



**Bushiri v Bwire (Environment & Land Case E009 of 2021)
[2024] KEELC 3443 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3443 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE E009 OF 2021**

BN OLAO, J

APRIL 29, 2024

BETWEEN

WILLIE LOVICE BUSHIRI PLAINTIFF

AND

VINCENT OUMA BWIRE DEFENDANT

RULING

1. Willie Lovice Bushiri (the Plaintiff herein) is obviously an idle man as will soon become clear in this ruling. He appears to have a lot of time and energy on his hands but does not know what useful purpose to put it to. He has therefore picked as his favourite pastime, the habit of filing frivolous and vexatious suits and applications. Sadly, his main victim is his own father Vincent Ouma Bwire (the Defendant herein) who, in his statement dated 28th June 2021, had this to say about his son's conduct:

8: "That the Plaintiff wants to drag me into endless Court battles which to me is wearing me out given my advanced age."

Of course Article 50(1) of the Constitution allows the Plaintiff to go to Courts seeking legal redress. But he should not be vexatious or frivolous.

A vexatious litigant is defined in Black's Law Dictionary 10th Edition as:

"A litigant who repeatedly files frivolous suits ... the litigant may also be subject to sanctions."

The term frivolous is defined in the same Dictionary as:

"Lacking a legal basis or legal merit, not serious, not reasonably purposeful."

Hopefully, by the end of this ruling, the Plaintiff will have found a more decent and respectful hobby and stop pestering his father.



2. The Plaintiff approached this Court *vide* his plaint dated 10th February 2021. He sought judgement against the Defendant in the following terms:
 1. A declaration that he is entitled to 2 acres out of the land parcel No Bukhayo/Kisoko/1998 and the whole land parcel No South Teso/Angoromo/6202.
 2. A permanent injunction restraining the Defendant, his servants or agents from interfering with the land parcel No Bukhayo/Kisoko/1998 and the Plaintiff's peaceful occupation thereof.
 3. A permanent injunction restraining both parties from carrying out any farming activities on the land parcel No Bukhayo/Kisoko/1998 until the case is heard and determined.
 4. An order of specific performance by the Defendant to sub-divide the land parcel No Bukhayo/Kisoko/1998 and effecting the transfer of both titles to the land parcels given as a gift to the Plaintiff.
 5. A declaration that the Plaintiff is the owner of the land given as a gift to him by the Defendant on an agreement dated 28th April 2012.
 6. Any other relief that this Honourable Court shall deem fit and just to grant.
3. The Defendant filed a defence dated 29th June 2021 in which he pleaded, inter alia, that this suit is res judicata the issues having been determined in BUSIA ELC CASE NO 51 of 2018 vide a Judgement delivered on 5th November 2019. That the Defendant has complied with the said Judgment and given the Plaintiff and other beneficiaries their portions out of the land parcel No Bukhayo/Kisoko/1998. He accused the Plaintiff of dragging him into endless Court battles.
4. The dispute was heard by OMOLLO J who delivered a Judgment on 5th November 2019 dismissing the Plaintiff's suit. The parties were ordered to meet their own costs.
5. The record shows that in 2018, the Plaintiff had also filed ELC CASE NO 51 of 2018 whose Judgment over the same property has already been executed.
6. No appeal was filed against any of the two Judgments.
7. As is typical with frivolous litigants of which the Plaintiff is a real epitome, he has now moved to this Court vide his Notice of Motion dated 4th October 2022 but filed on 2nd February 2023 in which he seeks the following orders:
 1. Spent
 2. A permanent injunction to restrain and prohibit the Defendant, his servants, agents and assigns from transferring, charging, dealing, interfering, advertising for sale, disposing of, occupying and/or otherwise interfering with the portion of the suit property on parcel No Bukhayo/Kisoko/1998 that forms part of the suit property that belongs to the Plaintiff pending the determination of this application.
 3. That the Defendant be restricted jointly and severally either by his servants, agents and assigns from transferring, charging, dealing, interfering, advertising for sale, disposing of, leasing and/or otherwise interfering with the suit property being parcel No Bukhayo/Kisoko/1998 pending the hearing and determination of this suit.
 4. That an order to casual dealings and transactions carried out on the suit property being parcel No Bukhayo/Kisoko/1998 be reverted back to its original status.



