



REPUBLIC OF KENYA



**Mbuu & another v Mbuu & another (Commercial Case E117 of 2022)
[2025] KEHC 3131 (KLR) (Commercial and Tax) (4 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3131 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E117 OF 2022**

AA VISRAM, J

MARCH 4, 2025

BETWEEN

BELINDA MBUU 1ST PLAINTIFF

MUMBU HOLDINGS LIMITED 2ND PLAINTIFF

AND

JOHN KARIUKI MBUU 1ST DEFENDANT

CREDIT BANK LIMITED 2ND DEFENDANT

RULING

1. I have considered the Notice of Motion Application dated 4th April, 2022, together with the affidavit in support sworn on even date and the replying affidavit in opposition to the same sworn on 3rd June, 2022, and the submissions of Counsel and the relevant law.
2. The Application seeks injunctive orders to restrain the Bank from exercising its statutory powers of sale.
3. I note that prayer No. 2 seeking leave to continue the action as a derivative suit was granted on 5th April, 2022, and accordingly, this Court will not deal with that prayer as part of the present Application.
4. As regards the other prayers, I have looked at the ruling delivered by my brother Majanja, J. issued on 28th February, 2022, in Civil Case E800 of 2021. It is evident that E800 of 2021 relates to predominantly the same parties, and the same land in issue, namely, LR No. 12948/134 and 12948/137 ('the Suit Properties') which properties are the subject of the present Application seeking injunctive relief to prevent the Bank from carrying out its statutory power of sale.



5. Having read the ruling of 28th February, 2022, I am of the view that the same deals conclusively with the remaining issues raised in the present Application. I note that the Court declined to grant an injunction based on the facts of the case at that time, which are the same facts presented to this Court in the present matter.

6. In addition, the Court critically noted as follows:-

“Having failed to establish a prima facie case with a probability of success, the inquiry end there according to the dicta in the Nguruman Case (Supra). 22. 23. There is also another reason I must decline to the injunction.

The Company filed a similar case seeking the same reliefs against the Defendants in respect of the suit property in HC COMM No. E727 of 2021 (Mumbu Holding Limited v Credit Bank Limited and 4 Others). This suit and the Application for injunction filed therein are still pending and were not disclosed by the Company. Moreover, the Company depones without any equivocation that, “there is no other suit, and there have been no previous proceeding in any Court between the Plaintiff and the Defendant herein over the subject.” This plea in the Plaint verified as correct in the verifying affidavit is clearly not true and correct. It is material non-disclosure”(Emphasis mine)

7. In short, I do not see how the issues in the present Application are any different from those raised in the pre- existing suits E800 of 2021 and E727 of 2021.

8. Further, it is not lost on me that the Applicant in the present matter filed the previous Application in the name of the Company. Counsel further pointed out that the deponent who swore the affidavits in the above-mentioned previous matters, is the same deponent in the present matter.

9. Therefore, notwithstanding the submission of Counsel for the Applicant, that the parties in the present matter are different, I do not think that the presence of the Applicant, in her own name and capacity, and as an additional party in the present matter, changed either the circumstances, or raises a material issue that had not previously been dealt with in so far as the question of injunctive relief is concerned.

10. Finally, Counsel submitted, and it was not denied, that no appeals have been preferred in relation to the previous rulings mentioned above, and therefore, the issues raised in the present matter have been dealt with conclusively. I am persuaded by this argument.

11. The law as regards, res judicata is well settled as pronounced in Pop-in (Kenya) Ltd & 3 others v Habib Bank AG Zürich [1990] KLR 609 which is the milestone decision. In that case the Court held inter-alia:-

“.... The plea of res judicata applies not only to points which the Court was actually required by the parties to form an opinion and pronounce judgement, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have been brought forward at the time.”

12. Further with regard to the matter being res judicata, Section 7 of the [Civil Procedure Act](#) provides that:-
No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such



subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation (4) of that Section further provides that:-

Any matter which might and ought to have been made a 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.

13. From the above, it is clear that the Court will not deliberate on a matter that has been directly and substantially in issue in a previous suit. Further, a matter that the party to the suit ought, by reasonable diligence, to have raised in the former suit, will be deemed as determined by the Court in that suit.
14. Looking at the ruling dated 28th February, 2022, it is clear that the Court found that there was no basis upon which to grant the Applicant an injunction, and further, dealt with the issue of fraud. Based on the record before me, the issues have therefore been raised in previous proceedings, and a Court of competent jurisdiction has made finding of fact and law in relation to the same. I do not think that this Court may not sit on appeal of such a Court.
15. As my brother Havelock, J stated, litigation must necessarily come to an end and our Courts, busy enough as they are, do not need to be burdened with repeated Applications of the same nature. I find and hold that the issues raised are res judicata.
16. Save for the prayer granted on 5th April, 2022, the Application is dismissed with costs. For the sake of clarity, in particular, prayers No. 3 and No. 4 of the Application are dismissed with costs.
17. For avoidance of doubt, any injunctive orders subsisting at this time are therefore discharged.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 4TH DAY OF MARCH, 2025

ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

.....Court Assistant
.....for 1st Plaintiff/Applicant
.....for 2nd Plaintiff/Applicant
.....for 1st Defendant
.....for 2nd Defendant

