

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

**MILIMANI LAW COURTS
Misc Civil Case 518 of 2000 (OS)**

Jagjit Singh Kalsi.....APPLICANT

VERSUS

Biashara Bank (K) Ltd.....DEFENDANT

RULING

December 1, 2000 T Mbaluto, Judge delivered the following ruling.

On July 17, 2000 the plaintiff took out an originating summons under section 57 of the Registration of Titles Act and section 3A of the Civil Procedure Act seeking orders of this court to direct the Registrar of Lands (sic) do lodge a caveat on LR 37/256/7 and also not to transfer the suit property to the defendant until the determination of the suit. By the same suit the plaintiff seeks an order nullifying the sale of the suit property that is alleged to have occasioned on July 4, 2000.

When the matter came up for hearing before me on October 18, 2000 learned counsel for the respondent, Mr Karori raised a preliminary point in which he argued that the suit was barred by section 7 of the Civil Procedure Rules in that there was another suit being HCCC No1785 of 1998 between the same parties and in respect of the same property namely L R 37/256/7 which a final order in the form of a consent order had been made by the court on September 2, 1998. For that reason Mr. Karori submitted that the present suit was *res judicata* and should be dismissed.

Mr Muchiri who represented the plaintiff in this matter though apparently considering that the parties had been involved in another case on the same property claimed that the order made in the previous suit were not final. He said that further orders have to be made in the previous suit.

Having perused both files i.e. HCCC No 1785 of 1990 (which is a reconstructed file the original having gone missing) as well and Misc Civil case No 518 of 2000 (Originating Summons) I am satisfied that:-

(a) The issues raised in the instant suit Misc Civil case No 518 2000 (Originating Summons) was directly and substantially an issue of the former suit (HCCC No 1785 of 1998) which said suit was between the same parties litigating under the same title and that the issue was finally determined with the consent of the parties.

(b) In commencing the new suit (Misc Civil case No 518 of 2000 (Originating Summons)) the plaintiff is ignoring the clear provisions of section 7 of the Civil Procedure Act.

For the above reasons I uphold Mr Karori's preliminary objection and dismiss the plaintiffs suit with costs.

December 1, 2000

T Mbaluto, Judge