

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

CIVIL CASE NO. 12 OF 2018

MHW.....PLAINTIFF

VERSUS

AAH.....DEFENDANT

R U L I N G

1. This matter was scheduled to be heard on the 14th of March, 2019.

The Plaintiff MHW has sued his estranged wife AAH over properties known as plot Nos. [Particulars withheld] Kimathi River Bank. In the result seeks for Kshs.10,224,000 as rent and interest collected by the defendant.

2. The defendant raised a Preliminary Objection to the suit. She contends that this suit is res judicata in view of High Court Case Number 29 of 2017(O.S.) **AAH vs MHW** and further that this suit amounts to an abuse of court process.

3. At that the hearing of Preliminary Objection the defendant's counsel argued that H.C.C.C No. 29 of 2017 deals with the properties in question as in issue is distribution of the same. She further informed the court that the said suit was stayed pending determination of the divorce between the two at the Kadhi's court.

4. In response counsel for the Plaintiff sought to have this case stayed in view of the existence of H.C.C.C. No. 29 of 2017.

5. There seem to be an agreement between the parties that H.C.C.C. No. 29 of 2017 raises issues similar or substantially to the issues raised in this case. H.C.C.C. No. 29 of 2017 was stayed to pave way for a divorce cause between the parties, in which case the doctrine of res judicata is yet to come into play. However, this court cannot proceed with this suit in view of the existence of H.C.C.C. No. 29 of 2017, though the issue herein is more of accounting and sharing of proceeds of rent.

6. In my view the issue of rent and how to share the proceeds may be raised in H.C.C.C. No. 29 of 2017 and canvassed therein.

7. Consequently in the interest of justice this cause be and is hereby consolidated with case No. H.C.C.C. No. 29 of 2017.

8. Costs in the cause.

DATED, SIGNED and DELIVERED IN NAIROBI this 9TH day of May, 2019.

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ALI-ARONI

JUDGE