



Meditec Systems Limited v Plaza Magnetic Resonance Plaza Imaging Ltd & 2 others (Civil Case E342 of 2023) [2025] KEHC 1800 (KLR) (Commercial and Tax) (14 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1800 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E342 OF 2023
RC RUTTO, J
FEBRUARY 14, 2025**

BETWEEN

MEDITEC SYSTEMS LIMITED PLAINTIFF

AND

PLAZA MAGNETIC RESONANCE PLAZA IMAGING LTD 1ST DEFENDANT

ALFRED ODHIAMBO OTIENO 2ND DEFENDANT

BENJAMIN IMALINGAT 3RD DEFENDANT

RULING

1. Before this Court for determination is the defendants' Notice of Motion Application dated 4th September 2023 seeking: -
 - a. That the Plaint dated 28th July 2023 be struck out for being an abuse of the process of the court.
 - b. That this Honourable Court lacks jurisdiction to entertain, determine the entire suit as drawn and filed.
 - c. That the costs of the Application and the suit be awarded to the Defendants.
2. The application is based on the ground that there is another suit, between the same parties over the same subject matter. The Application was opposed by the Respondent (Plaintiff) through their Replying Affidavit sworn on 9th October 2023, in which they stated, in summary, that the subject suits concern different defendants, different agreements but over a similar commercial arrangement of the defendants, and as such, the application should be dismissed for lack of merit.



3. Pursuant to the directions issued by this Court on 14th October 2024, the Applicants filed their submissions dated 31st October 2024, while the Respondent's submissions are dated 20th November 2023.

Applicants' submissions

4. The Applicants addressed only one issue: whether the instant suit is fit for striking out. It was their submission that the suit is an abuse of the court's process for it contravenes sections 5 and 6 of the Civil Procedure Act. The Applicants stated that they were two similar suits between the parties: this current one, and HCCOMM No. E190 of 2023, between Meditec Systems Limited and Nairobi Imaging Solutions Limited. According to the Applicants, the common denominator in both suits was that the parties are identical, the subject matter concerns an alleged commercial arrangement in which the Plaintiff's Board of Directors agreed to take a loan facility on behalf of the Defendants to enable them to purchase and maintain a Siemens Somatom Sensation 16 machine.
5. While making reference to Section 6 of the Civil Procedure Act, Order 2 Rule 15(1)(d) of the Civil Procedure Rules, and the case of Ephraim Miano Thamaini v Nancy Wanjiru Wangai & 2 Others [2022] eKLR, the Applicants sought for either the striking out of the present suit or the consolidation of the two suits to save the Court's time, as the issues are similar.

Respondent's submissions

6. On the other hand, the Respondent set out one issue for determination namely whether the Plaintiff dated 28th July 2023 ought to be struck out for being an abuse of the process of court.
7. Relying on the case of Cooperative Merchant Bank versus Geroge Fredrick Wekesa Civil Appeal No. 54 of 199, the Respondent submitted that the relief sought by the Applicants is draconian and can only be granted in cases where a clear case has been demonstrated. It was their submission that in both suits, the Plaintiff, who is the alleged creditor, is Meditec Systems Limited. That the debt in HCCOMM E190 of 2023 arises from an Operating Lease Agreement dated 28th November 2016 with the sole defendant being Nairobi Imaging Solutions Limited, while in the present suit, the Defendant is Plaza Magnetic Resonance Imaging limited and two guarantors. Therefore, they urged that the causes of action were distinct, and as such, the suit is neither sub judice nor res judicata.
8. In submitting that the application does not meet the threshold established to demonstrate sub judice, the Respondent relied on the cases of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others and Republic v Registrar of Societies – Kenya & 2 Others ex parte Moses Kirima & 2 Others [2017] eKLR. The Respondent submitted that the present suit arises from a commercial debt related to the restructured Hire Purchase Loans (HP Loans I, II & III) advanced to the Applicants for the purpose of consolidating outstanding balances between the Defendants and Prime Bank while the substance in issue in HCCOMM No. E190 of 2023 arises out of a commercial debt which led to an agreement to arrange lease financing through Jamii Bora Bank Limited for CT, Ultrasound, and UPS equipment. Therefore, the merits of both suits can only be properly tested with evidence during the hearing of the main suit.
9. On the issue of res judicata, the Respondent submitted that although both suits are before courts of competent jurisdiction, neither has been determined. Therefore, the present suit cannot be considered res judicata. They urged the court to dismiss the application as it lacked merit.



