



**Chebet v I&M Bank Kenya Limited & another (Civil Case
E029 of 2025) [2026] KEHC 38 (KLR) (14 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 38 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE E029 OF 2025
RN NYAKUNDI, J
JANUARY 14, 2026**

BETWEEN

IRENE CHEBET PLAINTIFF

AND

I&M BANK KENYA LIMITED 1ST DEFENDANT

ANTIQUA AUCTIONS AGENCIES 2ND DEFENDANT

RULING

1. There are two applications before this court one by the Plaintiff/ Applicant dated 24th November 2025 which is pleaded as follows by way of a notice of motion expressed to be brought under Order 40 Rule (1), (2) and 9 Order 20 Rule 4 of the Civil Procedure Rules 2010 read with Sections 1 A, 3 and 3 (A), 63 (e) of the *Civil Procedure Act* Chapter 21 Laws of Kenya, Rules 15 and 16 of the Auctioneer Rules 1997 and all other enabling provisions of the Law. The application is seeking for the following orders:
 - a. That this application be certified as urgent and service of the same be dispensed with in the first instance.
 - b. That an interlocutory injunction do issue restraining the Defendants/ Respondents, their agents, servants and/or employees from advertising, offering for sale by way of public auction or private treaty and/or transferring, disposing off and/or in any manner dealing with all that 1st plaintiff's Parcel of Land known as Parcels of Land known as Liz. Eldoret Municipality/ Block 14/2464 pending the hearing and determination of this application inter-parties.
 - c. That a permanent injunction do issue restraining the Defendants/ Respondents, their agents, servants and/or employees from advertising, offering for sale by way of public auction or private treaty and/or transferring, disposing off and/or in any manner dealing with all that Parcel of Land known as Parcels of Land known as I-JR. Eldoret Municipality/Block 14/2464 pending the hearing and determination of the main suit.



- d. That an order do issue to the 1st defendant/respondent ordering them to supply all the loan account statements relating to the loans advanced to the 2nd Plaintiff and the further charge documents.
 - e. That costs be provided for.
2. Which application is based on the following grounds:
- a. That the 1st Plaintiff/ Applicant charged her land parcel LR. Eldoret Municipality/Block 14/2464 with the defendant as a third party collateral for a Kshs. 5,000,000/ = loan facility advanced to the Borrower Robimart Petroleum ltd.
 - b. That the aid facility has been serviced fully.
 - c. That the plaintiff has been served with a notification of sale by way of public Auction for her land parcel which has also been advertised for sale on the 5th day of November, 2025.
 - d. That the notification of sale mentions service of redemption notices which have never been served upon her.
 - e. That the Plaintiff has also discovered from the copy of Title deed supplied by the 1st defendant and two further charges of Kshs. 15,000,000/ = and 9,000,000/= were registered against the same which she contends was irregular as she didn't execute the same.
 - f. That apart from the Notification of sale dated the 16th day of October, 2025 the defendants have not served the plaintiff with all other Statutory Notices in compliance with the mandatory provisions of the Land Act No. 6 of 2012.
 - g. That the 1st and 2nd defendants have served the plaintiff with a notification of sale and advertised the property hence clogging the 90 days statutory period which the plaintiff is granted by the law.
 - h. That as such the auction will be unlawful and unprocedural compounded by the fact that the said property is her family homes/matrimonial home and sale of the same will render homeless and destitute.
 - i. That the loan arrears of Kshs. 49,947,395.16/= is in express breach of Section 44a of the banking Act (Duplum Rule) as the principal amount borrowed was Kshs. 29,000,000/ = out of which Kshs. 15,000,000/ = has already been paid and therefore the 1st defendant cannot claim an amount that is more than the principal borrowed or the arrears owing as at the time they became due.
 - j. That the defendants/ Respondents are unlawfully using the threat of sale by way of public auction to exert pressure on the applicants to pay extra sums of money that are not due under the contract between the parties and thereby clogging their right of redemption of the suit properties and at the same time rendering their demand and actions immoral, exploitative and unconscionable.
 - k. That it is therefore in the interest of justice the Defendant/ Respondent be restrained by way of an injunction from offering for sale by way of public auction the suit properties being LR. Eldoret Municipality/ Block 14/2464.
 - l. That this application has been brought promptly and in good faith.



