Muiga & another v Ndanyi (Civil Appeal E881 of 2024)
[2025] KEHC 16088 (KLR) (Civ) (3 November 2025) (Judgment)

Neutral citation: [2025] KEHC 16088 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E881 OF 2024

FR OLEL, J

NOVEMBER 3, 2025

BETWEEN

THOMAS MWANGU MUIGA ..... 1ST APPELLANT

BENARD MUGAMBI MURIUKI ..... 2ND APPELLANT

AND

VICTORIA CLAIRE NDANYI ..... RESPONDENT

(Being an Appeal from the Ruling and Order of the Small Claims Court at Nairobi by Honorable Casmir Obiero-adjudicator Delivered on the 24th July, 2024)

JUDGMENT

A. Introduction

1. The Appellants were sued by the respondent before the small claims court, where she sought compensation totaling Kshs.258,160/= being costs incurred in repairing her motor vehicle registration Number KCE 530G- Nissan station Wagoon (hereinafter referred to as the 1st suit motor vehicle), which had been knocked by the appellants motor vehicle registration Number KCC 182V – Toyota Harrier (herein after referred to as the 2nd suit motor vehicle), which accident occurred on 15th October 2020 at around 1110hrs along Thika road at Kirima Area.

2. In response, the appellants denied the claimants' averments and stated that the suit filed was bad in law for the reason that the claimant had previously filed a suit as against them being Nairobi-SCCC No E2362 of 2022 Victoria Claire Ndanyi Vs Daniel Mugambi, Joe Mugambi & Willow Motors Motors Limited, which claim related to the said accident and was settled by a consent adopted in court on 14th November 2022 pursuant to which payment was released. The current suit was thus res judicata, and they urged the court to uphold the objection raised.

3. Subsequently, the appellants did file their notice of motion Application dated 15th April 2024 and sought to have the suit struck out on this basis. The same was considered on merit, and the trial magistrate vide his ruling dated 25th July 2024 dismissed the said application, thus this Appeal.

4. The Appellants, being dissatisfied with the said ruling, raised four (4) grounds of appeal, namely: -

   a. That the learned adjudicator erred in dismissing the Appellants' application and failed to consider relevant facts and law.

   b. That the learned Adjudicator erred in law and in fact in failing to consider that the cause of action in both suits occurred on the same day and involved the same motor vehicles.

   c. That the learned adjudicator erred in law and in fact in failing to hold that the causes of action were similar on all fours.

   d. That the learned Adjudicator erred in law and in fact in failing to consider the Appellants' submissions.

5. The Appellant thus prayed that the appeal be allowed and the ruling/order of the trial court be set aside.

B. Analysis and Determination

6. I have considered the entire record of Appeal and pleadings filed, the grounds of appeal raised, the submissions filed by both parties, and the cited authorities. This being an appeal from the Small Claims Court, it is important to point out that Section 38 of the *Small Claims Court Act* provides that appeals from the said court shall be only on issues of law. It provides thus:

   Section 38

   1. A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.

   2. An appeal from any decision or order referred to in subsection (1) shall be final."

7. It is clear from the aforementioned provision that the jurisdiction of this Court from the Small Claims Court will only lie on matters of law and not on factual issues. An appeal limited to matters of law does not permit the appellate court to substitute the tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts.

8. In John Munuve Mati Vr The returning officer, Mwingi North Constitency & 2 others (2018) eKLR, what amounts to "matters of law" was described as;

   (38) The interpretation or construction of *the constitution*, statute, or regulations made thereunder or their application to the sets of facts established by the trial court. As far as facts are concerned, our engagement with them is limited to background and context, and to satisfy ourselves, when the issue is raised, whether the conclusions of the trial judge are based on the evidence on record or whether they are so perverse that no reasonable tribunal would have arrived at them. We cannot be drawn into consideration of the credibility of witnesses or which witnesses are more believable than others; by law, that is the province of the trial court.