Analysis and Determination

10. I have carefully considered the present application, the affidavit in support and opposition of the said application as well as the parties' respective submissions and the only issue for determination is: -

Whether this court should strike out this suit for being sub-judice?

11. The applicant urges that this suit is an abuse of the court's process for it contravenes sections 5 and 6 of the *Civil Procedure Act*. That the respondent actions in both the instant suit and in HCCMM No. E190 of 2023 were a breach of the express terms of a contract by a seller under section 16 of the *Sale of Goods Act* as well as section 5 of the *Consumer Protection Act*, and a breach of an implied warranty as to fitness for purpose and supply of goods of a reasonable merchantable quality. In response the respondent stated that the present suit arises from a commercial debt related to the restructured Hire Purchase Loans (HP Loans I, II & III) advanced to the Applicant for the purpose of consolidating outstanding balances between the Defendants and Prime Bank while the substance in issue in HCOMM No. E190 of 2023 arises out of a commercial debt which led to an agreement to arrange lease financing through Jamii Bora Bank Limited for CT, Ultrasound, and UPS equipment.
12. Section 6 of the *Civil Procedure Act* provides that-

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

13. In the case of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties), the Supreme Court pronounce itself on the subject of sub-judice. It aptly stated as follows: -

(67) The term 'sub-judice' is defined in Black's Law Dictionary 9th Edition as: "Before the Court or Judge for determination." The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.

14. Guided by the above, this Court has a duty to establish whether "there exist two suits; whether the matter in issue is directly and substantially in issue in the previously instituted suit, whether the parties in the suits or proceedings are the same and, whether the suits are pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.
15. To begin with, it is undisputed that the Plaintiff in the current suit is the same as the Plaintiff in High Court Commercial Case No. E190 of 2023 between Meditec Systems Limited and Nairobi Imaging Solutions Limited. In the present suit, the listed defendants are three as follows: Plaza



Magnetic Resonance Imaging Limited, Dr. Alfred Odhiambo Otieno, and Dr. Benjamin Imalingat. In Commercial Case No. E190 of 2023, the defendant is Nairobi Imaging Solutions Limited.

16. In their response, the Respondent exhibited, two copies of the Certificate of Official Search (CR12) for Plaza Magnetic Resonance Imaging Limited and Nairobi Imaging Solutions Limited, respectively. Upon reviewing the Certificate of Official Search (CR12) for Nairobi Imaging Solutions Limited, it appears that there are only two directors: Dr. Alfred Odhiambo Otieno and Dr. Benjamin Imalingat. In contrast, the Certificate of Official Search (CR12) for Plaza Magnetic Resonance Imaging Limited lists, in addition to Dr. Alfred Odhiambo Otieno and Dr. Benjamin Imalingat, six other directors. Notably, Nairobi Imaging Solutions Limited is not among them. Nevertheless, both Plaza Magnetic Resonance Imaging Limited and Nairobi Imaging Solutions Limited are legal entities capable of litigating their respective rights in any existing suits.
17. In this regard one of the considerations for determining whether the matter is sub judice is whether it involves the same parties or those claiming under them. Notably, the defendants in the two suits are different therefore this ground fails.
18. The only remaining question for determination is whether the subject matter in this case is directly and substantially the same as in Commercial Case No. E190 of 2023 between Meditec Systems Limited and Nairobi Imaging Solutions Limited. In the current suit, the plaintiff alleges a breach of a Hire Purchase Loan Agreement dated 10th August 2018, which agreement was with Prime Bank Limited. The plaintiff prays for, inter alia, judgment against the defendants, jointly and severally, for the sum of Kshs 43,917,930. In contrast, in Commercial Case No. E190 of 2023 between Meditec Systems Limited and Nairobi Imaging Solutions Limited, the plaintiff pleads an alleged breach of an Operating Lease Agreement dated 28th November 2016, and prays for different sums as a result of the alleged breach.
19. From the contents of the two complaints, it is evident that the plaintiff is alleging a breach of two different agreements, each involving two distinct banks. Therefore, the issues for determination in the current suit and in Commercial Case No. E190 of 2023 between Meditec Systems Limited and Nairobi Imaging Solutions Limited are not directly and substantially the same. Consequently, this application does not pass the test.
20. The upshot of the above is that the application lacks merit and the same is hereby dismissed with costs.

Orders accordingly

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 14TH DAY OF FEBRUARY 2025.

For Applicants:

For Respondent:

Court Assistant:

