



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

**AT MALINDI**

**ELC CIVIL CASE NO.1 OF 2014**

***(Consolidated with ELC No. 26 of 2014)***

**FARES JILO DHADHO.....PLAINTIFF**

**=VERSUS=**

**AMON PETERO BUYA.....DEFENDANT**

**IN ELC NO. 26 OF 2014**

**ELIJA BARISA GALIDO.....PLAINTIFF**

**=VERSUS=**

**AMON PETERO BUYA.....DEFENDANT**

**RULING**

1. What is before me is the Notice of Preliminary Objection filed by the Defendant dated 18<sup>th</sup> May 2015.
2. The Defendant has averred in the Preliminary Objection that ELC Civil Case No. 1 of 2014 is *res judicata* Galole Land Disputes Tribunal Case No. LND, 17C/VOL VI/15 of 5/7/2011 because the issues of fact and law between the parties herein were substantially the same issues before the Tribunal; that those issues were substantially heard and determined by the Tribunal and that a decision was rendered on 18<sup>th</sup> October 2011 and adopted by the Magistrate's Court in Hola on 5<sup>th</sup> February, 2014.
3. Although the parties were required to file submissions, the Plaintiff's advocate did not file submissions.
4. The Defendant's/Applicant's advocate filed submission in which he reiterated the averments in the Notice of Preliminary Objection.
5. I have considered the Preliminary Objection and I am of the view that the issues raised by the Applicant should be raised at trial.
6. I say so because the proceedings of the Tribunal can only be conclusively considered once the same have been produced in evidence.

7. Considering that a Preliminary Objection is supposed to be an objection purely on a point of law, and in view of the fact that this court is supposed to consider if the proceedings in the Tribunal are *res judicata* this suit after receiving evidence, I shall not condemn the Plaintiff herein before hearing him.

8. The issue of whether the matter is *res judicata* or not is further compounded by the fact that this matter was consolidated with ELC Civil Suit No. 2 of 2014 in which the Plaintiff was not a party therein to the proceedings before the Tribunal.

9. The question of this suit being *res judicata* should therefore be raised as a Defence in the two suits and not as a Preliminary Objection.

10. In the circumstances, I dismiss the Notice of Preliminary Objection dated 18<sup>th</sup> May, 2015 with costs.

Dated and delivered in Malindi this **26<sup>th</sup>** day of **February**, 2016.

**O. A. Angote**

**Judge**