



**Minazini Enterprises Limited & 2 others v SBM Bank(K) & another (Environment & Land Case 203 of 2020) [2022] KEELC 3624 (KLR) (17 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3624 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 203 OF 2020**

**NA MATHEKA, J**

**MAY 17, 2022**

**BETWEEN**

**MINAZINI ENTERPRISES LIMITED ..... 1<sup>ST</sup> PLAINTIFF**

**ABDALLA MOHAMED ABDALLA (SUING THRO' HIS REGISTERED  
ATTORNEY SANIYA ABDALLA MOHAMED) ..... 2<sup>ND</sup> PLAINTIFF**

**ZUBEDA SAID MOHAMED ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**SBM BANK(K) ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF MOMBASA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The suit is *res judicata* Mombasa ELC Case no 285 of 2015: Abdalla Mohamed Abdalla vs The County Government of Mombasa, Civil Appeal no 14 of 2018: Abdalla Mohamed Abdalla vs The County Government of Mombasa and ELC Misc Application no 12 of 2019 Abdalla Mohamed Abdalla vs The County Government of Mombasa.
2. The suit does not disclose a cause of action against the 2<sup>nd</sup> defendant in so far as creation of securities between the plaintiffs and the 1<sup>st</sup> defendant is concerned (facts as presented by the plaintiffs).
3. The suit is an abuse of the court process and should be dismissed with costs to the 2<sup>nd</sup> defendant.



4. This court has considered the preliminary objection and the submissions herein. A preliminary objection, as stated in the case of *Mukisa Biscuit Manufacturing Company Ltd vs West End Distributors Ltd (1969) EA 696*,

“..... 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”

5. In the same case, Sir Charles Newbold said:

“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 had to be ascertained or if what is sought is the exercise of judicial discretion”.

6. J B Ojwang, J (as he then was) in the case of *Oraro vs Mbajja* (2005) eKLR had the following to state regarding a ‘preliminary objection’.

“I think the principle is abundantly clear. A “preliminary objection”, correctly understood is now well identified as, and declared to be the point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. I am in agreement ..... that, “where a court needs to investigate facts, a matter cannot be raised as a preliminary point.”.

7. The issue as to whether or not this suit is *res judicata* and therefore properly raised as a Preliminary Objection and the court will consider the same. This court has perused the pleadings in ELC Case no 285 of 2015: Abdalla Mohamed Abdalla vs The County Government of Mombasa, Civil Appeal no 14 of 2018: Abdalla Mohamed Abdalla vs The County Government of Mombasa and ELC Misc Application no 12 of 2019 Abdalla Mohamed Abdalla vs The County Government of Mombasa

8. In ELC Case no 285 of 2015: Abdalla Mohamed Abdalla vs The County Government of Mombasa the plaintiff moved to the Environment & Land Court (ELC) and sued the respondent claiming reliefs as follows:

- (a) An order that the action of the defendant is trespass on the plaintiff’s properties;
- (b) An order that the acquisition of the suit properties and construction of the road on the said properties is illegal;
- (c) An order against the defendant to remove all the road and materials from the suit property and restore the suit properties to its previous state;
- (d) In the alternative that the defendant pays Kshs. 56,000,000 to the plaintiff and acquire the suit properties for the “existence of a road”.

9. The court dismissed the plaintiff’s case and the latter proceeded on appeal in Civil Appeal no 14 of 2018: Abdalla Mohamed Abdalla vs The County Government of Mombasa. The appeal was also dismissed. The plaintiff filed ELC Misc Application no 12 of 2019 Abdalla Mohamed Abdalla vs The County Government of Mombasa which was struck out for being *res judicata*. I find that the parties are the same that is the plaintiff and the 2<sup>nd</sup> defendant and the subject matter is the same. The issues



were litigated upto the Court of Appeal. I concur with the 2<sup>nd</sup> defendant that this matter is *res judicata* and an abuse of the court process. The 2<sup>nd</sup> plaintiff is becoming a vexatious litigant. The current suit has included the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff's and the 1<sup>st</sup> defendant. Consequently, I find this preliminary objection is merited and I strike out the suit as against the 2<sup>nd</sup> defendant with costs to the 2<sup>nd</sup> defendant.

10. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 17<sup>TH</sup> DAY OF MAY 2022.**

**N A MATHEKA**

**JUDGE**

