



**Sinoven International Group Limited & another v Yalfa Cargo Handling Limited  
(Civil Appeal 57 of 2015) [2023] KEHC 17531 (KLR) (26 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 17531 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL APPEAL 57 OF 2015  
DKN MAGARE, J  
APRIL 26, 2023**

**BETWEEN**

**SINOVEN INTERNATIONAL GROUP LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**KEYUN INTERNATIONAL LOGISTICS CO LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**YALFA CARGO HANDLING LIMITED ..... DEFENDANT**

*(Ruling of Justice Njoki of October 8, 2021)*

**RULING**

1. Once again this matter has come for another application. It is dated December 6, 2021. The application seeks *inter alia* for review and declaration that payment has been fully made (paraphrase mine).
2. The application is opposed through grounds of objection dated March 21, 2023. The main ground was that on July 21, 2020 the applicant made an application to pay 86,346.63 by installments and the court ordered installments for the entire judgment sum. The defendant stopped paying on February 25, 2022. They rely on the Ruling of Justice Njoki of October 8, 2021.
3. There was also a replying affidavit filed by Simon Karina. I will not read the same. An advocate cannot descend with the arena for contentious matters. It stands struck out for it is not useful in determination of the matter before me.
4. The respondent filed an application for judgment on admission vide an application dated July 15, 2019. Vide a notice under order 2 rule 10(6) the defendant sought particulars related to 6 cheques Nos 0xxx4, 0xxx8, 0xxx4, 0xxx1, 0xxx2 for USD 20,000/= each and cheque No 000524 for USD 10,000/= all totaling to USD 110,000/=.



5. On September 8, 2016 the defendant filed a further list of documents annex in the said cheques. They also filed a list of documents, 12 in number on June 20, 2017 which are several cheques and bank statements.
6. On May 29, 2019, the plaintiff filed an application for: -
  - a. Judgment on admission for USD 179,952.72
  - b. Summary judgment USD 390,383.84 vide
7. On August 17, 2019 the plaintiff filed an application dated May 20, 2019 to review the order issued on March 26, 2019 granting leave to join a third party to the proceedings. The application for summary judgment was opposed with a replying affidavit. The applicant filed a further affidavit dated November 5, 2019.
8. The respondent filed a replying affidavit through Nulu Nguma Gyaza. There was no defence offered to the prayer for summary judgment. It is the response, that the Court of Appeal had in mind when they dealt with the case of *Ragbir Singh Chatte v National Bank of Kenya Limited* [1996] eKLR, where the Court of Appeal stated as doth: -

“The main object of this rule and r.14 is to bring the parties by their pleadings to an issue, and indeed to narrow them down to definite issues, and so diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing (per Jessel M. R in *Thorpe v Holdworth* [1876] 3 Ch D 637). This object is secured by requiring that each party in turn should fully admit or clearly deny every material allegation made against him. Thus, in an action for a debt or liquidated demand in money, a mere denial of the debt is wholly inadmissible”, (underling supplied).

I will also add that the crucial deficiency of a general denial which I have already described, also applies to the evasive, inconsistent and contradictory alternative general traverse in he appellants defence. This was that if the respondent had extended any overdraft facilities without stating the amount involved, to the appellant which was moreover, denied, then the same and here again, without stating how and when, had been paid. Such a spurious pleading in the alternative cannot give any merit to the defence and so also makes it one which discloses no reasonable defence for all purposes including that of 0 6 r 13(1)(a).”

9. The consequences, were dire and immediate. The court granted the prayers sought *vide* its ruling given on May 8, 2020. There was no appeal on the matter. As it happens in this part of the world a notice of change was inevitably filed together for: -

“The defendant be and is hereby permitted and ordered to defray/pay the balance of the outstanding USD 86,346.63 ...”

10. The supporting affidavit was a stark contract with the replying affidavit. The defendant was stating that out of USD 570,346.63. Decreed on May 8, 2020. They are seeking to pay by installments. There was an order that the defendant continues to pay till the determination of the application.
11. There appears to be payments made in settlement of the decree. I have gone through the background to show how convoluted this easy case has become. The respondent filed submissions repeating the history of the matter. Some aspect refer the affidavit of Simon Karina. I will disregard them. This is on the basis of a long settled traditions that in contentious matters, it is the clients who depone.



