Wild Elegance Fashions Limited v Chief Land Registrar & 4 others (Environment & Land Case 876 of 2014) [2023] KEELC 19291 (KLR) (27 July 2023) (Ruling)

Neutral citation: [2023] KEELC 19291 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 876 OF 2014

JO MBOYA, J

JULY 27, 2023

BETWEEN

WILD ELEGANCE FASHIONS LIMITED ..... PLAINTIFF

AND

CHIEF LAND REGISTRAR ..... 1ST DEFENDANT

SDIRECTOR OF SURVEY ..... 2ND DEFENDANT

HON ATTORNEY GENERAL ..... 3RD DEFENDANT

DIESEL CARE LIMITED ..... 4TH DEFENDANT

FT LUBULELLAH ..... 5TH DEFENDANT

RULING

1. Vide Notice of Motion Application dated 17th May 2023; the 4th Defendant/Applicant herein has approached the Honorable court seeking for the following reliefs;

   i. .....(Spent).

   ii. That this Honorable court do stay the execution of the Decree herein pending the hearing and determination of this Application.

   iii. That this Honorable Court be pleased to extend time to allow the parties herein to comply with the consent order in particular that the 4th Defendant be allowed to pay the balance of the purchase price and the Plaintiff to issue the 4th Defendant with completion documents for the suit property as prescribed in the said Consent order.

   iv. That this Honorable Court grants any other orders it deems fit and just.

v. That costs of the Application be provided for.

2. The instant Application is anchored and premised on the various grounds, which have been detailed and enumerated in the body thereof. Furthermore, the Application is supported by the affidavit of one; Joseph Claudio Karuoro, sworn on the 17th May 2023 and in respect of which the Plaintiff has exhibited two sets of documents.

3. Upon being served with the Application under reference, the Plaintiff/Respondent duly filed a Replying Affidavit sworn by one Nishidh Shah, which is sworn on the 2nd June 2023; and in respect of which the Deponent has annexed two documents, inter-alia a Request on behalf of the Plaintiff/Respondent seeking vacant possession over and in respect of the suit property.

4. Further and in addition, the 4th Defendant/Applicant herein thereafter sought for and obtained Leave to file and serve a Supplementary Affidavit. Consequently and in this regard, the 4th Defendant/Applicant duly filed a Further Affidavit sworn by the said Joseph Claudio Karuoro.

5. Other than the foregoing, it is worthy to state that the instant Application came up for hearing on the 6th July 2023, whereupon the advocates for the Parties agreed to canvass and dispose of the Application by way of written submissions.

6. Arising from the foregoing, the Honourable court proceeded to and indeed gave directions pertaining to and concerning the timelines for the filing and exchange of the written submissions by and on behalf of the Parties.

7. For good measure, the 4th Defendant/Applicant proceeded to and filed written submissions dated the 8th June 2023; whereas the Plaintiff/Respondent filed written submissions dated the 20th June 2023.

Submissions By The Parties

a. Applicant's Submissions:

8. The Applicant herein filed written submissions dated the 8th June 2023; and in respect of which same has raised, highlighted and canvassed two issues for consideration by the Honourable court.

9. Firstly, Learned counsel for the Applicant has submitted that even though the Applicant and the Plaintiff/Respondent and the rest of the Parties entered into and executed a consent; the Applicant herein was unable to comply with and/or adhere to the terms of the consent under reference.

10. Further and in addition, Learned counsel has submitted that even though the timeline for complying with the terms of the consent has lapsed, the Honorable court is vested with the requisite discretion to extend and or enlarge the set timelines, to enable the Applicant herein to comply with the terms thereof.

11. Additionally, Learned counsel for the Applicant has submitted that the power of the court to extend and or enlarge time is prescribed vide the provisions of Section 95 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya as read together with Order 50 Rules 6 of the Civil Procedure Rules, 2010.

12. In any event, Learned counsel for the Applicant has further submitted that the power to enlarge time can be applied even to and in respect of timelines set vide consent. Consequently and in this regard, Learned counsel has therefore implored the Honourable court to find and hold that the court is seized of the requisite Jurisdiction to entertain the current Application.

