



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**ELC CASE NO. 16 OF 2020**

**EDNA JEBIWOTT KIPLAGAT.....PLAINTIFF**

**VERSUS**

**PHILIP KIPROTICH TUITOEK.....1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR, UASIN GISHU COUNTY.....2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**RULING**

This ruling is in respect of an application dated 3<sup>rd</sup> April 2020 by the plaintiff/applicant seeking for the following orders:

- a) Spent
- b) That a temporary injunction do issue restraining the 1<sup>st</sup> defendant by himself, agents or servants from alienating, transferring, entering offering for sale or dealing in any way with Land parcel NO SERGOIT/KELJI BLOCK 1 (NGOCHOI)/22 pending the hearing and determination of this suit.
- c) Costs of the application be awarded to the plaintiff.

This matter was filed online during the COVID 19 pandemic whereby Justice Kibunja gave a temporary order of inhibition in terms of Section 68 of the Land Registration Act No. 3 of 2012 against the suit land pending the hearing and determination of this application. The court handled the matter online and was not seized with the information that there was another existing suit which had determined this matter. The said matter is **ELDORET ELC NO. 72 B OF 2019** which is also pending for ruling for an application by the applicant for stay of execution and setting aside judgment.

The applicant filed a supporting affidavit in support of this application which the court has looked at. The plaintiff also indicates that there are no other proceedings or previous proceedings pending in any court between the plaintiff and the defendants over this subject matter. This is a false statement because the above mentioned case is before this court and is pending for ruling on an application filed by the same applicant. The applicant should know that courts keep records and sneaking in pleadings may not escape the attention of the courts or the opponents involved in such cases.

The respondent filed a defence and a replying affidavit alerting the court that the suit is res judicata. The respondent annexed the judgment in ELC NO 72B OF 2019 and the orders of the court which legally transferred the suit land to the respondent. The court

being seized of both matters is in a position to make substantive orders on the issue of res judicata at this juncture.

In case of **The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others, Nairobi CA Civil Appeal No. 105 of 2017 ([2017] eKLR)**, the Court of Appeal held that:

*“Thus, 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.”*

The court further explained the meaning of res judicata and stated as follows:

*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.”*

The applicant knew that there was a similar case between her and the respondents whereby she filed an application for stay and went ahead to file another case instead of waiting for the outcome of her application. This is sheer abuse of court process.

The guiding law on the issue of res judicata is **section 7 of the Civil Procedure Act** which 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”.*

This is court of law, equity and record, and it will not hesitate to dismiss a claim that is an abuse of the court process. The suit herein is res judicata and the earlier interim order granted of inhibition is hereby vacated and the suit struck out with costs to the 1<sup>st</sup> defendant.

**DATED and DELIVERED at ELDORET this 26<sup>th</sup> DAY OF MAY, 2020**

**M. A. ODENY**

**JUDGE**



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