



**Mwangi & 4 others v Murang’a Shuttle Services Limited & 2 others; Registrar of Companies & 12 others (Interested Parties) (Commercial Case 025 of 2022) [2023] KEHC 19336 (KLR) (Commercial and Tax) (14 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19336 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**COMMERCIAL CASE 025 OF 2022**  
**DO CHEPKWONY, J**  
**JUNE 14, 2023**

**BETWEEN**

**ROBERT MWANGI ..... 1<sup>ST</sup> PLAINTIFF**  
**JAMES MWANGI KARIUKI ..... 2<sup>ND</sup> PLAINTIFF**  
**EPHRAIM KABETHI MUCHUE ..... 3<sup>RD</sup> PLAINTIFF**  
**MOSES KAMOCHE KUNGU ..... 4<sup>TH</sup> PLAINTIFF**  
**GEOFFREY GACHUGU GACHATHI ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**MURANG’A SHUTTLE SERVICES LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**MARTIN KANGANGI WAIRIMU ..... 2<sup>ND</sup> DEFENDANT**  
**DAVID NGARI KAMAU ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**THE REGISTRAR OF COMPANIES ..... INTERESTED PARTY**  
**JAMES MUNGORA KIHUHA ..... INTERESTED PARTY**  
**BENJAMIN MUNYEKI KAGWAINI ..... INTERESTED PARTY**  
**GODFREY MURIMI ..... INTERESTED PARTY**  
**STEPHEN MWANIKI KIBIRU ..... INTERESTED PARTY**  
**EPHATUS KANG’ORI IRUNGU ..... INTERESTED PARTY**  
**PETER KABURI MAINA ..... INTERESTED PARTY**  
**JOHN THUMBI MWANGI ..... INTERESTED PARTY**



VERONICAH WAITHIRA NDEGWA ..... INTERESTED PARTY  
KARIUKI KAMAU ..... INTERESTED PARTY  
FRANCIS MUTHII MIANO ..... INTERESTED PARTY  
ROY MWANGI WAWERU ..... INTERESTED PARTY  
MUCHIRI MAINA ..... INTERESTED PARTY

## RULING

1. This suit was precipitated through a Notice of Motion application dated September 14, 2022 filed under Section 3A of the *Civil Procedure Act*, Order 40 Rules 1, 2, 3 & 4 of the Civil Procedure Rules, the *Judicature Act*, Articles 2, 10, 22, 24, 25, 27, 32, 36, 38, 47, 48, 50 and 159 of the *Constitution* of Kenya, the *Companies Act*, *Fair Administrative Act* of 2015. The Application seeks the following orders:
  - a Spent;
  - b That the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents whether by themselves, agents, servants or otherwise howsoever be and are hereby restrained from alienating, disposing, selling, charging interfering or in any manner whatsoever handling the assets and accounts of the 1<sup>st</sup> Defendant/ Respondent pending the mention of this application or hearing and determination of this application inter parties;
  - c That the 2<sup>nd</sup> & 3<sup>rd</sup> Defendants/Respondents whether by themselves, agents, servants otherwise howsoever be and are hereby restrained from alienating, disposing, selling, interfering or in any manner whatsoever handling the assets and accounts of the 1<sup>st</sup> Defendant/Respondent pending the hearing and determination of this application and suit;
  - d That the 2<sup>nd</sup> & 3<sup>rd</sup> Defendant/Respondents whether by themselves, agents, servants or otherwise howsoever be and are hereby restrained from taking and making decisions, giving instructions, writing and signing letters, notices, forms, deeds, minutes, resolutions, returns and any other documents in the name of and/or on behalf of the 1<sup>st</sup> Defendant/Respondent without the consent and concurrence of all eligible Directors/Shareholders pending the hearing of this application interpartes;
  - e That the Registrar of Companies be ordered by this Honourable Court to call a special general meeting of all directors/shareholders thereby causing action for a full audited accounts for the company for the last Five (5) years;
  - f That this Honourable Court be pleased to make any further order or directions in the interest of justice, equity and in the positive approach to the assets of the 1<sup>st</sup> Defendant/ Respondent which are at the mercy of wanton wastage by the 2<sup>nd</sup> & 3<sup>rd</sup> Defendant/Respondents;
  - g That costs shall be in the cause.
2. Upon service of the said application, the 2<sup>nd</sup> Respondent filed the Notice of Preliminary Objection dated November 21, 2022. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents also filed their Grounds of Objection dated December 14, 2022 which raised the following grounds:-



