



**Sanitam Services (E.A) Ltd v Rentokil Intitial (K) Ltd (Civil Suit  
E216 of 2021) [2025] KEHC 1976 (KLR) (Civ) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1976 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL SUIT E216 OF 2021**

**JN MULWA, J**

**FEBRUARY 13, 2025**

**BETWEEN**

**SANITAM SERVICES (E.A) LTD ..... PLAINTIFF**

**AND**

**RENTOKIL INTITIAL (K) LTD ..... DEFENDANT**

**RULING**

(On Motion Dated 4/9/2024)

1. This suit was filed vide a plaint dated 3/9/2021. The claim against the defendant and dispute between the parties revolves around the proprietorship of a patent number AP773 issued by the African Regional Industrial Property Organization (A.R.I.P.O) with all the rights appurtenant thereto to the plaintiff. The plaintiff therefore prayed for judgment against the defendant for:-
  - a. an enquiry as to profits generated by the defendant as consequence of infringement of the plaintiffs patent rights regarding the patent from 16/12/1999 to 4/9/2018; and
  - b. an order that those profits be paid to the plaintiff within an appointed time, as well as costs with interest at court rates.
2. A perusal of the court proceedings show that this matter and cause of action have been litigated in several court cases between the parties since 1999, notably HCCC No. 58 of 1999 in which judgment the Court found that the Plaintiff was the patent holder of AP No. 773 registered by ARIPO in 15.10.1999. The plaintiff then, aggrieved by the decision in HCCC No. 58 of 1999, lodged an appeal vide Civil Appeal 228 of 2004. The appellate Court granted an injunction to last the life of AP No. 773 from 16.10.1999 in the following terms :-



- a. A permanent injunction restraining the defendant (sic) from manufacturing and/or using the foot operated sanitary bin and/or holding out to consumers the use of the bin.
  - b. A permanent injunction as against the Defendant from trading in Kenya in any manner likely to cause the business of the defendants to be confused with the business of the plaintiffs.
  - c. A permanent injunction as against the Defendant from trading in any manner, which does not sufficiently differentiate or distinguish the defendants business from that of the plaintiffs.
  - d. A permanent injunction against the defendant from using the AP No. 773 or any other calculated to confuse the goods sold by the defendants as being goods manufactured or provided by and on behalf of the plaintiffs or otherwise infringing any of the plaintiffs registered patent.
  - e. A permanent injunction as against the defendant from otherwise passing off the business of the defendants as and/or the plaintiffs business.
3. Earlier, on or about 16.11.1999, the Defendant had filed an application for revocation of AP No. 773 before the Industrial Property Tribunal, which application was determined on 21.01.2014, thereby revoking AP No. 773 as registered by ARIPO, in favour of the Plaintiff
  4. Aggrieved with the outcome, the Plaintiff lodged an appeal before the Commercial & Tax Division of the High Court in HCCC 338 of 2016, saliently challenging and submitting on jurisdiction of the Tribunal to entertain the revocation application. The appeal was dismissed with costs on 25.04.2019.
  5. Upon the above background, the plaintiff filed the instant suit as stated above in 2014, claiming infringement of the same patent number AP No. 773, which was revoked on 21/01/2014 seeking reliefs stated in the plaint and replicated above.
  6. The defendant by the application for determination, and dated 4/9/2024 moved this court for orders that the suit filed by the plaintiff and dated 3/9/2021 be struck out for being scandalous, frivolous, vexatious and an abuse of court process.  
  
The application is based on grounds stated at its face and supporting affidavit sworn by one Fraser Branch, the Managing Director of the Defendant.
  7. Alongside the above application the defendant also filed a Notice of Preliminary objection (PO) dated 20/4/2024 to the hearing of the suit on grounds that;-
    - a. by provisions of Section 106 of the Industrial Property
    - b. Act, this court lacks jurisdiction to hear and determine the case; and
    - c. Section 115 grants the High Court jurisdiction in respect of any orders or decisions of the Tribunal;
    - d. That the claim herein as filed by the plaintiff is res judicata.
  8. The plaintiff has not filed a response to the preliminary objection.
  9. The court has carefully read the proceedings in this case and noted the numerous cases filed by and between the parties since 1999, all in respect of the patent AP No. 773. The PO on its face questions this court's jurisdiction, as well as the doctrine of exhaustion and Res Judicata.
  10. On jurisdiction and doctrine of exhaustion



Section 105 as read with 106 and 115 of the *Industrial Property Act* clearly provides that the tribunal has jurisdiction as the first port of call in respect of issues in the Plaintiff's suit. The plaintiff ought to have filed the claim against the defendant in the first instance at the Tribunal, and if aggrieved by the tribunal's decision, only then should it lodge an appeal to the High Court.

11. The Doctrine has since been settled in *Speaker of National Assembly v Njenga Karume* [1992] KECA 42 KLR and *Mumba & 7 others v Munyao & 148 others* [2019] KESC 83 (KLR) in the above manner.

12. On Res Judicata;

The doctrine is well provided at Section 7 of the *Civil Procedure Act*, and was well settled in the case of *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others* [2021] KESC 39 (KLR).

13. It is evident from a reading of the pleadings before this Court that the question of profits and inquiry thereto in respect of AP No. 773 were earlier canvassed and litigated in HCCC No. 58 of 1999. Therefore, the suit is res judicata, and cannot be re-litigated once more as that would amount to abuse of court process.

Additionally, the court notes that no rights on the patent AP No.773 would accrue to the plaintiff even if the suit were to be heard as the patent AP No. 773 was revoked by the Industrial Property Tribunal on 21/1/2014.

14. For the foregoing, the court finds and is persuaded that the Preliminary Objection dated 20/4/2024 is merited on the preliminary issues of law raised therein, and on the doctrines of exhaustion and res judicata.

The plaintiff's suit is therefore struck out with costs to the Defendant.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025.**

**JANET MULWA**

**JUDGE**

