



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KITALE

CIVIL CASE NO. 24 OF 2018

(Originally Kitale ELC Case No. 105 of 2017)

COSMAS STEPHEN NABUNGOLO.....PLAINITFF

VERSUS

AFRICAN BANKING CORPORATION LTD.....DEFENDANT

R U L I N G

1. The Applicant herein vide his application dated 26th June 2018 prayed for injunctive orders against the Respondent from exercising its statutory power of sale. The Respondent had advertised the sale of the securities deposited by the Applicant/Plaintiff in regard to the loan facility advanced by the Defendant. M/s Igare Auctioneers had advertised the same in the Standard Newspaper of 26th June 2018.

2. When the application came up for hearing, the Respondent filed a preliminary objection on a point of law stating inter alia that the same was res judicata. That similar application has been decided vide the ELC court's decision of 29th May 2018 in the application dated 13th June 2017. In the premises, the application should be dismissed.

3. Parties did file their written submissions and were permitted to highlight the same. I have also perused the attached sets of authorities all in support or in opposition of the preliminary objection.

4. The doctrine of *Res Judicata* is well anchored in Section 7 of the Civil Procedure Act which states;

“ 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 their 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.”

5. I have perused the application dated 29th June 2018 and that dated 13th June 2017 as well as the court's ruling dated 29th May 2018 and find that they all relate to the same parties and same prayers. The only difference in the current application which is found in the applicant supporting affidavit sworn on 29th June 2018 are issues to do with interest and that the figures arrived to by the Respondent are inordinately high.

6. Other than this, the entire application is *res judicata*. The issues though adjudicated by my brother

Njoroge J at ELC Court, the findings have not been challenged.

7. As was found by Kuloba J in *Mwangi Njangu Vs Meshack Mbogo Wambugu Civil suit No. 2340/1991*, all that the Applicant has done is to do a “facelift” to the suit.

8. The application for injunction was dismissed. Again he had applied for similar orders. This to say the least is abuse of court process.

9. The preliminary objection is allowed. The application dated 29th June 2018 is dismissed with costs to the Respondent.

Orders Accordingly.

Delivered, signed and dated at Kitale this 2nd day of April, 2019.

H.K. CHEMITEI

JUDGE

2/4/19

In the presence of;

Mr. Ojicho for the Plaintiff

Wanjala holding brief for Makege for the Respondent

Court Assistant – Kirong

Ruling read in open court.