



REPUBLIC OF KENYA



**KENYA LAW**

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**Githogora v Equity Bank Kenya Limited (Civil Appeal E776 of 2021)  
[2023] KEHC 47 (KLR) (Civ) (17 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 47 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E776 OF 2021**

**DAS MAJANJA, J**

**JANUARY 17, 2023**

**BETWEEN**

**EVERLYN MURINGI GITHOGORA ..... APPELLANT**

**AND**

**EQUITY BANK KENYA LIMITED ..... RESPONDENT**

*(Being an appeal from the Ruling and Order of Hon.G. A. Mmasi, SPM dated 11th December 2020 at the Magistrates Court at Milimani, Nairobi in CMCC No. 8604 of 2019)*

**RULING**

1. This is an appeal against a ruling of the Subordinate Court dismissing the Appellant's application for review made under order 45 rule 1 of the [Civil Procedure Rules](#) and section 80 of the [Civil Procedure Act](#) (Chapter 21 of the Laws of Kenya).
2. The facts upon which the application is made are fairly straight forward. By a Notice of Motion dated December 20, 2019, two interested parties; Grace Wamuyu Mathenge and Geepak Limited applied, inter alia, to be joined to the suit as interested parties and that the suit be struck out on the ground that it was res judicata. The Appellant opposed the application and by a ruling dated 29<sup>th</sup> May 2022, the trial magistrate struck out the suit on the ground that it was res judicata.
3. Being aggrieved by the order striking out the suit, the Appellant filed the notice of motion dated 19<sup>th</sup> April 2020 seeking to review the order of May 29, 2022. The Respondent and Interested Parties opposed the application. By the ruling dated 11<sup>th</sup> December 2020, the trial court dismissed the application which now gives rise to this appeal.
4. Both parties have filed extensive written submissions in support of their respective positions on the substance of the appeal. What is was not apparent to the parties nor raised by them is that the Interested



Parties, who filed the initial application to strike out the suit and who opposed the application for review, are not parties to this appeal. This appeal cannot therefore be heard without affording the Interested Parties before the trial court an opportunity to be heard. This would amount to a breach of the fundamental rule of natural justice which this court cannot countenance (see *Pashito Holdings and Another v Ndung'u and 2 Others* KLR [E &L] 1, 295).

5. The failure to join all the parties involved in the litigation in the Subordinate Court and in particular, the Interested Parties, who ought to be Respondents in this appeal renders this appeal fatally defective.
6. The Appeal is struck out but with no order as to costs.

**DATED and DELIVERED at NAIROBI this 17<sup>th</sup> day of JANUARY 2023.**

**D. S. MAJANJA**

**JUDGE**

Ms Wanjiku instructed by Gachie Mwanza and Company Advocates for the Appellant.

Mr Mukiri instructed by Mukiri Global Advocates LLP for the Respondent.

