



Sambula v County Government of Trans Nzoia & another (Environment and Land Miscellaneous Application 19 of 2022) [2023] KEELC 48 (KLR) (17 January 2023) (Ruling)

Neutral citation: [2023] KEELC 48 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 19 OF 2022
FO NYAGAKA, J
JANUARY 17, 2023**

BETWEEN

FREDRICK SAMBULA APPELLANT

AND

COUNTY GOVERNMENT OF TRANS NZOIA 1ST RESPONDENT

GH TANNA & SONS LIMITED 2ND RESPONDENT

RULING

The Application

1. The application dated October 18, 2022 and filed by the applicant on even date invokes the provisions of section 3A and 18 of the *Civil Procedure Act* as well as order 51, rule 1 of the *Civil Procedure Rules*. It seeks the following reliefs:
 1. That the honorable court be pleased to transfer Chief Magistrate Case No 75 of 2018 at Kitale and all proceedings pending therein to the Kitale Environment and Land court for trial and disposal.
 2. Upon grant of prayer 1, the honorable court be pleased to issue an order of consolidation of Kitale Chief Magistrate Land Case No 75 of 2018 at (*sic*) Kitale Environment and Land Court Case No 46 of 2022 and Kitale Environment and Land Court Case No 9 of 2021 to be heard and determined by the Environment and Land Court judge.
 3. The costs of this application be provided for.
2. The application is supported by the grounds on the face of it and by further affidavit of the applicant. According to the applicant, the officials of Kamukunji Market CBO instituted Kitale Chief Magistrate Land Case No 75 of 2018 which was scheduled to be mentioned on October 18, 2022. He annexed a copy of the pleadings marked FS1. The value of the subject matter before the trial court is over Kshs



- 95,000,000.00; over and above the pecuniary jurisdiction of the trial court. For this proposition, the applicant attached a copy of the valuation report in respect to the parcels marked FS2.
3. The applicant argued that the 2nd respondent and one Boaz Kaino litigated upon certain parcels of land wherein judgment was issued in favor of the 2nd respondent. It then commenced execution proceedings against the applicant who was not a party to the suit yet has title deeds in his favor over the suit lands. He contended that it is of necessity thus that a uniform judgment be adopted with a view to avoiding conflicting decisions of the superior courts. He annexed copies of the titles marked FS 3a-d and the judgment marked FS4.
 4. The applicant argued further that the cause of action arose within the jurisdiction of this honorable court where other related matters have been filed touching on the same subject matter hence the need for consolidation. He urged that it was in the interest of justice that the suit be heard expediently and uniformly. Finally, the application was made in good faith and would not occasion any prejudice upon the respondents if allowed.
 5. The 1st respondent on November 7, 2022 informed the court that it was not averse to the application and thus elected not to participate in the motion.
 6. The application was opposed by the 2nd respondent. Through a replying affidavit sworn by its learned counsel David Nyakango Onyancha on October 24, 2022. He deponed that the facts regarding this matter were within his knowledge. He deposed further that the applicant was guilty of material non-disclosure as the instant application is *res-judicata*. He attached rulings in respect to Kitale ELC Misc App No 5 of 2019 and Kitale ELC Misc App No 11 of 2019 marked DNO 1(a) and (b) respectively in support of that allegation.
 7. The deponent cited that the applicant attached a valuation report on the properties revealing that they were valued at Kshs 85,000,000.00 in Kitale ELC Misc App No 11 of 2019. In that regard, he found that the instant Application was an abuse of the process of the court and accused the Applicant of being a vexatious litigant. Finally, he expressed that Kitale ELC No 46 of 2022 and Kitale ELC No 9 of 2021 do not exist. The deponent urged this court to dismiss the application with costs.
 8. The applicant purported to file a further affidavit on October 31, 2022. I have perused the court record and I find that the same was not filed with leave of the court. Therefore, to that extent, it is a strange document as far as the record is concerned. For that reasons, I will not consider the affidavit in totality.