13. In support of the foregoing submissions, Learned counsel for the Applicant has cited and quoted various decisions, inter-alia, the case of Johnston Kassim Muumbo & Others versus Lee Funeral Services Ltd [2021]eKLR, Nicholas Kiptoo Arap Korir Salat versus IEBC & 7 Others [2014]eKLR and June Jebet Moi versus Fuelex Oil Company Ltd & 2 Others Nairobi HCC No. 305 of 2000 (UR), respectively.

14. Secondly, Learned counsel for the Applicant has submitted that the Applicant herein has tendered and placed before the Honourable court sufficient and credible basis to warrant the exercise of discretion in favor of the Applicant.

15. In this respect, Learned counsel for the Applicant has submitted that the Applicant was prevented and precluded from complying with the terms of the consent order as a result of covid-19; which struck and affected global business, across the world, Kenya not excepted.

16. Further and in addition, Learned counsel has contended that as a result of the covid-19 pandemic, the Applicant's business was substantially affected and thus the Applicant was incapacitated from meeting various obligations, inter-alia, the terms of the consent, which had been entered into and executed between the Parties.

17. Other than the foregoing, Learned counsel for the Applicant has also submitted that the Applicant has carried out and undertaken substantial improvements on the suit property and thus it would be appropriate for the Honorable court to grant the Applicant further latitude and extension of time within which to comply with the terms of the impugned consent.

18. In support of the foregoing submissions, Learned counsel for the Applicant has cited and relied on; inter-alia the case of Cannon Assurance Company Ltd versus Caleb Okwako Jogogo & Another; Patricia Musimbi v Peter Khakali [2021]eKLR and William Oloch v Pan African Company Ltd [2020]eKLR, respectively.

19. Consequently and in view of the foregoing, Learned counsel for the Applicant has therefore implored the Honourable court to find and hold that the subject Application is meritorious and thus deserving to be allowed.

b. Respondent's Submissions

20. The Plaintiff/Respondent herein filed written submissions dated the 20th June 2023; and in respect of which same has highlighted and amplified two salient issues for consideration by the Honourable court.

21. First and foremost, Learned counsel for the Respondent has submitted that the 4th Applicant had hitherto filed a similar Application dated the 20th November 2020; wherein same sought for extension of time within which to comply with the terms of the consent order.

22. Further and in addition, Learned counsel has submitted that even though the 4th Defendant/Applicant filed the named Application, dated the 20th November 2020; same failed to prosecute the impugned Application and thereafter the Application was Dismissed for non-attendance.

23. Arising from the foregoing, Learned counsel for the Plaintiff/Respondent has therefore submitted that the current Application, which seeks similar and/ or substantially, similar reliefs as the previous Application, is therefore barred by the Doctrine of Res-Judicata.

24. In support of the submissions touching on and concerning the Doctrine of Res-Judicata, Learned counsel for the Plaintiff/Respondent has relied on the decision in the case of John Florence Maritime

Services Ltd & Another versus The Cabinet Secretary, Transport, Infrastructure Public Works (2015)eKLR.

25. Secondly, Learned counsel for the Plaintiff/Respondent has submitted that the Parties herein entered into and executed a consent dated the 1st July 2020; wherein the Parties agreed on express, explicit and unambiguous terms, which were binding on all the Parties, inter-alia, the 4th Defendant/Applicant.

26. Pursuant to and in terms of the consent which was entered into by the Parties, Learned counsel for the Plaintiff/Respondent has submitted that the 4th Defendant/Applicant undertook to pay the decretal sum vide instalments, whose details were enumerated at the foot of clause three (3) of the consent order.

27. Furthermore, Learned counsel for the Plaintiff/Respondent has also submitted that the 4th Defendant was party and privy to the clauses of the consent order which stipulated that in the event of default to comply with the terms alluded to in clause three of the consent order; then the 4th Defendant/Applicant would be obligated to vacate and hand over vacant possession of the suit property.

28. Owing to the foregoing, Learned counsel for the Plaintiff/Respondent has therefore submitted that the terms of the consent were/are binding on all the Parties and that in any event the terms thereof cannot be extended other than by a further consent between the Parties.

29. Further and in any event, Learned counsel for the Plaintiff/Respondent has submitted that this Honorable court has no mandate and Jurisdiction to endeavor to and unilaterally alter and or re-write a contract for the Parties, either in the manner sought by the Applicant or at all.

