



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 290 OF 2019**

**GREEN BELT WARE HOUSE LIMITED.....PLAINTIFF/RESPONDENT**

**-VERSUS-**

**ABDULLAHI MOHAMED SHEIKH.....DEFENDANT/APPLICANT**

**RULING**

1.The Defendant herein filed a Notice of Motion dated 20<sup>th</sup> January 2020 seeking a stay of execution of the Ruling and the orders of this court issued on 11<sup>th</sup> December 2019.

2.In response the plaintiff filed a notice of Preliminary of Objection dated 10<sup>th</sup> June 2020 the grounds are:-

**1.The application res judicata for reasons that it seeks similar reliefs which have already been handled by the Honourable court vide Defendant's applications dated 26<sup>th</sup> September, 2019 and 10<sup>th</sup> December 2019 respectively.**

**2.The Application is fatally and incurably defective for failure to attach the decision sought to be stayed.**

**3. In any case, the application is bad in law, vexatious an abuse of the court process.**

3.On the 20<sup>th</sup> July 2020, the court with the consent of the parties directed that the preliminary objection be heard first in priority to the Notice of Motion dated 20<sup>th</sup> January 2020. The Court also directed that the Preliminary Objection be canvassed by way of written submissions. Parties were given fourteen (14) days to file the said submissions.

**The Plaintiff's Submissions**

4. They are dated 16<sup>th</sup> September 2020. The Preliminary Objection is based on a pure point of law in which the court ought to sustain and dismiss the application. It has put forward the cases of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696; IEBC vs Jane Cheperenger & 2 Others [2015] eKLR.**

5. The application is *res judicata* as the prayers sought in the application were dismissed with costs in similar applications dated 26<sup>th</sup> September 2019 and 10<sup>th</sup> December 2019. It has also relied on Section 7 of the Civil Procedure Act and the case of **Ukay Estate Ltd & Another vs Shah Hirji Manek Ltd & 2 Others [2006] eKLR.**

6. The issues being canvassed in the present application are the same matters that were directly and subsequently in issue in the previous applications. It has put forward the cases of **James Kariuki Nganga t/a Ndungu Merchants vs Josephat Ngae Njuguna & Another [2004] eKLR; Orion East Africa Ltd vs Eco Bank Kenya Ltd & Another [2015] eKLR.**

It prays that the application be dismissed

7. It appears the defendant neglected to file any written submissions. By the time of writing this ruling the defendant's submissions were not on record.

8. I have considered the preliminary objection herein, the written submissions filed on behalf of the plaintiff and the authorities cited. The issue for determination is whether the preliminary objection is merited.

9. Section 7 of the Civil Procedure Act provides.

**“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”.**

10. I have gone through the court record. The Defendant’s Notice of Motion dated 26<sup>th</sup> September 2019 sought the following orders:-

**1. That the application be certified as urgent.**

**2. That this honourable court do stay the proceedings before this honourable court pending the hearing and determination of High Court Commercial & Tax Division Civil Suit No. 501 of 2016 – Abdullahi Mohammed Sheikh vs Gulf African Bank Limited.**

**3. That this suit be consolidated with High Court Commercial & Tax Division Civil Suit No 501 of 2016- Abdullahi Mohammed Sheik vs Gulf African Bank Limited.**

**4. That costs of this application be provided for.**

11. This court after considering the Notice of Motion dated 26<sup>th</sup> September 2019 delivered its ruling on 11<sup>th</sup> November 2019. The said Notice of Motion was dismissed for lack of merit. Thereafter the defendant filed a Notice of Motion dated 10<sup>th</sup> December 2019 which was slated for directions on 20<sup>th</sup> January 2020. On the 20<sup>th</sup> January 2020 the parties did not appear. Instead the defendant filed yet, the Notice of Motion dated 20<sup>th</sup> January 2020 seeking similar orders as in the previous applications. I agree with the plaintiff’s submissions that this applications is res judicata. It is an abuse of the court process. I find the preliminary objection herein merited and the same is upheld. The Notice of Motion dated 20<sup>th</sup> January 2020 is hereby dismissed with costs to the plaintiff/respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 29<sup>TH</sup> DAY OF JULY, 2021**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Ongeru for the Plaintiff

Ms Nganyi for Mr. B Khaemba for the Defendant.

Phyllis - Court Assistant