



**Njeri & another v Kithuka (Miscellaneous Application E218 of 2023)
[2024] KEHC 11792 (KLR) (Civ) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11792 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS APPLICATION E218 OF 2023
JN MULWA, J
OCTOBER 3, 2024**

BETWEEN

ALICE NJERI 1ST APPLICANT

BONIFACE MUMO 2ND APPLICANT

AND

NICHOLUS NDETEI KITHUKA RESPONDENT

RULING

1. The Applicants in this motion dated 18/04/2023 seek leave to appeal out of time and stay of execution of the small claims court judgment delivered on 27/04/2022 in SCC No E058 of 2022 pending hearing and determination of the intended appeal.
2. In opposition to the Application the Respondent in his Notice of Preliminary Objection dated 1/03/2024 objected to its hearing stating that the application is Res-judicata citing two similar past applications that had been filed and both dismissed.
3. The past Miscellaneous Applications (suit) are stated as HCC Misc. Appln. No E147 of 2023 Alice Njeri & Bonface Mumo v Nicholas Ndetei Kithuka vide an Application dated 16/03/2023 wherein the applicant sought leave to file appeal out of time and stay of execution of the same SCC Case No E058/2022 between the same parties. The motion was dismissed on the 12/10/2023 by the Hon. D. S. Majanja J.
4. A similar suit dated in Misc. Application No E216 of 2022 was filed by an Application dated 2/04/2022 similar orders were sought in the same trial court.

It was dismissed by Hon. Meoli J. on 7/11/2022.



5. There is no doubt that the applicant's third suit herein, by the instant Motion dated 18/04/2023 is yet another attempt to mislead the court by filing similar suits by applications seeking same orders.
6. I have read the orders of court dismissing the suits and motions.
I am sufficiently persuaded that this suit is yet another suit by the same parties, over the same subject matter having been litigated and determined by courts of competent jurisdiction.
7. Section 7 of the [Civil Procedure Act](#) bars courts from relitigating suits and all applications thereunder by the doctrine of *res-judicata*. In the circumstances, the Respondent's Preliminary Objection is upheld. The suit and motion dated 18/04/2023 are hereby dismissed with costs to the Respondent.

It is so ordered.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2024.

JANET MULWA

JUDGE

