



**South Eastern Kenya University v Ukambani Agricultural Institute
Ltd and Another; Muli & another (Applicant) (Civil Appeal
465 of 2015) [2023] KEHC 17551 (KLR) (Civ) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17551 (KLR)

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

CIVIL

CIVIL APPEAL 465 OF 2015

JN MULWA, J

MAY 11, 2023

BETWEEN

SOUTH EASTERN KENYA UNIVERSITY APPELLANT

AND

**UKAMBANI AGRICULTURAL INSTITUTE LTD AND
ANOTHER RESPONDENT**

AND

STEPHEN NDAMBUKI MULI APPLICANT

ERIC MUTINDA MUTISYA APPLICANT

RULING

1. This ruling is in respect of the Application dated 6th October, 2022 brought by Stephen Ndambuki Muli, 1st Applicant and Eric Mutinda Mutisya the 2nd Applicant. It is premised upon provisions of Sections 1A, 1B and 3A of the *Civil Procedure Act*, and Order 51 Rule 1 of the civil Procedure Rules.
2. The Applicants seek the following orders: -
 1. Spent
 2. That the Honourable court be pleased to suspend, lift and/or stay execution of the Warrants of Arrest issued by this court against the Applicants pending the hearing and determination of the Appeal against the ruling delivered on the 17th October, 2018.
 3. That the costs of the application be provided for.



3. The grounds for the application are stated that there is an appeal pending at the Court of Appeal against the ruling dated 17th October, 2018; that there are warrants of arrest issued against them and that the appeal had been scheduled for hearing on 2nd November, 2022, that therefore, if the orders are not granted, the applicants will be prejudiced if the appeal succeeds as they would have to serve sentence before the appeal is heard and determined, hence may render the appeal nugatory.
4. The above is replicated in the supporting affidavit sworn by Stephen Nambuki Muli the 1st Applicant.
5. The application is opposed by a Replying Affidavit sworn by Prof. Geoffrey M. Muluvi, the vice-chancellor of the Southern Eastern Kenya University the Appellant herein, on two main grounds; that the application is both res judicata and an abuse of the court process; and proceeds to depone to the material facts in support of the two depositions.
6. It is a further deposition that by a court order issued on the 30th January 2020, the applicants were found to have been in contempt of the Court orders, and their application for stay of further proceedings and/or issuance of warrants of arrest against them pursuant to their conviction on 17th October, 2018 pending hearing and determination of the appeal.
7. The impugned ruling dated 17th October, 2018 is the subject of the appeal hereof. The court (Thuranira J) categorically found the applicants guilty of contempt of court, and directed that warrants of arrest do issue against the two applicants. Two attempts to stay the execution of the Orders of the 17th October, 2018 have been made by the applicants in two similar applications dated 20th November, 2018, and 13th February, 2020 (withdrawn) and the instant application.
8. In the first application, the applicants sought stay of further proceedings and warrants of arrest against them pursuant to their conviction on the 17th October 2018 pending hearing and determination of the appeal. It was heard inter partes, and determined by an order of dismissal on the 30th January, 2020 by a competent court. There is no appeal filed and pending against this dismissal order.
9. By the instant application, the applicants seeks orders for stay of execution of the court's orders issued on the 17th October, 2018 by suspending, lifting and/or stay the execution of the warrants issued by the Court against them by the court on the 17th October, 2018.

A Matter Of Resjudicata?

10. I have carefully considered the parties' submissions and cited authorities.
The Applicants submissions are dated 21st November, 2022 by their Advocates, Ong'anya Ombo Advocates. They have failed to address the matter of Res Judicata as raised by the Appellant; but dealt at length with conditions that the court ought to consider for grant an order of stay of execution pending appeal, citing substantial loss to the applicants' arguability of the appeal, prejudice to the respondents and the applicant's rights to appeal to be safeguarded as not to render the appeal nugatory should it be successful.
11. For the record, these are the same issues the court was faced with, and ably determined in the ruling of 30th January, 2020 and found no merit therein, and dismissed it with costs.
12. The Appellant's submissions by its Advocates E.K. Mutua & Co. Advocates are dated 25th November, 2022; with emphasis on the Res judicata doctrine



Section 7 of the [Civil Procedure Act](#) defines Res judicata as follows:-

“7. No court shall try any suit of 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 of the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.”

13. Without a doubt, the two applications seek similar orders, of stay of execution of the Court’s orders of the 17th October 2018, which orders have since been dismissed by the same court, and subject of this appeal.

14. The Court of Appeal in the case John Florence Maritime services Ltd & Another v Cabinet Secretary for Transport and infrastructure & 3 others (2015) eKLR, rendered itself on the purpose of the said doctrine that: -

“..... it promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect of justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably.”

Seeking similar orders without regard and respect of orders issued by judicial officers of similar status. It has not even stated by the Applicants if her new circumstances that may have arisen since the previous orders were issued to warrant a review of setting aside of the previous orders.”

15. The applicants have been faulted for filing a multiplicity of similar applications and therefore abusing the court process. The superior courts while faced with this abuse has arisen and pronounced themselves succinctly in numerous decisions among them: -

Satya Bahama Gandhi Vs Director of Public Prosecutions & 3 others (2018) eKLR, that: -

“It is trite law that the court has an inherent jurisdiction to protect itself from abuse or to see that its process is not abused. An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules of its use.”

16. Further, the court rendered that abuse of court process may arise in different scenario, where a party thinks the court process has not been fair, honest or is to the detriment of the party making multiple suits in respect of similar causes of action. It may also involve some perceived or real bias, malice, or desire to misuse or pervert the cause of justice or judicial process to the detriment of the opponent party.

17. This court therefore agrees with the Appellant’s averments and submissions that the Applicants are barred by the doctrine of res judicata and cannot be allowed to bring multiple and similar applications.

18. Even if circumstances may have changed such that the court orders cannot be practically obeyed by the Applicants which is not the case hereof, there are several court procedures that if employed properly would inform the Applicants the correct and legal manner to take to get themselves off the hook, one being purging the contempt orders by complying.



19. For the aforesaid, the court finds no merit in the Applicants application dated 6th October 2022, for being Res Judicata and an abuse of the Court process. It is therefore dismissed with costs to the Appellant being the only party that participated in opposing the application.

Orders accordingly.

DELIVERED DATED AND SIGNED THIS 11TH DAY OF MAY, 2023

JANET MULWA

JUDGE

