



**Jubilee General Insurance Limited v Munene (Civil Appeal
E159 of 2024) [2025] KEHC 6975 (KLR) (21 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E159 OF 2024
SM GITHINJI, J
MAY 21, 2025**

BETWEEN

JUBILEE GENERAL INSURANCE LIMITED APPELLANT

AND

ANTHONY MUNENE RESPONDENT

RULING

1. For determination is the Respondent's Preliminary Objection dated 28th March, 2025 raising 3 grounds that:
 1. The application is Res Judicata
 2. The Honorable court lacks jurisdiction
 3. The application is an abuse of court process and forum shopping
2. The Appellant filed an application dated 20/3/2025 seeking inter alia stay of execution of the judgment delivered on 11/9/2024 in Meru CMCC No. E334 of 2022. That application is said to offend the doctrine of Res Judicata because the trial court already dismissed 2 similar applications dated 13/9/2024 and 25/10/2024. According to the Respondent, this court lacks jurisdiction to hear and determine that application and it should down its tools in line with the principles set out in Owners of the Motor Vessel "Lilian S" v Caltex Oil Kenya Ltd (1989) KLR 1. The filing of multiple applications in different courts over the same issue constitutes forum shopping and blatant abuse of the court process. The application should be struck out with costs as it is a deliberate strategy to frustrate execution, causing unnecessary delays and infringing on the Respondent's right to enjoy the fruits of his judgment.
3. Despite the court's directions of 24/4/2025 that the Preliminary Objection be heard by way of written submissions, none were filed by either party.



Determination

4. The sole issue for determination is whether the Preliminary Objection has been properly raised.
5. The doctrine of Res Judicata is set out under Section 7 of the *Civil Procedure Act* 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.”
6. The Court of Appeal in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* (2017) eKLR held that; “The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”
7. In order to fully gauge whether the application dated 20/3/2025 is indeed Res Judicata, it is imperative to set out briefly the factual matrix herein. The Appellant filed an application dated 13/9/2024 before the trial court seeking stay of execution of the judgment of 11/9/2024. That application was however dismissed on 7/10/2024 for want of prosecution, which necessitated the filing of the application dated 25/10/2024, seeking stay of execution and reinstatement of the earlier application of 13/9/2024. Although the trial court’s proceedings have not been exhibited, it is said that the application dated 25/10/2024 was finally heard on merits and dismissed. Unperturbed, the Appellant proceeded to file its application dated 20/3/2025, seeking stay of execution of the trial court’s judgment delivered on 11/9/2024, including the Garnishee proceedings pending the hearing and determination of its appeal. The Respondent utterly believes that the said application is Res Judicata, because 2 similar applications seeking stay orders were hitherto dismissed by the trial court.
8. Order 42 Rule 6 of the Civil Procedure Rules is succinctly clear that this court has unfettered jurisdiction to entertain an application for stay of execution even where such stay has been denied by the trial court. It provides as follows: “No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside. No order for stay of execution shall be made under sub rule (1) unless: - a) The court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay. b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.”
9. I find that the dismissal of the 2 applications for stay of execution by the trial court did not oust this court’s jurisdiction to entertain the subsequent application for stay of execution dated 20/3/2025.



10. The upshot from the foregoing is that the Preliminary Objection dated 28/3/2025 is in want of merit and is hereby dismissed. Costs in the cause.

DATED AND DELIVERED THIS 21ST DAY OF MAY, 2025.

S. M. GITHINJI

JUDGE

Appearances:

Mr. Mwanzia holding brief for Mr. Karanja for the Applicant.

Mr. Nyaga holding brief for Ms. Nyaga for the Respondent.

