



**Okeyo v Stanbic Bank Kenya Limited (Civil Suit E124 of 2025)
[2025] KEHC 13437 (KLR) (Commercial and Tax) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13437 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E124 OF 2025
PM MULWA, J
SEPTEMBER 25, 2025**

BETWEEN

DAVID SIWA OKEYO PLAINTIFF

AND

STANBIC BANK KENYA LIMITED DEFENDANT

RULING

1. The Plaintiff instituted this suit together with the Notice of Motion dated 24th February 2025 seeking injunction orders against the Defendant to restrain the bank's statutory power of sale over the property known as 209/9071/115.
2. The Defendant objected the application and filed the Replying Affidavit sworn on 29th April 2025 and a Notice of Preliminary Objection dated 21st March 2025 citing *res judicata* and seeking to strike out the suit.
3. By the court direction, the Preliminary Objection is to be determined first by way of written submissions.
4. The Defendant filed submissions dated 29th April 2025 and submitted that the Plaintiff has concealed the existence of earlier suits involving the same parties and subject matter. In Kisumu MCCC No. E351 of 2021 – *Miriam Chilloh Siwa, David Siwa Okeyo & Space Development Ltd v Stanbic Bank Kenya Ltd*, the Court dismissed several applications challenging the Bank's statutory power of sale, and ultimately struck out the entire suit on 3rd July 2023 for want of jurisdiction and *res judicata*.
5. Similarly, in Milimani MCCC No. E1146 of 2024 – *Miriam Chilloh Siwa & David Siwa Okeyo v Stanbic Bank Kenya Ltd*, the Plaintiff again sought injunctive relief. That application was dismissed on 22nd November 2024, and the suit itself was struck out for want of jurisdiction.



6. The Defendant argues that the present suit is a duplication of the earlier matters, raising issues already determined by competent courts, and therefore offends the doctrine of res judicata as codified under section 7 of the [Civil Procedure Act](#) and affirmed in [IEBC v Maina Kiai](#) [2017] eKLR. The matters directly and substantially in issue have already been conclusively adjudicated between the same parties, litigating under the same title.
7. In addition, the Plaintiff has filed multiple suits without settling costs of the earlier discontinued or struck-out suits, contrary to Order 25 Rule 4 of the [Civil Procedure Rules, 2010](#). The Defendant relied in the cases of [Judith Cherono Mosonik v Dickson Kipkemboi](#) [2019] eKLR and [Kenya Women Micro-Finance Bank Ltd v Stellar Kavutha Muthoka](#) (Kitui HCCC No. E007 of 2023), that subsequent suits on the same cause cannot be maintained until such costs are paid. The Defendant urged the court to find that the present suit and the application are incompetent and should be struck out.
8. The Plaintiff on the other hand filed submissions dated 9th May 2025. Counsel submits that the decisions of the former suits did not fully settle the issues in question and thus the instant suit is not barred by the doctrine of res judicata as the two courts that heard the matter lacked the jurisdiction.
9. The Plaintiff further submits that the suit does not offend the provisions of order 25 rule 4 of the [Civil Procedure Rules](#) as the Plaintiff did not discontinue the suit and subsequently filed another suit on the same or substantially the same cause of action without first paying the costs of the discontinued suit. It further argues that the costs awarded in the ruling dated 3rd July 2023 have not been ascertained to date.

Analysis and determination

10. I have considered the rival submissions and authorities cited. The starting point is Section 7 of the [Civil Procedure Act](#), which 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 a former suit between the same parties, or 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.”
11. The principles of res judicata have been articulated in [E.T v Attorney General & Another](#) [2012] eKLR, where the Court emphasized that the doctrine bars not only issues that were actually determined but also those which could have been raised in earlier proceedings. The Court of Appeal in [IEBC v Maina Kiai & 5 Others](#) [2017] eKLR set out the elements of res judicata as:
 - (i) the matter was directly and substantially in issue in the former suit;
 - (ii) the former suit was between the same parties or parties under whom they or any of them claim;
 - (iii) the parties were litigating under the same title; (iv) the issue was heard and finally determined in the former suit; and (v) the court which heard the matter was competent.
12. The rationale, as emphasized in [IEBC v Maina Kiai](#) (*supra*), is to prevent multiplicity of suits, ensure finality in litigation, and safeguard judicial economy.
13. I have perused both rulings in the previous matters and I note that in the subordinate court both suits were between the same parties and the same subject matter. The interim applications also sought



