



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**CORAM: F. MUGAMBI, J**  
**CIVIL SUIT NO. E598 OF 2024**

**BETWEEN**

**HEPA GENERAL AGENCIES LTD .....  
PLAINTIFF/APPLICANT**

**AND**

**NCBA BANK KENYA PLC .....  
DEFENDANT/RESPONDENT**

**RULING**

**Background and Introduction**

1. This Ruling determines the applications dated 24<sup>th</sup> February 2025 and 14<sup>th</sup> March 2025 (*the applications*), both filed by Hepa General Agencies Limited. The application of 24<sup>th</sup> February seeks orders of review and for the Court to vary its orders dated 4<sup>th</sup> October, 2024 which discharged interim orders in favour of the applicant. The application of 14<sup>th</sup> March 2025 on the other hand seeks injunctive relief against the respondent.

2. The respondent has opposed both applications through a Replying Affidavit sworn on 17<sup>th</sup> March 2025 and a Supplementary Affidavit sworn on 31<sup>st</sup> July 2025, both deposed by CHRISTINE WAHOME, the respondent's legal counsel. The applications were canvassed through written submissions, which I have duly considered.

### **Analysis and Determination**

3. The respondent raises two preliminary objections that go to the jurisdiction of this Court and must be addressed at the outset; first that the applications are barred by the doctrine of res judicata under **Section 7 of the Civil Procedure Act** and secondly that the applications offend **Section 6 of the Civil Procedure Act** due to the pendency of an appeal on the same subject matter.
4. On the first issue, **Section 7 of the Civil Procedure Act** prohibits courts from re-hearing matters that have already been directly and substantially in issue between the same parties, and which have been conclusively determined by a competent court. The Supreme Court in

**Communications Commission of Kenya & 5 Others V Royal Media Services Limited & 5 Others, [2014] eKLR** and **John Florence Maritime Services Limited & Another V Cabinet Secretary Transport & Infrastructure & 3 Others, [2021] KESC 39 (KLR)** extensively elaborated on the underlying rationale and constituent elements of the doctrine.

5. The record before me speaks for itself; the issue of injunctive relief has been litigated extensively, including in this Court and the Court of Appeal in **Civil Application No E201/25** as well as in **E1388/25**. In the Ruling of 4<sup>th</sup> October, 2024, I expressed myself as follows at paragraph 18:

***“Overall, after evaluating the evidence I find that the applicants have failed to establish a prima facie case with a probability of success. Their claim for an injunction therefore fails at the first hurdle in line with the dicta in Nguruman Limited v Jan Bonde Nielson & 2 Others (supra)....”***

6. This finding was definitive and dispositive of the issue. The current applications, which seek to reintroduce the same prayers under the guise of review and fresh injunctive relief, amount to a collateral attack on a concluded matter. They are therefore barred by the doctrine of *res judicata*.
7. Additionally, it is not in dispute that the applicant has filed an appeal in the Court of Appeal, being **Civil Appeal No. E055 of 2025**, involving the same parties and subject matter. There is a pending application dated 28<sup>th</sup> January 2025 before the appellate court. **Section 6 of the Civil Procedure Act** prohibits a court from proceeding with a matter where the same issues are directly and substantially in issue in a previously instituted suit between the same parties, which is pending before a court of competent jurisdiction.
8. Moreover, pursuant to **Order 45 Rule 1(1) of the Civil Procedure Rules**, a party may only seek a review of a judgment or order where no appeal has been preferred, unless the review and the appeal relate to distinct and separate issues. The Court of Appeal in **Multichoice (Kenya) Ltd V Wananchi**

**Group (Kenya) Limited & 2 Others, [2020]**

**eKLR** held:

***“It is now an accepted view that both the Civil Procedure Rules and the Court of Appeal Rules did not contemplate the simultaneous proceedings of review and appeal before two different courts at the same time. Where a party has filed an appeal but subsequently wishes to apply to the court from which the appeal came to review the decision impugned, that party must, in the first place, withdraw the appeal.”***

9. This position was reaffirmed in **Karani & 47 Others V Kijana & 2 Others, [1987] KLR 557,** where the Court held that once an appeal is filed, the remedy of review is no longer available. Accordingly, the applicant’s attempt to invoke the review jurisdiction on issues that are substantially similar to those pending before the Court of Appeal is legally untenable. This Court is therefore divested

of jurisdiction to entertain the application for review.

## **Disposition**

**10.** Accordingly,

- i. The Notice of Motion dated 24<sup>th</sup> February 2025 is hereby struck out.***
- ii. The Notice of Motion dated 14<sup>th</sup> March 2025 is equally struck out.***
- iii. The costs of both applications shall be borne by the applicant.***

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI  
THIS 14<sup>TH</sup> DAY OF NOVEMBER 2025.**

**F. MUGAMBI  
JUDGE**