



**Southg Sioux Farms Limited v Tarlochan (Sued as the Administratrix
of the Estate of the Late Tariochan Singh Chajja Singh) (Civil Case
E009 of 2023) [2024] KEHC 14209 (KLR) (Civ) (8 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14209 (KLR)

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

CIVIL

CIVIL CASE E009 OF 2023

AN ONGERI, J

NOVEMBER 8, 2024

BETWEEN

SOUTHG SIOUX FARMS LIMITED PLAINTIFF

AND

KULPRIT KAUR TARLOCHAN DEFENDANT

**SUED AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE
TARIOCHAN SINGH CHAJJA SINGH**

RULING

1. The notice of motion coming for consideration is the one dated 14/11/2023 seeking to have this suit struck out for being an abuse of the court process since there is another suit being HCCC E097 of 2020 which was on the same issues and which was settled.
2. The respondent filed a replying affidavit opposing the Notice of Preliminary Objection as follows;
3. That it is true that the respondent previously instituted High Court Civil Suit No. E097 of 2020 South Sioux Farms Limited v Tarlochan Singh Chajja which was marked settled by consent of both parties.
4. Further, that the applicant fraudulently sought and obtained the respondent's consent by misrepresentation and fraud during funeral rites of her husband/his uncle. The full particulars of fraud and misrepresentation have been furnished in the plaint.
5. He averred that for a matter to be re judicata, it must be one which the court has previously exercised its judicial mind and has after arguments and consideration come to a conclusion on the contested matter and that is when a matter is said to have been heard and finally determined.



6. The parties filed written submissions as follows; the applicant submitted that the respondent's claim is an abuse of court process as it is an attempt to relitigate matters which have already been settled in previous proceedings.
7. That the respondent has not disclosed that the plaint dated 5/12/2022 in this matter is similar to the plaint filed in High Court Civil Suit No. E 097 of 2020 South Sioux Farms Limited vs Tarlochan Singh Chaja, save that the respondent now claims that the consent dated 25/3/2021 which settled the suit was obtained fraudulently.
8. The applicants relied on Kenya Commercial Bank Ltd vs Specialized Engineering Co. Ltd [1982] KLR 485 it was held that it is well settled that a consent judgment is binding on all parties to the proceedings and cannot be varied or set aside unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts, or in representation or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.
9. The applicant further argued that the doctrine of res judicata as established under section 7 of the *Civil Procedure Act* aims to bring finality to litigation. The doctrine serves not only to protect public interests, but also to safeguard the legitimate interests of litigants to ensure that they are not harassed by unnecessarily burdensome litigants who endeavour to file a multiplicity of suits to obtain at last, outcomes favourable to themselves.
10. Further, that the consent signed between the parties herein on 23/3/2021 was geared towards bringing this litigation to an end. That consent has not been set aside. It would be an abuse of court process to allow the respondent to maintain the present proceedings in those circumstances.
11. The sole issue for determination is whether this suit is res judicata.
12. The definition of the doctrine of res judicata is as follows;
13. Section 7 of the *Civil Procedure Act* provides as follows on the issue of res judicata;

“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. The Supreme Court in Communications Commission of Kenya & 5 others - v- Royal Media Services Limited & 5 others [2014] eKLR expressed itself as follows on the issue of res judicata:

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“(317) The concept of res judicata operates to prevent causes of action, or issues from being re-litigated once they have been determined on the merits. It encompasses limits upon both issues and claims, and the issues that may be raised in subsequent proceedings....

[319] There are conditions to the application of the doctrine of res judicata: (i) the issue in the first suit must have been decided by a competent Court; (ii) the matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and (iii) the parties in the former



suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title..”

15. I find that is not in dispute that the plaint herein is similar to the plaint filed in High Court Civil Suit No. E 097 of 2020 South Sioux Farms Limited vs Tarlochan Singh Chaja, where a consent dated 25/3/2021 was recorded which settled the suit.
16. The said consent has not been set aside and I find that this suit is res judicata in the circumstances.
17. I strike out this suit with costs to the applicant assessed at Kshs.20,000.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant

