



REPUBLIC OF KENYA



KENYA LAW
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**Karanja v Kenya Women Micro Finance Ltd & another (Civil Case
15 of 2019) [2023] KEHC 23887 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23887 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE 15 OF 2019
PM MULWA, J
OCTOBER 19, 2023**

BETWEEN

DEBORAH KARANJA PLAINTIFF

AND

KENYA WOMEN MICRO FINANCE LTD 1ST DEFENDANT

GARAM INVESTMENT AUCTIONEERS 2ND DEFENDANT

RULING

1. This court has been called upon to determine the Notice of Motion application dated July 17, 2023, brought under Sections 1A, 1B and 7 of the *Civil Procedure Act*, Order 2 rule 15(b) and (d) and Order 51 Rule 1 of the *Civil procedure Rules*. The Motion seeks inter alia that the suit against the Applicants/ Defendants herein be struck off as it offends the provisions of Section 7 of the *Civil Procedure Act*.
2. The application is premised on the grounds that the Plaintiff/Respondent filed a similar suit in Milimani HCCCOMM No E274 of 2020 Deborah Ngugi Karanja v Family Bank & Central Bank of Kenya seeking compensation for the loss of the property LR Ruiru/East Block 5/118; that judgment was delivered in her favour on March 24, 2023 and she was awarded damages of Kshs. 47,526,945 and that proceeding with the instant suit will amount to double compensation as the instant claim is premised on LR Ruiru/East Block 5/118; that the only issue is the Defendants are different but the subject matter is the same.
3. The application is supported by the supporting affidavit of Geoffrey Mulanya advocate on record for the 1st Defendant/Applicant, sworn on July 17, 2023. He avers that the instant case emanates from the loss of property known as Ruiru/East Block 5/118 in which the Respondent was adequately compensated in Milimani HCCCOMM No E274 of 2020. He avers that the matter is *res judicata* as the subject matter and the Plaintiff are similar, the only difference being the defendants. He states that the plaintiff seeks to unjustly enrich herself by acquiring double benefits from the same property.



4. The application is opposed by the plaintiff through the Grounds of Opposition dated July 21, 2023 recited hereunder:
 - i. The application is frivolous, vexatious and an abuse of the process of the law for the reasons that:
 - a. The suit before this court relates to the irregular exercise of the 1st Defendant's right of redemption while the suit before Milimani Commercial Court related to the contractual, fiduciary and moral obligation of Family Bank Limited.
 - b. The suit before this court is neither *res judicata* nor *res sub judice*
 - ii. The application offends the overriding objective of the court as it is clearly aimed at delaying the hearing of the suit.
5. The application was orally argued in court on July 24, 2023.
6. Mr Kipkoech argued that the instant suit deals with compensation for the loss of the property known as Ruiru/East Block 5/118 which issue has already been dealt with in Milimani HCCOMM and damages awarded in the sum of Kshs 47 million and proceeding with the instant suit will amount to double compensation. That the suit is an abuse of the court process. He placed reliance on the case of *IEBC v Maina Kiai & Anor* (2015) eKLR
7. Counsel urged the court to allow the application and strike out the suit as the plaintiff seeks to unjustly enrich herself.
8. Mr. Michuki submitted for the Respondent and relied on the grounds of opposition as filed and maintained that the matter filed in Milimani HCCOMM No 274 of 2020 and the instant suit are distinct as they sought different reliefs. He argued the parties are not similar as the Applicant was not involved in the Milimani suit and further that the issue of whether the property was sold contrary to the [Land Act](#) was not before Milimani High Court.
9. Counsel argued that the issue before the instant suit has not been determined and the issue of compensation does not bar the Plaintiff from bringing the instant suit pursuant to the exercise of statutory notice of sale which is not *res judicata*.
10. Lastly, Mr. Michuki submitted that the issue in the contention in the Milimani case involved the contractual relationship and did involve the 1st Defendant who cannot evade its obligation by seeking to strike out the instant suit. He submitted that striking out the suit amounts to defeating the plaintiff rights to restitution of his property. The application is filed in an attempt to evade liability and cause further delay in the matter.
11. In a rejoinder Mr. Kipkoech submits the nature of damages awarded in the Milimani Commercial Case directly affects the instant suit as the Plaintiff will be compensated for the loss of the property which amounts to double compensation. He contended that Section 7 of the [Civil Procedure Act](#) is very clear as parties should not be allowed to re-model pleadings to structure new issues and cause of actions and new defendants. That the 1st Defendant/Applicant herein, KWFT was carefully omitted in the Milimani suit.



