



**Mwangi v Kamau (Environment & Land Case E013 of 2022)
[2023] KEELC 15807 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15807 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE E013 OF 2022
LN GACHERU, J
FEBRUARY 23, 2023**

BETWEEN

KAMAU MWANGI PLAINTIFF

AND

ANDREW KIIRU KAMAU DEFENDANT

RULING

1. By a Notice of Motion Application dated 21st September 2022, the Defendant/Applicant sought the following orders:
 1. That the Plaintiff/Respondent's suit be struck out for being Res-judicata, disclosing no reasonable cause of action, being scandalous, frivolous, and vexatious and being an abuse of the Court process;
 2. That there be an order of this honourable court barring the Plaintiff from filing any other suit pertaining to the subject property of this suit Loc 14/Kiru/1965/28 (the suit property); and
 3. That the Plaintiff be condemned to pay the costs of this application as well as those of the suit to the Defendant.
2. The application is premised on the grounds stated on its face and supported by the Affidavit of Andrew Kiiru Kamau, sworn on 21st September 2022. It was his contention that the ownership pertaining to land Parcel No.Loc 14/Kiru/1965/28, has been previously determined and is res judicata. That there are multiple suits filed by the Plaintiff in various courts pertaining to the ownership of the suit property and touching on the subject matter.



3. The Plaintiff/Respondent opposed the application through his grounds of opposition filed on 26th September 2022, as follows; -
 1. That the case referred to was between the Respondent and Peter Kamau, where judgement was delivered on 25th October 2016.
 2. That the Defendant in this case has refused to vacate the suit property which belongs to the Plaintiff/Respondent;
 3. That the Plaintiff/Respondent has sought for the eviction of the Defendant/Applicant and the tenants from the suit property and the Defendant/Applicant cannot hide behind the case that was decided in the Plaintiff/Respondent's favour;
 4. That the application is meant to delay the determination of the suit.
4. The Application was canvassed by way of written submissions. The Defendant's Applicant through the Law Firm of Nyambura Njuguna & Co. Advocates filed their written submissions in support of the Defendant/Application on 19th October 2022.
5. On the issue of whether the suit is res judicata having been tried and determined previously, the Defendant/Applicant relied on the case of Margaret Karungari Kamau v. Jecinta Wanjiru Mwangi & Others ELC No. 350/2014(Nakuru)and Nairobi ELC Cause No. 289 of 2013;- *Wilson Njau Huruko v. Hon A.G. & Others*.
6. The Plaintiff/Respondent filed his written submissions dated 31stOctober 2022,and opposed the application. It was his submissions that the previous suit concerned probate proceedings, while the present suit is a Civil Claim, and therefore does not fall within the realm of res judicata,as probate courts do not handle civil claims. On this issue, he relied on rule 41(3) of the Probate and Administration Rulesand the case of Re Estate of Julius Wachira (deceased) (2013) eKLR. He prayed that the application be dismissed with costs.
7. Having considered the pleadings and the written submissions, the Court finds that;-

Through a Plaint dated May 30, 2022, the Plaintiff/Respondent sought an eviction order against the Defendant/Applicant, and the tenants occupying the suit property. The Defendant/Applicant was granted leave to file his Defence out of time. Concurrently, the present application was filed seeking to have the suit struck out on the grounds that it is an abuse of the court process and that it is res judicata.
8. The Defendant/Respondent opposed the application vide his grounds of opposition dated September 26, 2022, and claimed that through the judgement in Murang'a ELC Case No. 57 of 2017 (formerly Nyeri HCCC No. 62 of 2012) delivered on 25th October 2016, he was declared the owner of the suit property.
9. The Court notes the mischief in the Plaintiff/Respondent's reference to a vacated judgement as an attempt to mislead the court. The Ruling in ELC Case No. 57 of 2017 (formerly Nyeri HCCC No. 62 of 2012), which held that the Plaintiff/Respondent herein was the registered owner of the suit property was indeed set aside and vacated on 3rd January 2018. This suit is therefore an abuse of the Court process on relying on an already vacated and set aside judgement.



10. The final issue stands as to whether the suit is res judicata. The Defendant/Applicant states that the issue on ownership of the suit property was determined in Nyeri Succession Cause No. 2 of 1985, wherein the Court distributed the estate of Julius Kamau Mwangi (Deceased) including the suit property and the rental income between Julius Kamau Mwangi's (deceased) beneficiaries. The said orders are still in force, since the subsequent appeals were dismissed.
11. The *Civil Procedure Act* under Section 7 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.”
12. The intent of res judicata is to bring litigation to a halt; It is anticipated to bar a person who has had his day in a court of competent jurisdiction where his case was concluded from re-litigating his case afresh. In essence it saves judicial precious time and protects the sanctity of the court to do just what it should do. In sum, it prevents the abuse of the Court process. The Court in Independent Electoral and Boundaries Commission v Maina Kiai & 5 others, Nairobi CA Civil Appeal No. 105 of 2017 ([2017] eKLR) held that:

“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.”
13. In the present case, the issue as to ownership of the suit property was determined in Nyeri Succession Cause No.2 of 1985 and Nyeri HCCA No 35 of 1993. In the former case, the courts Confirmed the Grant and distributed the suit property between the deceased's beneficiaries, while in the latter suit, the Court put the Defendant/Applicant into full possession of the suit property. Therefore, the Defendant/Applicant's application and supporting documentation have been sufficient to show evidence of a multiplicity of suits around the same subject matter and revolving on the same issue. This Court finds that the suit is indeed res judicata and is an abuse of the Court process.
14. The upshot of the above is that this Court finds and holds that the Defendant/Applicant's Notice of Motion Application dated September 21, 2022, is merited and the same is allowed entirely in terms of prayers No. 1, 2 and 3.
15. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 23RD DAY OF FEBRUARY, 2023.

L. GACHERU
JUDGE



In the presence of;

Plaintiff/Respondent – Present in person

Mrs Magwa for the Defendant/Applicant

Court Assistant – Joel Njonjo