injunctive reliefs restraining the bank to exercise its statutory power of sale. However, I note that the suit in Kisumu MCCC E 351 of 2021 was struck out for want of territorial jurisdiction as it was filed in Kisumu while the cause of action occurred in Nairobi. On the other hand, Nairobi MCCC/E 1146 of 2024 was dismissed for want of pecuniary jurisdiction.

14. The question that arises is whether a suit dismissed or struck out for want of jurisdiction can ground a plea of res judicata. The general principle is that a court without jurisdiction cannot make a determination on the merits of a dispute, and its decision cannot constitute a final judgment for purposes of section 7 of the Civil Procedure Act. This position was affirmed in Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1, where the Court held that:

“...jurisdiction is everything; without it, a court has no power to make one more step.”

15. I am of the view that a determination rendered without jurisdiction cannot found res judicata.
16. This view is further supported in Kagenyi v Musiramo & Another [1968] EA 43, where the Court emphasized that res judicata applies only where the previous decision was rendered by a court of competent jurisdiction. Similarly, in Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Others [1996] eKLR, the Court underscored that res judicata is premised on a competent and final adjudication of the issues in controversy.
17. Applying the above authorities, I am persuaded that since Kisumu MCCC No. E351 of 2021 was struck out for want of territorial jurisdiction, and Milimani MCCC No. E1146 of 2024 was struck out for want of pecuniary jurisdiction, neither of those courts could be said to have conclusively determined the substantive dispute on its merits. The effect is that the plea of res judicata, as framed by the Defendant, is not sustainable.
18. That said, the Defendant has also raised the issue of non-compliance with Order 25 Rule 4 of the Civil Procedure Rules, 2010 which provides:

“If any subsequent suit shall be brought before payment of the costs of a discontinued suit upon the same, or substantially the same cause of action, the court may order a stay of such subsequent suit until such costs shall have been paid.”

17. The record shows that costs were awarded against the Plaintiffs when Kisumu MCCC No. E351 of 2021 was struck out. The Plaintiffs have not demonstrated that those costs were paid or settled prior to instituting the present suit. Their argument that the costs have not been taxed or ascertained cannot avail them. Once costs are awarded, the obligation to settle arises, and taxation merely ascertains the quantum. In Judith Cherono Mosonik v Dickson Kipkemboi & Another [2019] eKLR, the Court held that a party cannot escape the bar of Order 25 Rule 4 by pleading that costs are unascertained.
18. Likewise, in Kenya Women Micro-Finance Bank Ltd v Stellar Kavutha Mutboka (Kitui HCC No. E007 of 2023), the Court struck out a subsequent suit where a party had instituted proceedings on the same cause of action without first paying costs of an earlier struck-out suit, holding that to allow such practice would encourage abuse of process and forum shopping.
19. I am persuaded that the present proceedings, though not res judicata, are incompetent for failure to comply with the mandatory provisions of Order 25 Rule 4 of the Civil Procedure Rules. This Court cannot countenance a multiplicity of suits filed in disregard of subsisting costs orders. Litigation must be conducted in a fair, orderly and economical manner.



20. In the result, I find that the Defendant's Preliminary Objection partly succeeds. The objection founded on res judicata fails, but the objection based on Order 25 Rule 4 of the [Civil Procedure Rules](#) succeeds.
21. Accordingly, the Plaintiff's suit and the Notice of Motion dated 24th February 2025 are hereby struck out with costs to the Defendant.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Otieno for Plaintiff

Mr. Mutugi h/b for Mr. Otieno for Defendant

Court Assistant: Carlos

