



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 139 OF 2013

CHARLES MERISHIA

ABRAHAM M. LIMAKWANG (*Suing as Administrators  
of the Estate of Kochulem Amoywal*)

DANIEL R. NGURIAPUS (*Suing as Administrator of the  
estate of Kabeli Moler Korinyang*).....PLAINTIFFS

VERSUS

PETRO KALUNGOKOR.....DEFENDANT

### R U L I N G

1. A preliminary objection was taken on behalf of the Defendant on the ground that this suit is res judicata. M/s Nasike for the Defendant argued that there was a suit which was filed in the year 2000 touching on the same subject matter as in the present suit. The suit was **Kitale HCCC No. 146 of 2000 between Kochulem Amoywal & Another – Vs- Petro Kalungorokor.** This suit was dismissed for want of prosecution on 27/6/2012.

2. The preliminary objection was opposed by M/s Arunga for the Plaintiffs who argued that the previous suit was not heard on merits and as such the present suit cannot be res judicata.

3. The principle of res judicata is founded on Section 7 of the Civil Procedure Act which provides as follows:-

***“No court shall try any suit or issue in which a 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 suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court” . Underlining mine.***

4. Section 7 of the Civil Procedure Act is very clear. A suit can only be res judicata if a previous suit has been heard and determined by a competent court. The rationale behind the principle of res judicata is that there has to be an end to litigation. A litigant ought not to be vexed if a matter or issue has been decided in a previous suit.

5. In the instant case, the previous suit was dismissed for want of prosecution. The issues in that suit were not determined on the merits as no hearing took place and a decision made thereon. This case cannot therefore be res judicata. I find that the preliminary objection has no merits. The same is hereby overruled with costs to the Plaintiffs.

It is so ordered.

Dated, signed and delivered at Kitale on this 16th day of May 2016.

**E. OBAGA**

**JUDGE**

**In the presence of M/S Arunga for Plaintiff**

**Mr Pukah for Defendant**

**Court Assistant – Isabellah**

**E. OBAGA**

**JUDGE**

**16/5/16**