22.12.16 is merited. I proceed to dismiss the application of 06.12.16 but with no orders as to costs.

The net effect of this finding is that the proposed Interested Party is actually not a party and has no basis addressing the Court. In circumstances, the Preliminary Objection of 09.12.16 is dismissed with no orders as to costs.

This Court is however mandated to exercise judicial authority in manner that is expeditious (see article 159 2(b)). Why is a 2002 suit still a running case?. It appears there is a pending application of 11.11.16, filed by Respondent.

I note that the Suit herein was struck out way back on 03.10.06. The appellant is apparently dead (see proceedings of 06.12.16), and there is no evidence of substitution.

The present application of 11.11.16 is more or less similar to another application filed by Respondent on 16.10.06, in that in both applications, Respondent desires to have particular entries in respect of parcel NO. NTIMA/IGOKI/3720 cancelled and to have other entries reinstated.

The application of 16:10:06 was struck out on 14:11:06 where orders given on that day read as follows:-

***“I have seen the order of 03.10.2006 in which I struck out the appeal. I have also seen the application dated 16.10.2006. It is filed in the wrong forum and the respondent ought to pursue those orders in the lower court or in a separate suit and not in this file. Sua Motion therefore and for these reasons, the application dated 16.10.2006 is struck out with no order as to costs orders accordingly”.***

It follows that this Court is functus officio in respect of the pending application of 11.11.16. There is no suit and there is no appellant.

I hence proceed to dismiss the application of 11.11.16 Sua Moto. This matter is marked as finalized and the file is to be taken to the archives.

**DELIVERED, SIGNED AND DATED IN OPEN COURT AT MERU THIS 4<sup>TH</sup> DAY OF OCTOBER, 2017 IN THE PRESENCE OF:**

CA: Janet

Michael Kungu Kigia (Respondent Present)

**Hon. L.N. MBUGUA**

**ELC JUDGE**