9. This Appeal is centered on the question of Res Judicata, which is a purely an issue of law.

10. Section 7 of the *Civil Procedure Act*, 2010 provides as hereunder:

> " 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. It is now old hat that the said doctrine applies to both suits and applications, as was held in Abok James Odera vs. John Patrick Machira, Civil Application No. Nai. 49 of 2001. However, as was held in the said suit, to rely on the defence of res judicata, there must be:

(i) A previous suit in which the matter was in issue;

(ii) the parties were the same or litigating under the same title;

(iii) A competent court heard the matter in issue;

(iv) The issue had been raised once again in a fresh suit.

12. As regards the rationale of the doctrine of res judicata, reliance is placed on the decision of the Court of Appeal in Independent Electoral & Boundaries Commission –vs- Maina Kiai & 5 Others (2017) eKLR, where the court held that

> " The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice."

10. In the Maina Kiai case (supra), the Court quoted with approval the Indian Supreme Court in the case of Lal Chand vs. Radha Kishan, AIR 1977 SC 789, where it was stated;

> > " The principle of res judicata is conceived in the larger public interest, which requires that all litigation must, sooner than later, come to an end. The principle is also founded in equity, justice, and good conscience, which require that a party that has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving the determination of the same issue. The practical effect of the res judicata doctrine is that it is a complete estoppel against any suit that runs afoul of it, and there is no way of going around it – not even by consent of the parties – because it is the court itself that is debarred by a jurisdictional injunct from entertaining such a suit."

13. Finally, in Gurbachan Singh Kalsi vs. Yowani Ekori Civil Appeal No. 62 of 1958, the former East African Court of Appeal stated as follows:

> " Where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward

> their whole case, and will not, except under special circumstances, permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgement, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time...No more actions than one can be brought for the same cause of action, and the principle is that where there is but one cause of action, damages must be assessed once and for all...A cause of action is every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved.

14. It is not in dispute that both suits filed related to an accident, which occurred on 15th October 2020, along Thika road at Kirima area, involving the two suit motor vehicles, and that a consent was recorded to settle the first suit on 14th November 2022. Subsequently, the decretal amount of Kshs.227,708.00 was released by Old Mutual Insurance Company to the respondents' advocate on 28th November 2022, settling the said decree.

15. The trial Magistrate did find that the claimant was the same person, but the prayers sought were different, and further held that the respondents sued in the previous suit were different from the respondents sued in the present suit, and therefore, the instant suit could not be held to Res judicata.

16. The adjudicator erred in his finding, as both suits relate to the same cause of action, and the prayers sought were similar, i.e, for compensation for material damage suffered as a result of a road traffic accident, which occurred on 15th October 2020, along Thika road at Kirima area, involving the two suit motor vehicles.

17. The respondent herein did raise the issue that the parties sued in the first claim and the second claim are different, but obviously, it is so, because the principal and/or agent may be sued and/or could have been as a result of a misdescription of the parties which does not wipe out the core of the dispute, earlier settled in the prior suit. Section 7 of the *Civil Procedure Act* also recognizes the fact that a matter would still be res judicata even if those sued are parties under whom they or any of them claim.

C. Disposition

18. I do therefore find and hold that this Appeal has merit.

19. The ruling/ order issued in Nairobi SCCC E5199 of 2023 dated 25th July 2024 is hereby set aside and substituted with an order allowing the Notice of Motion Application dated 15th April 2024 in terms of prayers (1) and (2).

20. The costs of this Appeal are awarded to the Appellant and are hereby assessed at Kshs.100,000/= all inclusive.

21. Stay of execution 45 days

22. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MARSABIT THIS 3RD DAY OF NOVEMBER, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 3RD DAY OF NOVEMBER,2025.

In the presence of: -

N/A ..... Appellant

N/A ..... Respondent

Mr. Jarsao ..... Court Assistant