



Kenya Enterprises Development Fund Board v Chase Bank Kenya Limited (In Liquidation) & another (Commercial Case E083 of 2024) [2024] KEHC 11105 (KLR) (Commercial and Tax) (23 September 2024) (Ruling)

Neutral citation: [2024] KEHC 11105 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E083 OF 2024
AA VISRAM, J
SEPTEMBER 23, 2024**

BETWEEN

KENYA ENTERPRISES DEVELOPMENT FUND BOARD PLAINTIFF

AND

CHASE BANK KENYA LIMITED (IN LIQUIDATION) 1ST DEFENDANT

QUARANDUM LIMITED 2ND DEFENDANT

RULING

1. I have considered the Notice of Motion application dated 10th May, 2023, together with the affidavit in support sworn on even date; the replying affidavit sworn in opposition to the same on 19th September, 2023; the submissions of the parties; and the applicable law.
2. The Application seeks to strike out the Plaintiff's Complaint on the basis that the same is res judicata. The Applicant submitted that an order for compensation in relation to the amount sought in the Complaint has already been made in a previous suit.
3. He submitted that an order for compensation by the Anti-Corruption Court is enforceable as a judgment, and the same has already been made. Accordingly, the Plaintiff ought to execute the existing order, rather than bring a fresh suit based on the same issues that have already been determined.
4. He submitted that the practical issues before the court are the same as the previous suit. What is sought in the present suit, is essentially an order for compensation, for the same amount, which was already granted in Milimani CM Anti -Corruption Case No. 13 of 2016, and Milimani ACEC Criminal Appeal No. E018 of 2021.



5. He contended that there is no bar preventing the Plaintiff from enforcing what is still a valid order of the court, and which still exists in favour of the Plaintiff as against the 2nd Defendant. In his view, the only difference between the present suit and the former suit, was that the present suit had an additional party. This however, he contended, could not cure the issue of *res judicata*.
6. In opposition to the application, counsel contended that the case was filed on 9th February, 2021, before the judgment was delivered in the previous suit. This he stated, was to avoid the matter from being statute barred.
7. Counsel submitted that the matter is not *res judicata*, and this has been demonstrated. His view was that criminal proceedings do not bar civil proceedings based on the same cause of action.
8. He contended that the proceeds recovered were forwarded to the consolidated fund. The Plaintiff has not recovered the same, and this is why the case is ongoing.
9. Based on the record before me, it is evident that the amount sought by the Plaintiff in the Plaintiff is the same sum that has already been awarded by the court in Milimani CM Anti -Corruption Case No. 13 of 2016 and Milimani ACEC Criminal Appeal No. E018 of 2021. Looking at the judgment, it is clear that the 2nd Defendant was ordered to pay to the Plaintiff the sum of Kshs. 189,364,789/=. The compensation order in the said case does not state that the money is to be paid to the Consolidated Fund as alleged by the Respondent, but rather, it states clearly, that the sum is payable to the Plaintiff, who is the same party in the present matter.
10. Counsel submitted, and I am persuaded, that the forfeiture proceedings are distinct from the compensation order made in the above quoted suit. A valid court order has been made in favour of the Plaintiff, and there is no reason why it ought not take appropriate action in relation to execution of the same.
11. A compensation order having already been made in the said matter, and given that execution is still pending, I am satisfied that the present suit would not yield anything further, and would therefore be improper use of judicial time and resources.
12. Accordingly, I am persuaded that the issue has in fact been determined, and the Plaintiff therefore offends the principle of *res judicata*, and in particular, section 7 of the *Civil Procedure Act*. Section 7 reads 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 the 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.”
13. I am also persuaded, that the addition of another party, based on the same practical issues, in the circumstances of the present matter, may not cure the offence to Section 7 quoted above.
14. Based on the reasons above, I find that the application dated 10th May, 2023, is with merit. The orders are granted as prayed for, and the Plaintiff's suit is accordingly struck out with costs.
15. The file is marked as closed.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 23RD DAY OF SEPTEMBER 2024



ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

..... For the Plaintiff/Respondent

..... For the 1st Defendant/Applicant

..... For the 2nd Defendant/Respondent

