

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NUMBER 2 OF 2016

MARY NYAMBURA KINYANJUI NJEHIA..... APPELLANT

VERSUS

NATIONAL BANK KENYA LTD.....RESPONDENT

RULING

The Defendant in his application dated 30th June 2016 made under the provisions of **Section 3A, 1A, and 1B of the Civil Procedure Act** and **Order I Rule 3(2)** of the Rules sought that this suit be struck out with costs as it is *Res-judicata*, on the grounds that by a ruling of this court issued on the 20th January 2016, the court ruled that the suit is *Res-Judicata*. Despite service of the application upon the Respondent no reply has been filed.

I have considered my ruling issued on the 20th January 2016, together with the plaint in the case.

The parties in this suit Mary Nyambura Kinyanjui Njehia as plaintiff and National Bank of Kenya as Defendant are the same parties in **HCCC NO. 22 of 2015**. The plaintiff-hereof is the wife of Davis Nyanjui Njehia t/a as Davis Academy the plaintiff in **HCCC NO. 22 of 2015**. The subject matter of both suits is recovery of monies owed to the **Defendant National Bank of Kenya Ltd** by sale by public auction of their properties known as **LR NO. Bahati/Bahati Block 1/871, 872 and Dundori/Muroreni Block 2/1592, 3641 and 1589** which properties secured the loan extended to them by the defendant.

In both cases the applicants are the same, Davis Nyanjui Njehia in **HCCC No. 22 of 2015** and the spouse Mary Nyambura Njehia in **HCC HCCC No. 2 of 2016**. The issues raised on both suits and applications concern the matrimonial rights in the parcels **Bahati/Bahati Block 1/871 and 872**, the applicant and plaintiff in **HCCC No. 2 of 2016** had given her spousal consent for the charging of the subject properties. That case is still pending full hearing and determination by the court.

Before the case could be heard and determined the plaintiff came to court in this case with the same cause of action, same properties and seeking same reliefs.

By ruling dated 20th January 2016, this court declined to issue the prayers of injunction sought and declared the suit and application *Res-judicata*. In the circumstances, I find an abuse of the court process by bringing similar suit so court. All issues will competently be determined in **HCCC No. 22 of 2015**.

The doctrine of *Res-Judicata* as provided under **Section 7 of the Civil Procedure Act** is for purposes of safeguarding abuse of the court process by parties filing multiple suits in respect of the same cause of action between the same parties.

Section 7 provides:

“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 former suit 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.”

There is no doubt that the two suits concern same matter. This subsequent case after the former, which is still pending no doubt was brought to court in bad faith. It only serves to clog the court registry and to add to the case backlog. None of the parties will be prejudiced by its dismissal. Having made the above observations, I find it proper to grant the orders sought.

The plaint hereof is therefore struck out with costs to the Defendant.

Dated, signed and delivered in court this 6th day of October 2016.

JANET MULWA

JUDGE