



**South Sioux Farms Limited v Odera & another (Civil Appeal
E016 of 2023) [2024] KEHC 7590 (KLR) (25 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7590 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E016 OF 2023**

**KW KIARIE, J
JUNE 25, 2024**

BETWEEN

SOUTH SIOUX FARMS LIMITED APPELLANT

AND

DUNCAN OCHIENG ODERA 1ST RESPONDENT

ALEX OCHIENG OPAR 2ND RESPONDENT

*(Being an Appeal from the ruling and order in Oyugis Senior Principal Magistrate's
Civil Cause No. E089 of 2021 by Hon. B.O. Omwansa –Senior Principal Magistrate)*

JUDGMENT

1. On the 8th day of March 2023, Hon. B.O. Omwansa delivered a ruling in an application seeking to strike out the suit on grounds of res judicata. He dismissed the application. The appellant was aggrieved by the said ruling and filed this appeal. The firm of Wachira Wekhomba AIM & Associates Advocates represented her. The appellant raised the following grounds of appeal:
 - a. That the learned trial magistrate erred in misapplying and misinterpreting the principle of res Judicata as enshrined in section 7 of the *Civil Procedure Act*.
 - b. That the learned trial magistrate erred in law and failed to find that the appellant had satisfied all the ingredients necessary to prove that a matter is res judicata.
 - c. That the learned magistrate erred in law and failed to give due consideration to the appellant's submissions.
2. The firm Odera Okoyo & Company Advocates represented the respondents. The appeal was opposed on the following grounds:
 - a. That the appeal is in bad faith.



- b. That the appellant did not meet the threshold for the suit to be adjudged *res judicata*.
3. This Court is the first appellate court. I know my duty to evaluate the entire evidence on record, bearing in mind that I had no advantage in seeing the witnesses testify and watching their demeanour. I will be guided by the pronouncements in the case of *Selle v Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its conclusions in the matter.
4. The *Black's Law Dictionary*, Tenth Edition defines *res judicata* as:
1. An issue that has been definitively settled by judicial decision.
 2. An affirmative defence barring the same parties from litigating a second lawsuit on the same claim or any other claim arising from the same transaction or series of transactions that could have been but was not – raised in the first suit.

The three essential elements are

- (1) an earlier decision on the issue,
 - (2) a final judgment on the merits, and
 - (3) the involvement of the same parties, or parties in privity with the original parties.
5. Section 7 of the *Civil Procedure Act*, 2010:
- 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 the 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.
6. In the decision in *Uhuru Highway Development Ltd v Central Bank of Kenya* [1999], eKLR laid down the elements required to plead *res judicata* successfully as:
- (a) the former judgment or order must be final;
 - (b) the judgment or order must be on merits;
 - (c) it must have been rendered by a court having jurisdiction over the subject matter and the parties and
 - (d) There must be a relationship between the first and the second action, the identity of the parties, the subject matter, and the cause of action.

7. Later, in the case of *William Koross v Hezekiah Kiptoo Komen & 4 others* [2015] eKLR, the same Court stated the rationale of *res judicata* as follows:

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.



Speaking for the bench on the principles that underlie res judicata, Y.V. Chandrachud J in the Indian Supreme Court case of *Lal Chand v Radha Kishan*, AIR 1977 SC 789 stated, and we agree,

The principle of res judicata is conceived in the larger public interest, which requires that all litigation come to an end sooner rather than later. 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.

8. The plaintiff in Oyugis PMCC number 57 of 2020, like the plaintiffs in Oyugis PMCC number E089 of 2021, was seeking damages for the estate of Lorette Loreen Ngwena, who had died. I have perused the record in the Oyugis Senior Principal Magistrate's Court Civil Case number 57 of 2020, and this is the position:
 - a. The plaintiff was Robson Onyango Ng'ewna, who was suing as the administrator and personal representative of the estate of Loretta Loreen Ngwena, who had died.
 - b. The defendant was South Sioux Farms Limited.
 - c. This suit was on a claim of damages following the death of Loretta Loreen Ngwena in an accident involving motor vehicles KCY 427P and KCG 050V.
 - d. On the 26th day of January 2022, the parties entered into a consent in the sum of Kshs 2,500,000/= in favour of the estate.
9. Although the plaintiff in the Oyugis Senior Principal Magistrate's Court Civil Case number 57 of 2020 was different from the plaintiffs in the Oyugis Senior Principal Magistrate's Court Civil Case number 89 of 2021, the claim was the same, arose from the same accident, involved the same vehicles and was for the benefit of the estate of Loretta Loreen Ngwena. I read mischief in the second suit. It was undoubtedly *res judicata*. The learned trial magistrate, therefore, erred in dismissing the application.
10. The appeal is allowed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 25TH DAY OF JUNE 2024

KIARIE WAWERU KIARIE

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