30. In support of the submissions that the terms of the consent can only be varied and or altered subject to proof of circumscribed grounds, Learned counsel for the Plaintiff/Respondent has cited and relied on inter-alia the case of Stephen Kibiego Meli & another v Consolidated Bank Kenya Ltd [2019]eKLR.

31. In view of the foregoing, Learned counsel for the Plaintiff/Respondent has therefore impressed upon the Honourable court that the subject Application is not only misconceived, but also legally untenable.

32. As a result of the foregoing, Learned counsel has therefore invited the Honourable court to dismiss the Application with costs.

Issues For Determination

33. Having reviewed the Application dated the 17th May 2023; and the Response thereto and upon taking into account the written submissions filed by and on behalf of the Parties herein, the following issues do arise and are thus worthy of determination;

    i. Whether the Honorable court is seized of the requisite Jurisdiction to extend and or enlarge time for purposes of complying with the terms of the consent.

    ii. Whether the Applicant herein has established and demonstrated the requisite grounds to warrant variation, review and or alteration of the terms of the consent order.

    iii. Whether the instant Application is prohibited by the Doctrine of Res-Judicata.

Analysis And Determination

Issue Number 1 And 2

Whether the Honorable court is seized of the requisite Jurisdiction to extend and or enlarge time for purposes of complying with the terms of the consent.

Whether the Applicant herein has established and demonstrated the requisite grounds to warrant variation, review and or alteration of the terms of the Consent order.

34. Before venturing to interrogate and adjudicate upon the issues isolated herein before, it is imperative to state and underscore that the Parties to the instant suit, the 4th Defendant not excepted, entered into and executed a consent, whereupon same compromised and settled the entire dispute beforehand.

35. Further and in addition, the 4th Defendant/Applicant herein undertook and indeed bound herself to pay and or liquidate the agreed decretal sum (namely purchase price of the suit property) vide installments, whose details were enumerated at the foot of clause three (3) of the decree that was thereafter extracted and sealed by the Deputy Registrar.

36. Additionally, the 4th Defendant/Applicant was also party and privy to clause 9 of the consent order, which clearly stipulated that in the event of default by and on behalf of the 4th Defendant/Applicant, same would vacate and hand over vacant possession of the suit property.

37. Instructively, it is important to underscore that the 4th Defendant/Applicant herein failed and or neglected to comply with the terms of the consent order and same has now returned to court seeking for extension of time within which to inter-alia comply with the terms of the consent order.

38. For good measure, the 4th Defendant/Applicant is pleading with and/ or beseeching this Honourable Court to vary the set timelines, which were alluded to in the consent order and extend same; so that the Applicant can make the outstanding payments out of time.

39. Having made the foregoing observations, it is now appropriate to venture forward and discern whether the extension of time sought for by and on behalf of the Applicant, will amount to and or constitute variation/alteration of the terms of the consent.

40. Additionally, it is also imperative to interrogate whether a court of law would be seized of the requisite Jurisdiction to vary and alter the terms of a consent, which basically constitute a contract between the Parties and thus has contractual implications.

41. Lastly, this court will also be called upon to interrogate if at all, whether the Applicant herein has placed before the Honourable court the circumscribed grounds upon which a consent order can be reviewed, varied and/or altered. In this regard, the court would have to consider whether the Applicant herein has met the threshold underscored vide inter-alia, the decision in the case of Brooke Bond Liebig (T) Ltd versus Mallya [1975] EA.

42. To start with, there is no gainsaying that a consent which is duly entered into and executed by the Parties, like the one beforehand, gives rise to a contract, which is binding on the Parties thereto, subject to limited exceptions, like where the Consent is contrary to Public Policy etc.

43. Consequently and upon entering into the consent dated the 1st July 2020, there is no gainsaying that the terms of that consent are binding on the 4th Defendant/Applicant, as well as the rest of the Parties to the named Consent.

44. Furthermore, once a Party enters into a consent, which constitutes a contract, the terms of such a consent (read contract) can only be varied and or superseded either by an addendum duly executed by the Parties or a further consent/contract.

