



**REPUBLIC OF KENYA**

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

**ELC CASE NO 41 OF 2017**

**ROSARIA KARIANKI MBAYA.....PLAINTIFF**

**VERSUS**

**ROMANO KIGUNDA M'IKIUGI.....DEFENDANT**

**R U L I N G**

1. This Ruling is in respect of the Preliminary Objection filed by Defendant on 02:05:17. The Preliminary Objection is premised on the following grounds:-

a) That there is a suit which is similar to this instant suit i.e Nkubu Civil Suit No. 136 of 2014 (formerly High Court Civil Case No. 14 of 2010) whereby the Defendant in this instant suit had sued the Plaintiff in this present suit.

b) That the parties in Civil Suit No 136/2014 & this instant suit are the same.

c) That the subject matter in Nkubu Civil Suit No. 136/2014 is the same as this instant suit.

2. Parties have filed Submissions.

3. Defendant avers that the claim herein as well as the parties are the same as in Nkubu Case No. 136 of 2014 (formerly H.C.C No. 14 of 2010). Further Defendant states that the present suit is an abuse of the Court's process.

4. On her part applicant avers that Civil Case No. 136/14 (formerly H.C.C No. 14/10) no longer exists as the same was withdrawn on 12:07:17 and that is why she filed this case.

5. I find that even if the suit 136 of 2014 was withdrawn on 12:07:17 (as alleged by Plaintiff) that could not have been the basis of filing the present suit since the present suit was filed on 13.02.2917.

6. There is also no evidence to show that the Nkubu suit was withdrawn. The document availed by Plaintiff makes reference to CMCC No. 394 of 1994 and not the Nkubu Case No.136 of 2014.

7. A perusal of the copy of plaint in H.C.C No. 14 of 2010 clearly shows that the suit is similar to the present one.

8. The present suit has therefore been filed contrary to the provisions of Section 6 of Civil Procedure Act. Where it is stipulated that:-

**“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”.....**

9. I therefore, find that this suit is an abuse of the Court's processes.

10. I find that the Preliminary Objection has merits. **The Suit is hereby dismissed with costs to Defendant.**

**DATED, SIGNED AND DELIVERED AT MERU THIS 18<sup>TH</sup> DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-**

CA Janet

M.Kariuki H/B for Wamache for Defendant present

Plaintiff in person present

**Hon. L. N. MBUGUA**

**ELC JUDGE**