Analysis and determination

12. I have considered this application and the counsel's respective arguments. The issue for determination is whether the suit herein is *res judicata*.
13. Section 7 of the *Civil Procedure Act, 2010* provides: "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."
14. In the case of *Christopher Kenyariri v Salama Beach* (2017) eKLR, the court clearly stated the ingredients to be satisfied when determining *res judicata* thus: - "...the following elements must be satisfied...in conjunctive terms;
 - a. The suit or issue was directly and substantially in issue in the former suit
 - b. Former suit between same parties or parties under whom they or any of them claim
 - c. Those parties are litigating under the same title
 - d. The issue was heard and finally determined.
 - e. The court was competent to try the subsequent suit in which the suit is raised."
15. This court is therefore called upon to look at the issues raised in the plaint in Nairobi HCCOMM No 274 of 2020, evaluate the issues in the judgment alleged to have settled the issues in the instant suit and establish whether the instant suit is *res judicata*.
16. Having perused the plaint dated August 3, 2020, filed in Nairobi HCCOMM No 274 of 2020, I note that one of the many reliefs the Plaintiff sought was an order that the 1st and 2nd Defendants pay general and exemplary damages to the Plaintiff on account of the breaches afore-indicated leading to the Plaintiff's financial ruin and loss of her valuable property valued at Kshs. 65,000,000/= and personal trauma, depression and devastation with interest.
17. Mabeya J. in his judgment delivered on March 24, 2023, addressed the issue of restitution and award of damages to the Plaintiff for the loss of property known as Ruiru/East Block 5/118 and proceeded to award the Plaintiff damages in the sum of Kshs. 40,800,000. The learned judge also considered the valuation report prepared by Legit Valuers as appropriate for determining the value of the property.
18. The amended plaint in the instant suit dated December 10, 2020, among other prayers sought for the valuation report by Legit Valuers be adopted in calculating special damages of Kshs. 13, 250,000 for loss of property known as Ruiru/East Block 5/118.
19. In my considered view, the issue of restitution raised in the instant case has already been addressed in the judgment by Justice Mabeya in which the Plaintiff was awarded Kshs. 40,800,000/= as sufficient compensation for the loss of property. The judge rightfully found that the last prayer of exemplary damages was wrongly drafted and that the Plaintiff ought to have sought to be restituted in the position she was in prior to the loan facility.
20. The assertion by the Plaintiff that the parties and cause of action are different in the instant case from the Nairobi HCCOMM No 274 of 2020 does not hold water. The reliefs being sought in the instant case have been addressed in Nairobi HCCOMM No 274 of 2020.



21. The Court of Appeal in *Independent Electoral & 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 common-sensical 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 and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”
22. It is my finding that the Plaintiff introduced a new cause of action with different parties to seek the same remedy issued by another court of competent jurisdiction. The action of the Plaintiff is an abuse of the court process. Litigation must come to an end, there has to be finality. That rule is meant to counter the all too human propensity to keep trying until something gives.
23. I uphold the Notice of Motion dated July 17, 2023 on the basis that pursuant to Section 7 of the *Civil Procedure Act* this court lacks the jurisdiction to deal with the matter which has already been dealt with by a court of competent jurisdiction.
24. In the circumstances, the issue of restitution of the Plaintiff having been dealt with in Nairobi HCCOMM No 274 of 2020, the instant case Kiambu HCCC No 15 of 2029 is res judicata.
25. The suit filed herein is dismissed. Considering the financial difficulties posed on the Plaintiff by the Defendants I will order that each party bear their own costs.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 19TH DAY OF OCTOBER 2023.

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P. MULWA

JUDGE

