

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
CIVIL CASE 672 OF 2003

MBURU KIMANI.....PLAINTIFF

VERSUS

SIMON KANYOKO.....RESPONDENT

RULING

This matter came before me for hearing today but Mr. Machira applies to have the matter transferred to Visram J to hear the matter on the ground that the order intended to be extended to enable him put in replying affidavit was made by him.

The application was opposed by Mr. Njagi on the ground that a similar application was made before Mutungi J and was rejected. Counsel had applied for leave to file a replying affidavit to explain his failure to prosecute an earlier application. Mr. Njagi submitted that the issue of filing an affidavit to explain failure to prosecute the earlier application is resjudicate.

In reply Mr. Machira submitted that the matter is not resjudicate since the same has not been heard on merit.

Where a given matter becomes the subject of litigation in and 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 the same matter.

The applicant having raised the same subject matter before Mutungi J who dealt with it and pronounced a ruling, the plea of resjudicate applies. The applicant's application is therefore dismissed.

Dated and delivered at Nairobi this 9th day of February 2006.

J.L.A. OSIEMO

JUDGE