

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HCCC NO. 34 OF 2013 (OS)

N K.....PLAINTIFF

VERSUS

D K M.....DEFENDANT

RULING

1. On 28th March 2014, I delivered a judgment herein allowing the plaintiff's Originating Summons for division of matrimonial property after hearing the plaintiff in the absence of the defendant.
2. The defendant has now moved the court vide a Motion dated 2nd March 2015 seeking that the judgment be set aside and the plaintiff's suit struck out. He states that the suit herein was *res judicata* as a similar suit between the parties, being HCCC No. 2110 of 1994, was dismissed in a judgment delivered in that suit on 19th March 2007, copy whereof has been attached.
3. The plaintiff in response concedes the suit in HCCC No. 2110 of 1994, but argues that the prayers sought in it were different from what is sought in the instant suit, and that the question of contribution did not arise, and therefore the two suits were different.
4. I have carefully considered the contents of the two suits, and I am satisfied that the two suits were similar. The parties were litigating on the same facts. The plaintiff was trying to have a second bite at the cherry after the earlier suit was dismissed. This is no doubt a case of gross abuse of court process.
5. I shall accordingly allow the application dated 2nd March 2015 in terms of prayer 3 thereof. The applicant shall have costs thereof.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF SEPTEMBER, 2017.

W. MUSYOKA

JUDGE