



**Chadha v Chadha & another (Civil Suit E660 of 2021)  
[2022] KEHC 14546 (KLR) (Commercial and Tax) (28 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14546 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E660 OF 2021  
A MABEYA, J  
OCTOBER 28, 2022**

**BETWEEN**

**JOGINDER KAUR CHADHA ..... PLAINTIFF**

**AND**

**PERVINDER SINGH CHADHA ..... 1<sup>ST</sup> DEFENDANT**

**ORIENTAL MILLS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before court is the 1<sup>st</sup> defendant's application dated 23/7/2021. It was brought under section 6 and 8 of the *Civil Procedure Act*, and Order 2 Rule 15 (b) and (d) of the *Civil Procedure Rules* 2010.
2. The application sought for the striking out of the plaintiff's Notice of Motion and Plaintiff both dated 29/6/2021.
3. The grounds therefor were set out on the face of the Motion and on the undated supporting affidavit Pervinder Singh Chadha. It was the 1<sup>st</sup> defendant's case that the plaintiff dated 29/6/2021 was an abuse of process as the issues therein had been previously raised in Hcomm Misc. No. E033 of 2021.
4. That the issues of unlawful exclusion from the applicant and management of the 2<sup>nd</sup> defendant; the plaintiff's use of fraudulent means to assent to top management and his breach of fiduciary duty were all issues in Hcomm Misc. No. E033 of 2021.
5. That the parties therein are the same before this Court and the same subject is also the same in both suits. Finally, that Hcomm Misc. No. E033 of 2021 was active and ongoing.
6. The 1<sup>st</sup> defendant therefore alleged that the filing of the present suit was prejudicial to him as he was incurring further legal fees in his defence, and it was in the interest of justice that the suit be dismissed.



7. The plaintiff opposed the application vide his replying affidavit sworn on 10/9/2021. He contended that in Hcomm Misc. No. E033 of 2021, the 1<sup>st</sup> defendant herein had sought injunctive orders to restrain him from interfering with directorship of the 2<sup>nd</sup> defendant company. That the application in that suit is different from that dated 29/6/2021 in this suit as they raise different issues and seek different orders.
8. That the 1<sup>st</sup> defendant's summary of the issues herein was false as the present suit relates to illegal management and misappropriation of funds belonging to the 2<sup>nd</sup> defendant company. That the present suit was aimed at preserving the 2<sup>nd</sup> defendant's funds from waste and dissipation by the applicant the 1<sup>st</sup> defendant while Hcomm Misc. No. E033 of 2021 was aimed at restraining him from interfering with the directorship of the 2<sup>nd</sup> defendant company. It was thus contended that the application did not meet the standard for sub judice and ought to be dismissed.
9. The application was canvassed by way of written submissions. These were dated 11/11/2021 and 24/11/2021 for the 1<sup>st</sup> defendant and the plaintiff respectively. The Court has considered those submissions as well as the pleadings and evidence before it.
10. The law for striking out of suits is found under Order 2 Rule 15 (1) and (2) which provides: -
  - a) it discloses no reasonable cause of action or defence in law; or
  - b) it is scandalous, frivolous or vexatious; or
  - c) it may prejudice, embarrass or delay the fair trial of the action; or
  - d) it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be."
11. The 1<sup>st</sup> defendant moved the Court under sub-rule 2(b) and (d). His case is that the suit is sub judice as there exists Hcomm Misc. No. E033 of 2021 which is between the same parties as those before this Court. The sub judice rule is codified in section 6 of the *Civil Procedure Act* as follows:
 

"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."
12. In *Republic v Paul Kibara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya* [2020] eKLR analyzed the salient features in the sub judice rule and stated that;
 

"Both suits challenge the same decision. The prayers sought in both suits are the same. Since both the suits cite similar issues, the decision of the first suit should be binding on those issues and it need not be tried again. If the plea in the first suit succeeds, then it will render the second case res judicata. In fact, a favorable decision would not only benefit the Nairobi Branch, but the entire bar in the country. This truth renders the second suit useless and of no utilitarian value. A second trial on the same issues would entail duplication of work as evidence required to prove those issues in the first suit would be similar to those in the



second suit (read instant suit). Thus, it is desirable that such issues be resolved or adjudicated by one court only. It will avoid conflicting decisions or complications arising therefrom.”

13. Thus, the rule is that where an issue is pending in a court of law for adjudication between the same parties, any other court is barred from trying that issue so long as the first suit goes on. The aim of the rule is to pin-down the parties to one litigation and avoid the possibility of contradictory verdicts by two courts in respect of the same relief. The rule also prevents multiplicity of proceedings
14. This Court has carefully considered the pleadings in Hcomm Misc. No. E033 of 2021 vis a vis the plaint dated 29/6/2021. Undoubtedly, both suits relate to the same parties and the subject matter in both suits relate to the 2<sup>nd</sup> defendant company herein, Oriental Mills Limited, wherein both the applicant and respondents are directors/shareholders.
15. In Hcomm Misc. No. E033 of 2021, the plaintiff seeks injunctive orders against the 1<sup>st</sup> defendant herein on grounds that since the death of Kulwant Singh Chadha, the company’s former chairman, the 1<sup>st</sup> defendant has fully taken over management of the company to the exclusion of the plaintiff. He also raises issues of exploitation of the company’s assets and opportunities such as the applicant’s alleged intention to appoint his wife as a director and unjust enrichment.
16. In the plaint dated 29/6/2021, the plaintiff again raises the issue of exclusion in the management of the company by the 1<sup>st</sup> defendant. He also raises the issue of alleged mismanagement of the company, conversion, fraud and misappropriation of company funds, abuse of office, breach of fiduciary duty due to inter alia failure to hold general meetings etc.
17. What this discloses is that the issues before this Court are directly and substantially in issue in Hcomm Misc. No. E033 of 2021. If the two courts would arrive at different findings, there would be an embarrassment.
18. The respondent in Hcomm Misc. No. E033 of 2021 sought orders restraining the applicant from changing, altering or whatsoever interfering with the directorship of the 2<sup>nd</sup> defendant company. Similarly, in this suit the plaintiff seeks a permanent injunction against the applicant from dealing with the company’s assets and a permanent order barring him from appointing any new directors for the 2<sup>nd</sup> defendant without following due process. These reliefs, respectfully, are substantially similar.
19. The question that one must ask is, if Hcomm Misc. No. E033 of 2021 was to be heard to finality and the respondent subsequently files the instant suit, would the instant suit not be found to be res judicata? The answer is yes. A plaintiff must present his suit in such a way that he brings all issues in dispute before court for final determination. The rules in res judicata and sub judice are intended to guide against the practice of litigants bringing claims against defendants little by little, one issue as a time, at the expense of duplicity, waste of judicial time, and unnecessary legal expenses.
20. The law foresees a situation where a plaintiff should bring all disputes relating to the same parties, streaming from the same subject matter and seeking similar reliefs under the determination of the court for full and final determination of the disputes. Even though there could be other issues in this case not previously pleaded, this court’s position is that they ought to have been pleaded in Hcomm Misc. No. E033 of 2021 to avoid a multiplicity of suits.
21. In the end, I find that this suit is sub-judice. Consequently, the suit is an abuse of court and the same is struck out with costs to the 1<sup>st</sup> defendant.
22. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF OCTOBER, 2022.**



**A. MABEYA, FCIArb**

**JUDGE**