5. That costs of the application be borne by the Defendant.
8. The application is not premised on any particular grounds but is supported by the Plaintiff's 34 paragraph affidavit dated 4th October 2022 which, I must confess, I have had considerable difficulties trying to understand. That is not surprising taking into account the fact that both parties are acting in person.
9. Basically, however, the Plaintiff has simply given a history of this dispute and the resultant judgement against which none of the parties appealed. He goes on to refer to the previous litigation between both parties over the suit property including cases NO 51 of 2018 and 259 of 2015. He then accuses the Defendant of burying his daughter on the suit property and also getting the Land Registrar Busia to generate title to the land parcel No Bukhayo/Kisoko/11342 following the disappearance of the original title deed to the suit property being No Bukhayo/Kisoko/1998. The Plaintiff then accuses the Defendant's counsel for misleading him to file an application herein dated 29th November 2019 which are not in agreement with the judgment which application was withdrawn. That he subsequently visited the Land Registrar Busia to do a search for the land parcel No Bukhayo/Kisoko/1998 following the generation of other titles therefrom but he did not get a satisfactory explanation. Then on 23rd August 2021, the Land Registrar advised him to put a restriction on the land parcel No Bukhayo/Kisoko/11342 since the Defendant may sell it to complicate this case.
10. The Plaintiff has annexed to the application various documents which I need not go into for reasons which will become clear later in this ruling.
11. The application is opposed and the Defendant filed a replying affidavit dated 12th February 2024 in which he has deposed, inter alia, that the Plaintiff has sought an order of permanent injunction through a Notice of Motion yet such an order can only be sought by way of a plaint. Further, that the Plaintiff is seeking the cancellation of all dealings on the suit property being No Bukhayo/Kisoko/1998 through an application yet that can only be done through a suit. That the application has been over taken by events because following the said Judgment, the Defendant has sub-divided the suit property among his children including the Plaintiff in compliance with the decree. The Plaintiff did not appeal the Judgment herein yet he is raising issues that were canvassed in the said Judgment. He describes the application as a sham, vexatious and an abuse of the Court process and which should be dismissed.
12. The application has been canvassed by way of written submissions. These have been filed by both parties who are acting in person.
13. I have considered the application and the submissions by the parties.
14. As is now clear, the dispute over the suit property was heard and determined vide a Judgment delivered by OMOLLO J on 5th November 2019. None of the parties appealed that Judgment which can only mean that both of them were satisfied or if any of them was aggrieved by it, there was no need to appeal. The parties must therefore live with the said Judgment and the resultant decree.
15. That being the position, there can be no basis upon which the Plaintiff can approach this Court, as he has done through the Notice of Motion, seeking for orders of permanent injunction of cancellation of titles created out of the sub-division of the land parcel No Bukhayo/Kisoko/1998. Although the judgement of OMOLLO J cites VINCENT OUMA BWIRE as the Plaintiff and WILLIE LOVICE BWIRE as the Defendant, that must have been in error. The plaint shows that it is the other way round. The Plaintiff is WILLIE LOVICE BWIRE while the Defendant is VINCENT OUMA BWIRE. That notwithstanding, the dispute between the parties herein having been heard and determined by a competent Court, the matter is res judicata. None of the parties can come back to this Court to canvas



issues that were really the subject of that suit. That is clear from Section 7 of the [Civil Procedure Act](#) which reads:

- 7: “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 suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

As I have already stated above, the issues relating to the land parcel No Bukhayo/Kisoko/1998 were fully canvassed and a Judgment delivered on 5th November 2019. If any of the parties was aggrieved, the option open to either of them was to appeal or apply for a review. What the Plaintiff is trying to do through this application is to re-open the trial. However, as was stated by the Court of Appeal in the case of WILLIAM KOROSS v KIPTOO KOMEN & OTHERS 2015 eKLR,

“The philosophy behind the principle of *res judicata* is that there has to be finality; Litigation must come to an end. It is a rule to counter the all too human propensity to keep trying until something gives. It is meant to provide rest and closure, for endless litigation and agitation does little more than vex and add to costs. A successful litigant must reap the fruits of his success and the unsuccessful one must learn to let go.”

The Court went on to affirm the words of Y. V. Chandrachud in the Indian Supreme Court case of *lalchand v radha kishan AIR 1977 S.C. 789* where the judge said:

“The principle of *res judicata* is concerned in the large public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.”

Res judicata is a complete bar to both suits and application. This application is really for dismissal.

16. Secondly, the Plaintiff is essentially seeking to permanently injunct and prohibit the Defendant from dealing with the suit land. An order of permanent injunction or prohibition cannot be sought by way of a Notice of Motion. Those are orders which can only be sought by way of a suit e.g a Plaint, an Originating Summons or a Petition. The suit in this matter has already been heard and finally determined. In any event, as I have already stated above, the remedy of permanent injunction was sought against the Defendant and declined. This application must collapse.
17. On the issue of costs, ordinarily, this Court would be slow to burden family members with costs against each other. However, as is clear from the definition of a vexatious litigant above, the Court may consider imposing a sanction against such a litigant. In the circumstances of this case, I find it appropriate to award costs to the Defendant to demonstrate this Court’s disapproval of what is clearly an abuse of this Court’s process by the Plaintiff.
18. Ultimately, having considered the Notice of Motion dated 4th October 2022, I make the following orders in disposal of the same:
 1. The Notice of Motion dated 4th October 2022 is dismissed.
 2. The Plaintiff shall meet the costs of the Defendant.

BOAZ N. OLAO



JUDGE

29TH APRIL 2024

RULING DELIVERED IN OPEN COURT ON THIS 29TH DAY OF APRIL 2024.

Plaintiff present in person.

Defendant present in person.

BOAZ N. OLAO

JUDGE

29TH APRIL 2024

