

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI

CORAM: OMOLO, O’KUBASU & GITHINJI, J.J.A

Civil Appeal 87 of 2001

BETWEEN

JACK MATHAGU MURIUKIAPPELLANT

AND

NJAGI SAMSON.....RESPONDENT

*(Appeal from a ruling & Order of the High Court of Kenya at Nyeri
(Juma, J) dated 22/2/2001*

in

H.C.C.C NO. 233 OF 1994)

JUDGMENT OF THE COURT

As far back as 25th April, 1991, Tunoi, J. as he then was, told this appellant or those through whom she claimed that the suit which was repeatedly being brought in various counts was *res judicata*. There was an appeal to this Court and in confirming the decision of Tunoi, J this Court stated as follows:-

“It is clear that were the appellant filed her suit at Embu in 1982, 10 years after the dismissal of her suit on same issue filed at Nyeri in 1973, the matter was already res judicata. The learned Judge rightly allowed the respondent’s appeal. There is no merit in this appeal and we, therefore dismiss it with costs to the respondent against the appellant.”

After this it appears that the appellant again went back to the High Court over the same matter. *Juma, J*, told her the matter was *re judicata*. She now comes to this Court over the same matter. We must again tell the appellant as we told her in 1994, that the matter is *res judicata*. Even if the magistrates who dealt with the matter had no jurisdiction, the proper place to have raised those issues was before Tunoi, J and this Court when it gave its judgment in 1994. We must once again tell the appellant that this matter is *res judicata* and irrespective of the number of times it is brought to court it will be dismissed on the same ground. We order that this appeal be and is hereby dismissed with costs to the respondent.

DATED and DELIVERED at NYERI this 20th day of May, 2005.

R.S.C. OMOLO

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JUDGE OF APPEAL

E.O. O’KUBASU

.....

JUDGE OF APPEAL

E.M. GITHINJI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR