



REPUBLIC OF KENYA



**Kipsigis Tank Industry Limited & 3 others v Agricultural Finance Corporation
(Petition E004 of 2022) [2023] KEHC 930 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 930 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
PETITION E004 OF 2022
AN ONGERI, J
FEBRUARY 10, 2023**

BETWEEN

**KIPSIGIS TANK INDUSTRY LIMITED 1ST PETITIONER
REHEMA CHEBITOK SHABAN 2ND PETITIONER
ESTATE OF KIPROTICH AKA AYUB KIPROTICH SIELE
(DECEASED) 3RD PETITIONER
ETTAH CHEMUTAI SIELE AKA ET'TA CHEMUTAI SIELE
(DECEASED) 4TH PETITIONER**

AND

AGRICULTURAL FINANCE CORPORATION RESPONDENT

RULING

1. The Petitioners herein filed a petition dated 10/11/2022 alongside a notice of motion bearing the same date.
2. The Respondent filed a Notice of Preliminary Objection (NOPO) to the application dated 10/11/2022 on the grounds that the said application is res judicata.
3. The parties filed written submissions in the Notice of Preliminary Objection which I have considered.
4. The Applicant/Respondent submitted that prior to the instant suit, sometime on or about 5/6/1996 the first Petitioner applied for several loans totaling to Kshs. 11,140,000/=. The Petitioners subsequently, offered several securities for the sum of monies advanced to wit several parcels of land and charges were registered in favour of the Applicant/ Respondent.
5. The Applicant/Respondent contended that the Petitioners lodged a suit vide KerichoHCCC No.61 of2006, seeking a permanent injunction restraining the Applicant/Respondent, its agents or servants



from interfering, disposing, selling or in any other manner dealing with the land parcels. The matter was heard and determined, the Petitioners lost the suit, the court dismissed the amended plaint in its entirety with a condemnation to pay costs. It is against such background that the Petitioners lodged a petition to pursue the same claims, they were pursuing since 2006.

6. The Applicant/Respondent reiterated that the issues raised in the petition and impugned application were res judicata and were substantively dealt with in KerichoHCCC No.61 of 2006 when the court rendered its decision on 19/6/2020.
7. The Applicant/Respondent cited the provisions of section 7 of the *Civil Procedure Act* and the case of *Diocese of Eldoret Trustees (Registered) v Attorney General (on behalf of the Principal Secretary, Treasury) & Another* [2020] eKLR in support of its case.
8. The Applicant/Respondent reiterated that the issues raised in the petition were determined on merit and the Petitioners were bringing the same suit in disguise which was tantamount to an abuse of court process.
9. The Petitioners in opposition to the notice of preliminary objection submitted that petition was precipitated by a 45 days redemption notice dated 3/10/2022 by Respondent/Applicant through its agent M/S Legacy Auctioneering Service and not the suit lodged in 2006 as alleged by the Respondent/Applicant, demanding Kshs. 73,119,659/= which is allegedly the principal sum and interest due in a non-performing loan of Kshs. 11,140,000/=.
10. The Petitioners contended that the said amount was against the In Duplum rule which in essence was a gross violation of the Petitioner's constitutional rights. The Petitioners therefore lodged the petition seeking the cessation of interest rates on non-performing loans under the In Duplum rule by the Agricultural Finance Corporation. Furthermore, the Petitioners were apprehensive that if the interlocutory orders sought in the application filed alongside their petition, pending hearing and determination of the application and petition were not granted, they would be highly prejudiced and the petition herein would be rendered nugatory.
11. The Petitioners contended the fact that the doctrine of res judicata does not apply when a party is seeking a constitutional remedy and/or relief.
12. The sole issue for determination is whether this cause of action is res judicata.
13. The doctrine of res judicata is set out in Section 7 of the *Civil Procedure Act*. The doctrine ousts the jurisdiction of a court to try any suit or issue which had been finally determined by a court of competent jurisdiction in a former suit involving the same parties or parties litigating under the same title.
14. The Court of Appeal in *The Independent Electoral and 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 commonsensical 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 or calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice."
15. I find that it is not in dispute that the Petitioner filed Kericho HCCC No.61 of 2006 on the same subject matter.



16. This matter is res judicata. Constitutional remedies are not available where the Law provides for another remedy.
17. The Notice of Preliminary Objection is allowed with costs to the Respondent.
18. This suit be and is hereby struck out.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 10TH DAY OF FEBRUARY, 2023.

A. N. ONGERI

JUDGE