45. Additionally, the terms of such a consent can also be altered and or varied by the Honourable court, albeit on limited and circumscribed grounds; which must be duly established and demonstrated by the Applicant and not otherwise.

46. In my humble view, a consent order creates and establishes a binding contract. Consequently and in this regard, where a Party approaches the Honourable court to alter the terms of a consent; then what party is seeking to achieve is to use the Honorable court to re-write the terms of a consent, which is legally unacceptable.

47. As pertains to the foregoing position, it is imperative to take cognizance of the dictum in the case of National Bank of Kenya Ltd versus Pipeplastic Samkolit & Another [2001]eKLR, where the Court of Appeal held and stated thus;

> " A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge.
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> As was stated by Shah JA in the case of Fina Bank Limited vs Spares & Industries Limited (Civil Appeal No 51 of 2000) (unreported):
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> "It is clear beyond peradventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity's function to allow a party to escape from a bad bargain".

48. Secondly, given the nature of a consent and taking into account that same culminates into a contract, courts have always developed reverence as pertains to the terms of such consent. For good measure, it has often been assumed and taken that the Parties to a consent were acting at arms-length and therefore their agreements, ought to be respected by all and sundry, the courts not excepted.

49. However, in instances where an Applicant seeks to impugn and or impeach the terms of a consent, the courts have enumerated and circumscribed the grounds which must be established and or demonstrate before a consent can be reviewed, altered and or invalidated.

50. As concerns the ingredients that must be demonstrated and proved before the terms of a consent can be impeached and/or varied; it is worthy to adopt, re-state and reiterate the holding of the Court of Appeal in the case of Flora N Wasike versus Desterio Wamboko [1988]eKLR, where the court stated as hereunder;

> " It seems that the position is exactly the same in East Africa. It was set out by Windham J, as he then was, and approved by the Court of Appeal for East Africa, in Hirani v Kassam 1952] 19 EACA 131, at 134, as follows:
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> "The mode of paying the debt, then, is part of the consent judgment. That being so, the court cannot interfere with it except in such circumstances as would afford good ground for varying or rescinding a contact between the parties. No such ground is alleged here. The position is clearly set out in Setton on Judgments and Orders (7th edn), vol 1, P 124, as follows:

> "Prima facie, any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them ... and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court ...; or if the consent was given without sufficient material facts, or in general for a reason which would enable the court to set aside an agreement."
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> This passage was followed by the same court in Brooke Bond Liebig Ltd v Mallya [1975] EA 266 at 269 in which Law Ag P said:
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> "A court cannot interfere with a consent judgment except in such circumstances as would afford good ground for varying or rescinding a contract between the parties."

51. Having taken cognizance of the ratio decidendi in the foregoing decision, the question that remains outstanding is whether the Applicant herein has established and demonstrated any of the known grounds to warrant impeachment and/ or alteration of the consent, which same entered into freely and voluntarily.

52. Be that as it may, I must state that after examining the grounds contained at the foot of the Application and the contents of the affidavit thereto; I am unable to discern any scintilla of ground that comes closest to the circumscribed basis for interfering with a consent.

53. Lastly and in any event, there is the question as to whether the provisions of Section 95 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya; can be relied upon for purposes of altering and or varying the terms of a consent.

54. Whereas Learned counsel for the Applicant has contended that the named provision can be invoked and relied upon for purposes of varying and altering the terms of a consent order, it is not lost on this Honourable court that a consent order constitutes a contract and thus has contractual implications upon the Parties.

55. In the premises, though the provision of Section 95 (supra) grants the Honourable court the requisite Jurisdiction to enlarge and/or extend time, the said Section cannot be relied upon to invalidate and/ or otherwise alter the terms of a consent. To my mind, if the provisions of Section 95 of the *Civil Procedure Act* could be utilized to vary the terms of a consent, then no doubt the sanctity of contract would be rendered useless and in any event, be placed at the mercy of the courts, who would thereafter superimpose their own thinking and terms on the Parties; under the guise and pretext of exercising of discretion/Equity.

56. Surely, such a scenario would be tantamount to allowing courts of law to alter and vary contracts entered into by Parties, at will. For good measure, such a situation would then grant unto the courts a window to re-write the contracts by the Parties, contrary to the hackneyed position which has been elaborated upon in a plethora of decisions.