12. In *Magnulia PVT Limited v Synernard Pharmaceuticals (K) Ltd* 2018 eKLR, the court states:-

“Whereas there is nothing barring an advocate from swearing an affidavit in appropriate cases, where the matters deposited are agreed or on purely legal positions. Advocates should refrain from temptation of being the avenue through which disputed facts are proclaimed. The rationale for the said principle is to insulate the advocate, an officer of the court, from vagaries of litigation which on occasion may be very unpleasant.”

### Analysis

13. I do not think that the issue of the amount due is an issue for determination of the court. The court entered judgment, in its earlier decision.

14. By consent dated December 15, 2021 parties record a consent on 2 cheques for USD 13046 and 13045. On October 8, 2021, Justice Njoki Mwangi delivered her ruling requiring USD 200,0000 be paid up front, and USD 20,000/= be paid monthly till the payment in full. This foreclosed the application dated July 21, 2020. The record again reflects that on December 7, 2021 the application dated December 6, 2021 was brought under certificate of urgency. It was seeking stay of the judgment given on May 8, 2020. There was a consent record on December 15, 2021 as earlier stated. There has been a to-ing and fro-ing regarding this reconciliation of accounts.

15. To my mind the same relates to the remainder of the claim. In any case, if there were payments made between the date of filing that is April 27, 2015 and today, the same form part payment of the decree. There is no need for a third party to be appointed to reconcile the payment of the decretal sum.

16. The court will not dwell on the issue of stay. This court already made a ruling on October 8, 2021 for stay. That ruling determined stay. The party cannot continue regurgitating the same claim over and over again by adding a few new items and bringing it as a new one. .... regarding res judicata the court relies on the authority of

17. In the case of *ANM v PMN* [2016] eKLR, the court stated as doth: -

“If in essence therefore, the doctrine implies that for a matter to be *res judicata*, the matters in issue must be similar to those which were previously in dispute between the same parties and the same having been determined on merits by a court of competent jurisdiction. The court in the English case of *Henderson v Henderson* [1843-60] ALL E.R.378, observed thus:

“...where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.”



18. It should also be noted that the doctrine of *res judicata* is meant to protect the parties and the court from repeating itself over and over again over the same issues. In the case of [Accredo AG & 3 others v Steffano Uccelli & another](#) [2019] eKLR, the Court of Appeal sitting in Malindi had this to say: -

“ 30. Expounding further on the essence of the doctrine this court in *John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others* [2015] eKLR pronounced itself as follows:

“The rationale behind *res-judicata* is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. *Res-judicata* ensures the economic use of court’s limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without *res judicata*, the very essence of the rule of law would be in danger of unraveling uncontrollably.”

19. Further, if any, payment is made over and above the decree, it can form part of the payment of the decree. If finally found payable.

20. The court in the above case had this to say regarding *res judicata* in applications: -

“ 36. Therefore, the issue of the 2<sup>nd</sup> appellant’s shareholding and management was directly and substantially in issue in the ruling dated April 30, 2015 hence could not be raised again, even with the use of judicial craftsmanship, as we find was the case in the application whose ruling gave rise to the instant appeal. Our position is fortified by this court’s sentiments in *Suleiman Said Shabbal v Independent Electoral & Boundaries Commission & 3 others* [2014] eKLR thus,

“To constitute *res judicata*, there must be adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy.”

21. The claim whether USD 86,346.63 or USD 570,346.63 was due was part of the decisions of the court on October 8, 2021. The same is a point of law. There can be no two reviews of the same decree. If the court made an error in the second part, then the applicant ought to have appealed.

22. Further, order 45 rule 1 of the [Civil Procedure](#) provides as doth: -

“Application for review of decree or order [order 45, rule 1]

(1) Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or



evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

23. Order 45 rule 6 bars any application for review on an order for review. The consequence of the foregoing is that any error in the court's decision can only be an appealable order.

24. The upshot is that the said application dated December 6, 2021 lacks merit and is dismissed with costs Kshs 30,000/=. The court shall issue directions after the ruling on hearing of the remainder of the claim.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 26<sup>TH</sup> DAY OF APRIL, 2023.  
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

**In the presence of:**

Karina for the Plaintiff

Kinuva for the Defendant

Court Assistant - Firdaus

