



REPUBLIC OF KENYA



KENYA LAW
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**Taj Millennium Management Ltd v Taj Mall Limited (Environment and Land Case
Civil Suit E191 of 2023) [2025] KEELC 407 (KLR) (3 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 407 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT E191 OF 2023**

AA OMOLLO, J

FEBRUARY 3, 2025

BETWEEN

TAJ MILLENNIUM MANAGEMENT LTD PLAINTIFF

AND

TAJ MALL LIMITED DEFENDANT

RULING

1. The Defendant has this morning filed a Preliminary Objection dated 3rd February 2025 challenging the validity of the plaintiff's suit. The preliminary objection which raised four grounds was prosecuted by way of oral submissions. After reviewing the P.O. as filed and the submissions rendered, the four grounds are summarised into two as follows;
 - i. Res judicata
 - ii. Want of jurisdiction under section 6 of the *Arbitration Act*.
2. Section 7 of the *Civil Procedure Act* speaks on the principles governing Res judicata. I am also alive to the rules on Preliminary Objection as set out in the case of Mukisa Biscuits Ltd versus West End Distributors Ltd (1969)eKLR that a Preliminary Objection ceases to be one when it requires evidence to be adduced.
3. On the face of the plaint, at paragraph 9, reference is made to the case of NBI ELC 721 of 2012; Taj Millenium Management Ltd Vs Taj Mall Ltd where a judgment was already rendered. That judgment is included in the plaintiff's list of documents and it is my considered view that a judgment of the court does not constitute a contested fact as it forms a permanent record hence reference to it does not amount to adducing evidence in support of a preliminary objection.



4. The Defendant has referred to one of the orders granted to the present plaintiff at paragraph (g). The order reads thus;

“An order be issued to compel the Defendant to account to the Plaintiff for funds received from charges levied on the apartment owners as well as outsiders for use of the gymnasium.”

5. In the current suit, the Plaintiff is seeking for mesne profits from the Defendant on account of facts pleaded at paragraph 10 of the plaint. Paragraph 10 states thus;

“From the Court’s judgment above, it is then clear that the Defendant, has all through, been illegally obtaining the charges for the use of the gymnasium as they are not the registered proprietor to the suit premises. The Plaintiff, in which all apartment owners hold a share, is the party that was and is entitled to the charges for the use of the gymnasium.”

6. Having considered the orders granted under (g) of the judgment and what is sought herein, I am persuaded to find the prayers in this suit can be obtained vide execution of the said order/decre. In the alternative, the plaintiff had the opportunity to include this prayer for mesne profits in the previous suit (where it deems that it does not constitute part of what was awarded in the orders granted under (g) in ELC 721 of 2012). The failure to include t they are barred under explanation 4 which requires all issues to be litigated in one suit. Explanation 4 states thus;

“Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

7. Further, the parties in ELC 721 of 2012 are the same as the parties herein. ELC 721/12 was heard and determined by a court of competent jurisdiction on its merits. In conclusion, after reviewing the objection raised, the submissions rendered by the parties and the law, I find this case is res-judicata NRB ELC 721 of 2012. Therefore, I hold that ground 1 & 4 of the Preliminary Objection is merited. Hence there is no need to proceed to determine the second limb of the P.O. on jurisdiction as the first ground settles the matter that there exists no proper suit before the court.

8. The result is that the plaintiff’s suit is struck out for being res judicata with costs to the Defendant.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD FEBRUARY, 2025

A. OMOLLO

JUDGE