- i. That the Application is frivolous, vexatious, un-merited, misleading and afterthought and should be dismissed.
  - ii. That the 2<sup>nd</sup> Respondent shall raise an issue of on the jurisdiction of the Court and after determination of such issue, the Court is left with nothing but to down its tools at that point.
  - iii. That the matter is res judicata by virtue of the fact that this matter has already been decided in Chief Magistrate Court at Muranga vide Misc Appl No Eo14 of 2022 where the suit was dismissed for lacking locus standi and therefore the current suit cannot stand in law.
3. On December 5, 2022 parties were directed to dispose of the notice of Preliminary Objection by way of written submissions and they obliged.

### **Analysis and Determination**

4. This Court will first consider the Preliminary Objection as the same has the capacity to dispose of the entire suit if it is successful. The aspect of Preliminary Objections was discussed in the case of *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors* [1969] EA 696 where the court held that:-

“ [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 ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

5. In this case, the preliminary objection touches on the jurisdiction of the court which is core as without it, the court will have no option other than to down its tools. This was stated in the locus classicus case of *The Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1, where Nyarangi J.A. held as follows:-

‘I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.’

6. The Respondents argue that the parties reside and work in Muranga and therefore the appropriate forum ought to have been Muranga High Court. Further, it is the Respondents contention that the suit is res judicata since the matter was already determined in the Chief Magistrate Court at Muranga vide Misc. Application No. E014 of 2022 which was dismissed for lack of locus standi and no appeal was conferred against the decision. The Respondents argue that their Grounds of Objection have merits and should be allowed.
7. In their submissions, the Plaintiffs dealt with the merits of the application and did not address the issues of jurisdiction or res judicata raised by the Respondents in the Preliminary Objection.
8. I have perused the Ruling delivered in Murangá CMCC Misc Application No. E014 of 2022 filed by James Mwangi Kariuki and Robert Mwangi, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff herein against Muranga Shuttle



Services Ltd, Martin Kananag Wairimu and David Ngari Mwangi the Respondents herein seeking injunctive orders provision of statement of accounts of the 1<sup>st</sup> Respondent. These orders are similar to those that have been sought in this case and the parties therein are the same ones as those in this case.

9. In this case, the subordinate court rendered itself in respect of the suit before it, so that any aggrieved party had the liberty to either file an appeal under Section 79 of the Civil Procedure Act or an application for review under Section 80 of the Civil Procedure Act against that decision but cannot file a similar suit in this court.
10. It is trite that where there are procedures under the law, the same must be strictly followed. The Court of Appeal's decision in the case of Speaker of the National Assembly v James Njenga Karume Court of Appeal at Nairobi Civil Application No. 92 of 1992, was as follows:-

“In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.....”

11. It therefore follows that due procedure ought to be followed upon delivery of a judgment or a ruling. The Plaintiff cannot ignore the procedure and file a fresh suit in this High Court over the same issues addressed in the subordinate court as that would amount to the same being *res judicata*. The substantive law on *res judicata* is found in Section 7 of the Civil Procedure Act Cap 21 which provides that:-

“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 them 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”

12. Be that as it may, even if this could have been an appeal which it is not, this court would still lack the pecuniary jurisdiction to handle it given that the parties are all based in Muranga where the cause of action arose and therefore, the appropriate court would have been Muranga High Court.
13. In the circumstances, the suit is incompetent before this court and the Application dated September 14, 2022 is therefore dismissed for want of jurisdiction and by virtue of being *res judicata*. The Notice of Preliminary Objection dated November 21, 2022 is found to be meritable and the same is allowed. The Respondents shall bear costs of the suit.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 14<sup>TH</sup> DAY OF JUNE, 2023.**

**D O CHEPKWONY**

**JUDGE**

**In the presence of:**

**Mr Maingi Kamau counsel for Plaintiff**

**M/S Wangubi counsel holding brief for Mr. Mwangi for Plaintiff/Respondent**

**Court Assistant - Martin**

