



REPUBLIC OF KENYA



KENYA LAW
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**Doshi v Central Bank of Kenya (Civil Suit E027 of 2023)
[2024] KEHC 9324 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9324 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E027 OF 2023
JK NG'ARNG'AR, J
JULY 25, 2024**

BETWEEN

ASHOK LABSHANKER DOSHI PLAINTIFF

AND

CENTRAL BANK OF KENYA DEFENDANT

RULING

1. The Defendant filed a Notice of Preliminary Objection dated 19th July 2024 to the hearing of the Plaintiff's suit until Civil Appeal No. E008 of 2023, Central Bank of Kenya v Ashok L. Doshi and 2 Others is heard and determined because it touches on liquidation of Imperial Bank Limited. That the said issue of liquidation is also active in High Court Civil Case No. 36 of 2016, *Ashok L. Doshi and Another v Central Bank of Kenya and Imperial Bank Limited* (IR). That there is also a pending appeal as that the Ruling by Hon. Lady Justice Njoki Mwangi dated 25th November 2022 was appealed against and stayed by the Court of Appeal on 26th May 2023.
2. The Preliminary Objection was canvassed by way of written submission. The Defendant's submissions dated 22nd July 2024 in support of the Preliminary Objection stated that the Plaintiff and the Defendant have pending proceedings in High Court Civil Case No. 36 of 2016, *Ashok L. Doshi and Another v Central Bank of Kenya and Imperial Bank Limited* (IR) and Civil Appeal No. E008 of 2023, Central Bank of Kenya v Ashok L. Doshi and 2 Others where both the suit and the appeal are pending hearing. That the issue of liquidation is being canvassed both before this court and the Court of Appeal despite there being sub judice on the face of it. That on 16th May 2023, Hon. Justice Kizito Magare delivered a ruling under paragraph 23 and 24 that the matter herein is sub judice to the matter in the Court of Appeal. The Defendant prayed that the suit herein be stayed in light of the above and pursuant to Section 6 of the *Civil Procedure Act* 2010.
3. The Plaintiff in their submissions to the Defendant's Notice of Preliminary objection dated 22nd July 2024 argues that the Preliminary Objection was filed on Friday 19th July 2024, the last working day



ahead of the scheduled hearing on Monday 22nd July 2024. That the said hearing was fixed by consent of the parties before Justice Magare on 8th May 2024 and the Preliminary Objection by the Defendant is meant to delay hearing of this suit. That according to the Defendant's Preliminary Objection, the issue of liquidation of Imperial Bank is active in HCCC No. 36 of 2016 and that the Defendant cites Section 6 of the [Civil Procedure Act](#) but does not explain how the section is relevant to the Preliminary Objection.

4. The Plaintiff submits on whether the Defendant's Preliminary Objection is raised properly that the Defendant is asking this court to halt hearing of the suit herein until Civil Appeal No. E008 of 2023, *Central Bank of Kenya v Ashok L. Doshi & 2 Others* is heard and determined. That in other words the Defendant is applying for stay of proceedings through its preliminary objection without a formal application. The Appellant contends that a preliminary objection dispenses with the entire suit and not stay the hearing and determination thereof as the Defendant has sought herein. That the Preliminary Objection violates Section 6 of the [Civil Procedure Act](#) which requires the court to examine factual issues and therefore does not fall under the category of pure points of law. The Plaintiff relied on the holding in the cases of [Ventaglio International S. A. Luxemburg & Another v Registrar of Companies & Another](#) (2013) eKLR and [DJC v BKL](#) (Civil Suit E021 of 2021) (2022) KEHC 10189 (KLR) to support the said position.
5. The Plaintiff further submitted on whether the Defendant's Preliminary Objection is merited that the mere fact that liquidation is active in HCCC No. 36 of 2016 does not automatically mean that this suit is bad in law and should therefore not proceed to hearing. That contrary to the Defendant's allegation, the Plaintiff did not challenge liquidation of the bank in HCCC No. 36 of 2016 as the Notice of Motion application dated 20th December 20121 only sought one substantive order and the rest of the orders sought were interim in nature and only intended to preserve the status quo to ensure that the process of liquidation does not commence before hearing and determination of the application. That Justice Magare was aware that this suit is properly before court and that is why he allowed the same to proceed to full hearing and directed parties to file documents in compliance with pre-trial directions. The Plaintiff submitted that the Defendant's Preliminary Objection is therefore for dismissal.
6. This court has considered the Defendant's Preliminary Objection dated 19th July 2024, the grounds therein and submissions by both parties and the issue for determination is whether the Preliminary Objection raised is sustainable.
7. Order 2 Rule 2 of the [Civil Procedure Rules](#) provides that a Preliminary Objection should be raised on a pure point of law which has been pleaded, or which arises by clear implication out of the pleadings and which if argued as a preliminary point may dispose of the suit. The threshold for preliminary objection was set out in *Mukisa Biscuits Manufacturing Ltd v West End Distributors* (1969) EA 696 held that: -

“... a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration.”

In the same case Sir Charles Newbold, P. stated:

“... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but



unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop.”

8. The Defendant raised the issue of sub judice and that it offends Section 6 of the *Civil Procedure Act* on the basis that the two cases, High Court Civil Case No. 36 of 2016, *Ashok L. Doshi and Another v Central Bank of Kenya and Imperial Bank Limited* (IR) and Civil Appeal No. E008 of 2023, *Central Bank of Kenya v Ashok L. Doshi and 2 Others* are both pending.

9. Section 6 of the *Civil Procedure Act* provides: -

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

10. This court notes that the Defendant has not given details of how the suit herein has offended Section 6 of the *Civil Procedure Act* in respect to the two cases, High Court Civil Case No. 36 of 2016, *Ashok L. Doshi and Another v Central Bank of Kenya and Imperial Bank Limited* (IR) and Civil Appeal No. E008 of 2023, *Central Bank of Kenya v Ashok L. Doshi and 2 Others*. This court has perused the file and established that the issue of sub judice was indeed addressed by Magare, J. and directions given for hearing of the suit herein, with consent of both parties. This court therefore finds that the Preliminary Objection herein dated 19th July 2024 and its timing is indeed meant to delay hearing of the suit herein. The Preliminary Objection is therefore dismissed.

DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 25TH DAY OF JULY, 2024.

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J.K. NG'ARNG'AR, HSC

JUDGE

In the presence of: -

Kilonzo Advocate for the Plaintiff – (holding brief)

Orengi Advocate for the Defendant

Court Assistant – Samuel Shitemi

Further Order;

Notice to issue

J.K. NG'ARNG'AR, HSC

JUDGE

