

REPUBLIC OF KENYA

High Court at Malindi

Civil Suit 61 of 2009

ROSSI RENATAPLAINTIFF

VERSUS

FABIO MARELLI.....1ST DEFENDANT

SONGHAI INVESTMENT LTD2ND DEFENDANT

MOHAMED ESSAK BACHANI3RD DEFENDANT

R U L I N G

1. Before the plaintiff's application filed on 3rd September, 2012 could be heard, Mr. Omollo counsel for the defendants raised a preliminary objection to the effect that the application is *res judicata*. He stated that two similar applications had previously been dismissed by this court. Mr. Otara for the plaintiff/applicant conceded the fact that the present application is similar to the two others filed in the past. He submitted however, that none was heard on merits; the first was dismissed for non appearance of the applicant and the second on a technicality.

2. I have considered the respective submissions in light of the application on the record. I have also considered the ruling of the court in the application filed on 11th October, 2010, delivered on 8th July, 2011. There is no dispute that the applications dated 25th June, 2009, 11th October, 2011 and 3rd September, 2012 are similar and are brought under the same provisions save that the Civil Procedure Rules have now been renumbered.

3. It is not accurate for the applicant to state that none of the applications were heard on merit. The first was dismissed for non appearance but the second was dismissed upon a considered ruling, with reasons. These reasons do not qualify as technicalities. The court found that the application was incompetent and without merit for two main reasons:

1. The application was supported by an affidavit of one Carla Roncarlo rather than the plaintiff herein.
2. There was no basis laid for the prayer seeking security to be furnished in the sum of shs. 9m.

The court stated that had the application been properly supported it would have been granted against the defendants.

By bringing a similar application over a year later, the plaintiff is attempting to have a second bite at the cherry. Her instant application is *res judicata* and cannot be entertained. It is hereby struck out with costs to the respondents.

Delivered and signed at Malindi this **2nd** day of **November, 2012** in the presence of: Mr. Otara for the plaintiff/applicant.

Court clerks – Leah & Evans

C. W. Meoli
JUDGE