Submissions

9. The parties canvassed the application by way of written submissions. The applicant's submissions dated October 31, 2022 and filed on even date argued that the matter was not *res judicata* within the qualifications set out in section 7 of the *Civil Procedure Act* since the applicant in the present case is different and the substance of the matter is different. He added that the motion annexed an amended plaint whose amendments changed the character of the suit after the rulings were delivered in Kitale ELC Misc App No 5 of 2019 and Kitale ELC Misc App No 11 of 2019. He further supported his motion by stating that he attached a valuation report showing the value in issue. In view of the foregoing, he submitted that the Application is for allowing.
10. The 2nd respondent filed its submissions on October 27, 2022 dated October 26, 2022, the 2nd respondent rehashed the contents of its replying affidavit urging this court to dismiss the same in totality.
11. Looking at the pleadings filed in relation to the instant application, I find the following issues fall for determination sequentially:



- a. Whether the application is res judicata?
- b. If the answer in (a) is in the negative, whether the application is merited?
- c. Who bears costs of the application?

Analysis and Disposition

(a) Whether the application is res judicata?

12. It is the 2nd Respondent's disposition that the application is res judicata as it was determined previously in Kitale ELC Misc App No 5 of 2019 and Kitale ELC Misc App No 11 of 2019. That accusation was vehemently denied by the applicant in his submissions. Section 7 of the Civil Procedure Act provides as follows:

“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.”

13. The doctrine of res judicata essentially ousts the jurisdiction of the court to hear and determine matters, including applications previously litigated upon and determined by such court. The Court of Appeal in the Independent Electoral and Boundaries Commission vs Maina Kiai & 5 others [2017] eKLR held:

“For the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

- a. The suit or issue was directly and substantially in issue in the former suit;
- b. That former suit was between the same parties or parties under whom they or any of them claim;
- c. Those parties were litigating under the same title;
- d. The issue was heard and finally determined in the former suit;
- e. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

14. The court continued:

“The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and commonsensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice”.



15. Considering the application in light of the conditions set by the superior court, I note the following:
- a. The present issue of transfer of Kitale CMLC No 75 of 2018 to the present court was directly and substantially in issue in the former Applications ruled in Kitale ELC Misc App No 5 of 2019 and Kitale ELC Misc App No 11 of 2019;
 - b. That former applications and resultant suits were between the parties under whom they now claim. While the applicant is distinct from the other two matters, I observe that he was a beneficiary of the applications since he is one of the purported proprietors of the suit land.

(It is worth stating here that the fact that a person wears a hat rather than a cap or bare head does not change who he/she is. They are one and the same person irrespective of the clothing on their bodies. Thus, they should respect their identity. They should not come to court under different guises thinking they cannot be recognized: it is a shame that the applicant attempted to mislead the court in this manner. It cannot be countenanced).
 - c. Those parties were litigating under the same title. This can be confirmed from the fact that as per the explanation in (b) above, the applicant ultimately would have benefitted from the grant of the orders sought;
 - d. The issue was heard and finally determined in the former suit. I observe that Kitale ELC Misc App No 11 of 2019 determined the issue by declaring that the same was res judicata while Kitale ELC Misc App No 5 of 2019 was determined on its merits;
 - e. The court that heard and determined the issue formerly was competent to the suit in which the issue was raised.
16. I am thus persuaded by the 2nd respondent that the present application is res judicata. To this end, the application must suffer its fate, as one for dismissal. However, before I give my final orders, I must caution all the parties that would have benefitted from this orders that this court will not tolerate another application of this nature on its merits. I note that this is the 3rd of its kind to have been craftily placed before this court. These actions are approaching the maturity of being vexatious to this court and in the circumstances, the presentation of another application of this nature will result in more punitive sanctions than just costs. The applicants herein are hereby put on notice.
17. As stated earlier, the application offends the provisions set out in section 7 of the [Civil Procedure Act](#). Consequently, it is dismissed with costs to the 2nd respondent.
18. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS 17TH DAY OF JANUARY, 2023.

**HON. DR.IUR FRED NYAGAKA
JUDGE, ELC KITALE**

