



**P & L Consulting Company Limited v Scribe Services Registrars & 2 others (Civil Suit E244 of 2019) [2021] KEHC 125 (KLR) (Commercial and Tax) (15 October 2021) (Ruling)**

Neutral citation: [2021] KEHC 125 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E244 OF 2019  
A MABEYA, J  
OCTOBER 15, 2021**

**BETWEEN**

**P & L CONSULTING COMPANY LIMITED ..... PLAINTIFF**

**AND**

**SCRIBE SERVICES REGISTRARS ..... 1<sup>ST</sup> DEFENDANT**

**DIANA GICHANGA ..... 2<sup>ND</sup> DEFENDANT**

**MARGARET GICHANGA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. By a Motion on Notice dated 27/1/2021, the applicant sought a mandatory injunction to compel the 1<sup>st</sup> respondent to release all files belonging to it and an order to restrain it from charging company secretarial fees on the applicant.
2. The Motion was brought under Section 1A & B, 3A, 63(e) of the *Civil Procedure Act* and Order 51, rule 1 & 13 of the *Civil Procedure Rules* 2010.
3. The grounds for the application were set out in the body of the Motion and in the affidavit of Mercy Randa sworn on 27/1/2021. These were that the 1<sup>st</sup> respondent was holding the applicant's files and documents which was making it difficult for the applicant to participate in any business such as tender applications, filing of taxes and procuring Tax Compliance Certificate. That the holding of the files and documents was because the 1<sup>st</sup> respondent was exercising a lien over them for alleged instructions given to them by the 2<sup>nd</sup> respondent.
4. The 1<sup>st</sup> respondent opposed the application vide a replying affidavit of Bernard Kiragu sworn on 10/3/2021. It was contended that the orders sought were the very same orders sought in the applicant's previous application dated 6/2/2019. That the said application had been heard and determined in HC



- Misc. Appln. No 78 of 2019. That in the said case, the 1<sup>st</sup> respondent was ordered to release the said documents upon payment of the 1<sup>st</sup> respondent's fees. That to-date, the applicant had not yet settled the 1<sup>st</sup> respondent's fees of Kshs. 226,510/-. That the application was res judicata and should therefore be dismissed.
5. The applicant filed a further affidavit sworn on 17/3/2021 by its director in response to the 1st respondent's replying affidavit. It contended that the application was not res judicata as the prayers were different from those in the application dated 5/2/2019. That there was no court order requiring it to settle any outstanding dues to the 1<sup>st</sup> respondent as no such dues have ever been proved or are actually owed.
  6. The parties filed their respective submissions which the court has considered in depth. The first issue for determination is whether the application is res judicata.
  7. The doctrine of res judicata is provided for in section 7 of the Civil Procedure Rules which bars any court from trying any matter which has been determined in a former proceeding between the same parties.
  8. In *E.T. v Attorney General & another*, it was held: -

“The courts must be vigilant to guard against litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in a form a new cause of action which has been resolved by a court of competent jurisdiction”.
  9. The court has seen the ruling in MISC APP NO.78 OF 2019. The same is reported as P & L Consulting Limited v. Scribe Services Registrars & 2 others [2019] Eklr. In that application, the applicant sought two orders, leave to bring a derivative suit on behalf of the company and a mandatory order to compel the 1<sup>st</sup> respondent to release to the applicant its files and documents.
  10. In a ruling delivered by Muigai J on 27/5/2019, the applicant was granted leave to bring a derivative suit and it was directed that the prayer for injunction “be heard on a date to be obtained by parties from the registry”. In the body of the ruling, the court observed: -

“While leave is granted, the Company Secretary has a claim against the Company of payment of services rendered to the Company, the Company documents ought to be released upon payment by the Company of the debt”.
  11. There is nothing on record to show that the said application was ever prosecuted. Further, there is nothing on record to show if the derivative suit was ever lodged. One thing however, remains clear. The order for release of documents and files of the applicant was central in the aforesaid proceedings and was ordered to be heard later. That application and prayer is still pending.
  12. Since there is nothing to show that the said proceedings were either determined or withdrawn, the same must be pending. In this regard, the present application is sub-judice. It contravenes the provisions of section 6 of the [Civil Procedure Act](#).
  13. The court, in the aforesaid proceedings, having given directions that the files and documents be released upon the settlement of the outstanding debt, this Court cannot purport to sit on appeal on the same. Let the applicant pursue for the conclusion of that matter.



14. The foregoing determination is enough to conclude the matter. However, on the merit, the application also lacks merit. This is an application for a mandatory injunction.

15. In *Kenya Breweries Ltd & Another vs Washington O. Okeya* , the Court of Appeal held: -

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction”.

16. There are no special circumstances that were shown to exist in this case to warrant the issuance of a mandatory injunction at an interlocutory stage.

17. Accordingly, the application is without merit and is hereby dismissed with costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF OCTOBER, 2021.**

**A. MABEYA, FCI Arb**

**JUDGE**