57. Other than the foregoing, the utilization of Section 95 of the *Civil Procedure Act* to vary the terms of a consent, including timelines set by the Parties, would run counter the position underpinned by inter-alia the holding in the case of Broke Bond Liebig (T) Ltd v Mallya [1975]EA, where the court stated thus;

> " A court cannot interfere with a consent judgment except in such circumstances as would afford good ground for varying or rescinding a contract between the parties."

58. To surmise, I am not disposed to invoke and utilize the provisions of Section 95 of the *Civil Procedure Act*; or Order 50 Rule 6 of the Civil Procedure Rules, to impeach and/or impugn the terms of the consent which was freely entered and executed by the Parties.

59. Consequently and in view of the foregoing, I hold the opinion that this Honorable court is divested of Jurisdiction to extend and or enlarge time for the Applicant to comply with the consent, which was entered into freely between the designated Parties. Clearly and to my mind, to do so would amount to usurpation of the mandates of the Parties.

60. Further and in any event, I must also reiterate that even if I was minded to interfere with the consent, (which is not the case) it is imperative to underscore that I have not been persuaded taking into account the established and obtaining position of the law.

Issue Number 3

Whether the instant Application is prohibited by the Doctrine of Res-Judicata.

61. Learned counsel for the Plaintiff/Respondent has stated and posited that subsequent to the entry and or execution of the consent, the 4th Defendant/Applicant failed to abide by and or comply with the terms of the consent.

62. Additionally, Learned counsel has proceeded to and averred that owing to the failure by the 4th Defendant/Applicant to comply with the terms of the consent order; the 4th Defendant/Applicant filed an Application dated 20th November 2020; and in respect of which same sought for extension of time to comply with the consent order within 45 days.

63. Other than the foregoing, Learned counsel for the Plaintiff/Respondent has averred that despite filing the Application dated the 20th November 2020, the 4th Defendant/Applicant failed to prosecute the Application and thereafter the Application was Dismissed by the court on the 21st February 2021.

64. However, even though Learned counsel for the Respondent has contended that the said Application was dismissed for non-attendance on the 21st February 2021, what is evident from the record of the Honourable court is that though an application had been filed, the court stated that the subject matter had been resolved by consent and thereafter the court proceeded to close the file.

65. Whereas there is no express provision under the *Civil Procedure Act* and Rules for closing of a file, however the implication of the order of the court which was made on the 22nd February 2021 (and not 21st February 2021) seems to denote that the pending Application stood dismissed for Want of Prosecution.

66. Nevertheless, the question that then does arise is whether having filed a previous Application which stood dismissed, the Applicant herein can revert back to court with a similar Application, during the lifetime of the orders made on the 22nd February 2021.

67. In my humble view, the dismissal of the previous Application, which orders remains in existence, constitute an effective order of Honourable court and thus brings to the fore the application of the Doctrine of Res-judicata.

68. To this end, it is appropriate to invoke and adopt the holding of the Court of Appeal in the case of Co-operative Bank of Kenya Limited v Cosmas Mrombo Moka & Legacy Auctioneering Services [2019] eKLR, where the court stated as hereunder;

> (15) The appellant has strongly contended that the dismissal of the former suit constituted a full and final determination thereof, meaning no fresh proceedings could be instituted in respect of the same cause of action. As per Mulla's Indian Civil Procedure Code, 13th Ed Vol 1 p 798 says:
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> "Judgment" means the statement given by the judge on the grounds of a decree or order;" "Judgment - in England, the word judgment is generally used in the same sense as decree in this code."
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> Consequently, a judgment is a judicial determination or decision of a court on the main question(s) in a proceeding and includes a dismissal of the proceedings or a suit. A dismissal of a suit, under Order 12 Rule 6 (2) of the Civil Procedure Rules, is a judgment for the defendant against the plaintiff. A case in point is a decision of this Court in the Njue Ngai case, even a matter dismissed for want of prosecution still constitutes a matter that was heard and decided within the meaning of Section 7 of the Act. In that case, such a matter was held to be res judicata and no fresh proceedings could be entertained based on the same cause of action and by the same parties. The court stated as follows:
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> 'Now, we have seen that a dismissal for want of prosecution was as good as a final judgment in the appeal unless a successful application for setting aside was filed. There can be no doubt therefore that Njue's appeal to the High Court was decided by a competent court. The dismissal also meant that the decision of the Appeals Committee stood unchallenged and final, wart (sic) and all. The fresh suit filed by Njue was christened a 'Declaratory Suit' which he contended was an alternative to 'Judicial Review'. By whatever name called, it was a new suit and, as earlier stated, he was time barred in filing a Judicial review application to quash the decision of the Appeals Committee made 12 years earlier. The semantic change was merely a clever turn (but that legal ingenuity was within a cul-de-sac).' (Emphasis added)
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> (16) In the present case, the Judge definitely fell in error by failing to appreciate this aspect and when he stated in a pertinent paragraph of the Ruling as follows:-
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> 'The current suit is therefore a dispute between the same parties on a matter on the same dispute which was litigated upon in the previous suit which stands dismissed for want of prosecution and has not been sought to be reinstated. To this court it falls in all fours with what the court set as the ingredients of res judicata in Uhuru Highway Developers vs Central Bank of Kenya [1996] eKLR....
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> I understand the law to be that a matter is heard and determined after the court has delved into the merits. Where, like in this case, the suit was dismissed for want of prosecution, before the parties ventilate their grievances, I am hesitant and very reluctant to hold that the matter has been heard and finally determined.'

(17) As stated hereinbefore, this Court has already addressed its mind as to whether a matter dismissed for want of prosecution could be resuscitated through a fresh suit and the categorical answer was that it could not as doing so would offend the doctrine of res judicata. Consequently, this matter being completely on four with the Njue Ngai matter, we find no justifiable reason to allow a party who had litigated on the same issues to re institute a similar suit. In our considered view, the former suit having been dismissed for want of prosecution, the latter suit was res judicata and cannot stand. The 1st respondent filed a suit which he failed and neglected to prosecute, it cannot be proper for him to wake up again and decide to start the same process again. We agree with the appellant this would be contrary to public policy that litigation must come to an end and the best the 1st respondent could do was to invoke the appellate process and not filling a fresh suit.

69. From the foregoing ratio decidendi, there is no gainsaying that where a suit (including application) is dismissed for want of prosecution plus non-attendance; such dismissal founds Res-Judicata unless same is set aside.

70. Consequently and in my humble view, having hitherto filed the Application dated 20th November 2020, which was determined vide the orders made on the 22nd February 2021; the Applicant herein cannot mount the current Application.

71. Notwithstanding the foregoing, assuming that the orders of 22nd February 2021; closed the file without disposing of the said Application; then the said application remains alive and thus brings to the fore the doctrine of Res-sub-judice.

72. To understand the import of the Doctrine of Res-sub-judice, one needs to take cognizance of the dictum of the Supreme Court in the case of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR, where the court stated and held thus;

(67) The term 'sub-judice' is defined in Black's Law Dictionary 9th Edition as: "Before the Court or Judge for determination." The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.

73. Instructively and for good measure, the Applicant herein cannot evade the invocation and application of the twin Doctrines of Res-Judicata and Res-sub-judice, respectively; whose import and tenor, precludes the filing of several Applications/ Suits, over and in respect of the same matter.

Final Disposition

74. Having duly considered the issues which were enumerated in the body of the Ruling, I am now minded and desirous to render and proclaim the Final and Dispositive orders, pertaining to and concerning the Instant Application.

75. Nevertheless and for good measure, in the course of analyzing the itemized issues, this Honourable court has already made findings and drawn conclusions, which are determinative and dispositive of the Application.

76. Consequently and in a nutshell, the Application dated the 17th May 2023; is devoid and bereft of merits and hence same be and is hereby Dismissed with costs to the Plaintiff/Respondent

77. It is so order.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JULY 2023.

OGUTTU MBOYA

JUDGE

In the presence of:

Benson – Court Assistant

Ms. Naliaka for the Plaintiff/Respondent.

Ms. Kemunto h/b for Mr. Kago for the 4th Defendant/Applicant.

Mr. Allan Kamau for the 1st, 2nd and 3rd Defendants/Respondents.

N/A for the 5th Defendant/ Respondent.