



**Canobbio v Kenya Revenue Authority (Civil Suit 10 of 2022)
[2024] KEHC 11534 (KLR) (2 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11534 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL SUIT 10 OF 2022
SM GITHINJI, J
OCTOBER 2, 2024**

BETWEEN

PIETRO CANOBBIO PLAINTIFF

AND

KENYA REVENUE AUTHORITY DEFENDANT

RULING

1. This Ruling is in respect of a Preliminary Objection by the Defendant/ Respondent dated 3rd November, 2023 on the following grounds;
 1. The suit contravenes the principle of Resjudicata as the Plaintiff instituted an Appeal in Tax Appeal Number 1106 of 2022 Pietro Canobbio vs Commissioner Of Domestic Taxes which has already been concluded and judgment delivered.
 2. The suit contravenes the principle of sub judice in that the Plaintiff instituted a claim in Malindi High Court Civil Case No. E005 of 2022 Pietro Canobbio vs Nanyuki Mall Ltd & KRA.
2. On the 11th day of March, 2024 this court gave directions that the Preliminary Objection be canvassed by way of written submissions. The Defendant/Respondent filed their submissions on the 3rd day of November, 2023. Counsel in his submissions attached the Judgment in Tax Appeal No. 1106 Of 2022 Pietro Canobbio Vs Commissioner of Domestic Taxes which I have had an opportunity to peruse holistically. He submitted that parties are similar and the issues are the same as those that the tax tribunal had already pronounced itself on.

DIVISION - Disposition

3. I have considered the preliminary objection and the submissions by the Respondent. In my view, the issue for determination is; whether the preliminary objection herein is merited.



4. In *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696, Law JA stated as follows: “So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
5. Having perused the decision in the Tax Appeals Tribunal dated 19th October, 2023 I note that the parties in that Tribunal are similar to the present case before this court. The Appellant’s issues determined in that Tribunal revolved around the sale of property to Nanyuki Mall Limited in September, 2021; there is Agency Notice dated 31st August, 2022 and the tax decision of 27th September, 2022. From a cursory look at the Plaintiff that has been filed in this case, the Plaintiff among other prayers seeks to have the agency notices dated 19.5.2022, 31.08.2022 and 30.11.2022 lifted/ cancelled. In my view, the issues the Plaintiff desires be determined by this Court have been heard and determined before the Tax Appeals Tribunal.
4. Given the foregoing, the Plaintiff is barred by the doctrine of res judicata from raising the same issues. They can only seek for appeal against the same. In the end, the Defendant’s Preliminary Objection is upheld with costs to the Defendant.

RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 2ND DAY OF OCTOBER, 2024.

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S.M. GITHINJI

JUDGE

In the presence of; -

1. Mr Muhoro for the 1st Respondent/Applicant
2. Mr Kinaro for the Respondent in the Preliminary Objection.

