



REPUBLIC OF KENYA



KENYA LAW

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**Mbugua & another v CFC Stanbic Bank Limited (Cause E334 of 2022)
[2025] KEHC 4991 (KLR) (Commercial and Tax) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4991 (KLR)

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

CAUSE E334 OF 2022

PM MULWA, J

APRIL 24, 2025

BETWEEN

FLORENCE WAIRIMU MBUGUA 1ST PLAINTIFF

FARMERS INDUSTRIES LIMITED 2ND PLAINTIFF

AND

CFC STANBIC BANK LIMITED RESPONDENT

RULING

1. The application before the Court is the Notice of Motion dated 21st March 2024 brought under Sections 1A, 1B, 3, 3A and 63(e) of the *Civil Procedure Act* and Order 40 Rules 1, 2 and 3, together with Order 51 Rules 1 and 3 of the Civil Procedure Rules. The Applicant seeks the following substantive order: That pending the hearing and determination of the suit, an order be issued restraining the Defendant whether by itself, its servants, employees, auctioneers, agents, receivers or any other person acting under its authority or mandate from selling or offering for sale by way of public auction the parcel of land known as Nairobi LR No. 209/1530 (IR No. 95209), together with all developments thereon, otherwise referred to as Emani Centre. And costs to be provided.
2. The application is premised on the grounds set out on its face and supported by an affidavit sworn by the 1st Plaintiff. It is the Applicant's case that the suit property was offered as security for financial facilities advanced to the 2nd Plaintiff. It was an agreed term of the loan facility that the income generated from the completed development would be applied toward the repayment of the said facility. However, it is averred that tenants in the development surrendered their leases, leading to significant financial hardship and rendering the 2nd Plaintiff unable to meet its repayment obligations.
3. The Applicant further states that efforts are being made to source alternative funds through the sale of another property known as L.R. No. 5949/4 (IR 21588), Muringa Brothers Limited, which is



currently undergoing subdivision. It is the Applicant's apprehension that the process may take longer than anticipated and thus seeks the Court's indulgence to exercise its equity of redemption.

4. The application is opposed. The Defendant has filed a Notice of Preliminary Objection dated 5th April 2024 alongside a replying affidavit sworn by Amos Mugambi, the Defendant's Manager for Recoveries and Rehabilitation, on even date. The Defendant contends that the application is res judicata, as the question of injunctive relief restraining the sale of the suit property has previously been adjudicated and determined by this Court in rulings delivered on 17th February 2023 and 31st May 2023.
5. The Defendant further avers that the Plaintiff is in substantial arrears amounting to Kshs. 91,313,449.24, with an outstanding loan balance of Kshs. 192,201,440.79 as at 5th April 2024, exclusive of accruing interest. It is further deposed that despite repeated indulgence by the Defendant, the Plaintiff has failed to make any meaningful repayment, thereby necessitating the issuance of the requisite statutory notices. The Defendant maintains that the Plaintiff, having defaulted on the terms of the charge instrument, does not merit the equitable relief sought.

Analysis and determination

6. I have carefully considered the Notice of Motion before this Court, the response thereto, and the respective submissions made by counsel for the parties. Two primary issues arise for determination:
 - i. Whether the application is barred by the doctrine of res judicata; and
 - ii. Whether the Applicant has satisfied the threshold for the grant of an interim injunction.

On whether the application is res judicata

7. The Applicant asserts that the loan facility was predicated on the successful tenancy and rental income from the suit premises, which was adversely affected when tenants surrendered their leases. It is further contended that efforts are underway to settle the outstanding debt through the sale of an alternative property. However, the Defendant has presented evidence, including prior rulings by this Court dated 17th February 2023 and 31st May 2023, in which similar prayers for injunctive relief were declined by the court.
8. The doctrine of res judicata, as set out under Section 7 of the *Civil Procedure Act*, bars the re-litigation of matters directly and substantially in issue between the same parties and already determined by a court of competent jurisdiction.

The section provides as follows:

“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.”

9. The doctrine implies that for a matter to be res judicata, the matters in issue must be similar to those which were previously in dispute between the same parties and the same having been determined on merits by a court of competent jurisdiction.



10. It is well established that the doctrine of res judicata is applicable not only to suits but also to interlocutory applications. In the case of *Julia Muthoni Githinji v African Banking Corporation Limited* [2020] KEELC 272 (KLR) the court stated thus:

“ 14. After a careful reappraisal of the application for injunction before the lower court, I have come to the conclusion that the application was res judicata and the entire suit was sub judice as there was an active pending suit before a court of competent jurisdiction being Nakuru ELC No. 272 of 2017. All issues raised in the suit before the subordinate court could be properly litigated in the suit pending before the ELC. The filing of the suit by the appellant in the subordinate court when she had a similar suit in the ELC Court was an abuse of the Court process which the Court cannot countenance.”

11. Upon comparing the application dated 31st August 2022, and 30th March 2023 with the present application dated 21st March 2024, it is evident that the issue sought to be canvassed in the latter is res judicata. All three applications seek injunctive relief principally restraining the defendant from selling the land reference No. 209/1530 (IR No. 95209), also known as Emani Centre. The core issue in all the applications is whether the Defendant should be restrained from exercising its statutory power of sale over the suit property, which I find is substantially the same, involving the same parties and the same subject matter.

12. Upon perusal of the rulings delivered on 17th February 2023 and 31st May 2023 by the late Hon. Justice D.S. Majanja, I am satisfied that this very issue has already been conclusively determined by a court of competent jurisdiction. By the Ruling of 31st May 2023, the judge held that the issue of injunction was res judicata, having been conclusively dealt with in the Ruling of 17th February 2023. The Court of Appeal observed in *Suleiman Said Shabhal v Independent Electoral & Boundaries Commission & 3 Others* [2014] KECA 658 (KLR):

“ To constitute res judicata, there must be adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy.”

13. I am persuaded that the present application, which seeks substantially similar relief as that previously adjudicated, offends the doctrine of res judicata and amounts to an abuse of the court process. It is therefore liable to be struck out on that ground alone. Having so found, it is unnecessary to consider the second issue regarding the merits of granting a temporary injunction.

14. Accordingly, the application dated 21st March 2024 is hereby dismissed with costs to the Respondent/Defendant.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF APRIL 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Thuku for Plaintiff/applicant

Ms. Mutisya for Defendant/respondent



Court Assistant: Carlos