- m. That the defendants/respondents will not be prejudiced in any way if the orders sought are granted.
3. The application is supported by the affidavit sworn by Irene Chebet who depones as follows:
- a. That I am the plaintiff/ applicant herein hence competent and authorized to swear this affidavit.
 - b. That I am the registered owner of Land parcel known as LR. Eldoret Municipality/Block 14/2464. (Annexed is a copy of certificate of lease marked IC.
 - c. That I charged my title as a third party collateral with the 1st defendant for a loan facility of Kshs. 5,000,000/= advanced to an entity called Robimart Petroleum Ltd which was the principal borrower.
 - d. That I was recently served on my WhatsApp with a notification of sale from the 2nd defendant for my aforesaid land alleging I had been earlier served with redemption and other notices. (Annexed is a copy of Notification of sale marked IC '2')
 - e. That consequently the 1st defendant has instructed the 2nd defendant, who has advertised my aforesaid Parcel of Land by public Auction on the 5th day of November, 2025. (Annexed is a copy of Advert marked IC '3')
 - f. That from the copy of the Title deed provided by the 1st defendant I discovered that the 1st defendant illegally and without my consent entered further charges of Kshs. 15,000,000/= and Kshs. 9,000,000/= against my aforesaid title deed. (Refer to annexure marked IC 1)
 - g. That at no time did I ever execute any further charges committing my title deed and indeed my aforesaid land parcel for the further loans advanced to the borrower hence the same was illegal.
 - h. That the defendants have never served me with the 90 days statutory notice as required by the law as we have only been served with the notifications of sale dated the 16th day of October, 2025.
 - i. That the defendants have also in an attempt to deprive me of my property inflated the loan arrears of Kshs. 49,947,395.16/= is in express breach of Section 44a of the [banking Act](#) (DUPLUM RULE) as the principal amount borrowed was Kshs. 29,000,000/= out of which Kshs. 15,000,000/= a calculation of the unpaid principal sum and interest cannot reasonably amount to the sum demanded.
 - j. That the loan has been substantially repaid and the figures claimed are unreasonable and unjustified.
 - k. That the defendants have clogged our 90 days statutory notice by serving us the 45 days redemption notices and statutory demand notices and is an attempt to clog my equitable rights of redemption.
 - l. That I have been advised by our advocate on record and which advice I verily believe to be True that the 1st defendant has applied unconscionable and illegal interest on the principal sum using threats of sale by way of public auction to exert pressure on me to pay extra sums that are due on the loan account.
 - m. That I have been advised by our advocate on record and which advice I verily believe to be True that the amount claimed by the defendants is not only illegal but expressly breaches section 44



- (a) of the Banking Act (In Duplum rule) by demanding an amount that is more than double the principal advanced.
- n. That I have been advised by our advocate on record and which advice I verily believe to be True that the intended sale by way of Public Auction is in direct breach of the Auctioneer Rules 1997 as the requisite notices under section 90 of the Land Act, 2012 as to 90 days service.
 - o. That I have been advised by our advocate on record and which advice I verily believe to be True that the intended sale by way of Public Auction is in direct breach of the Auctioneer Rules 1997 as the requisite notices under section 96(2) of the Land Act, 2012 as to 40 days service.
 - p. That I have been advised by our advocate on record and which advice I verily believe to be true that the intended no valid redemption notice and Notification of sale has been issued and served.
 - q. That I have been advised by our advocate on record and which advice I verily believe to be True that the intended sale by way of Public Auction is in direct breach of section 97(2) of the land Act, 2012 as no valuation has been undertaken and neither has a reserve price has been set as expected under section 98 (1) of the Land Act 2012.
 - r. That the charged/ Mortgaged property has my family/ matrimonial home/ house where my family live and sale of the same will unfairly and unjustly deprive me of shelter and render me destitute and homeless a loss which cannot be compensated monetarily.
 - s. That I stand to suffer great loss and damage in the event that my land is sold by way of public auction.
 - t. That I therefore pray that the defendants/Respondents be restrained by way of an injunction from offering for sale our Parcels of land as i have demonstrated a prima facie case with probability of success.
 - u. That I have made this application promptly and in good faith and that we have demonstrated the principles set out in the case of Gielle —vs- Cassman Brown as legally informed by my advocate on record.
 - v. That the defendants/ Respondents will not be prejudiced in any way if the orders sought herein are granted.
 - w. That I swear this affidavit in support of the application now before court.
 - x. That this honorable court has unfettered discretion to grant the orders sought.
4. In the response to the first application the 1st defendant/respondent through Flavia Wambui the Bank's Senior Associate Recovery Unit deponed as follows:
- a. I am currently engaged by the Bank as a Senior Associate, Debt Recovery Unit and well conversant with the facts of the instant Plaintiff/Applicant's Notice of Motion Application dated 4th November, 2025 together with the supporting affidavit (hereinafter "the Applicant" and the Application" respectively) by virtue of my office and I have been duly authorized by the Bank, thus competent to swear this Affidavit on its behalf.
 - b. I have read, understood and where necessary I have had the nature and import of the Application and underlying suit fully explained to me by Messrs. G&A Advocates LLP (hereafter, "the Bank's Advocates on record"). I therefore depose this Affidavit in opposition to the instant Application.



- c. At the outset, I am advised by the Bank's Advocates on record whose advice I verily believe to be true that:
- i. the instant application is resjudicata on the account that the matters in issue and the orders sought were already determined vide the ruling of Justice Emily Ominde delivered on 16th October 2025; (Annexed and marked as FW-I is a true copy of the Ruling dated 16th October 2025).
 - ii. The proceedings relating to present suit are barred by the doctrine of subjudice as they are substantially similar to the case in Eldoret HCCC No. E029 of 2024 — Irene Chebet v. I&M Bank Limited & Antique Auctions Agencies which is pending before a competent court; and (Annexed and marked as FW -2 (a) and (b), are true copies of the Notice of Motion Application and Complaint both dated 20th November 2024).
 - iii. Consequently, the Plaintiff is precluded from instituting the present suit in respect of the same issues that are already before another court of competent jurisdiction.
 - iv. I note that Plaintiff herein is the director of Robimart Petroleum Company Limited (hereafter, "the principal debtor"), and in her aforesaid capacity, together with one Martin Robin Kinuthia, executed joint and personal guarantees and indemnifies to secure the credit forming the subject of the present suit before this Honourable Court.
 - v. I confirm that the two further charges of Kshs. 15,000,000/= and Kshs. 9,000,000/= registered over the suit property in favour of the 1st Defendant are regular. The Plaintiff executed the legal charges in the presence of legal counsel and were duly registered as per the requirements of the law. (Annexed and marked as FW-3 are true copies of the Further Charge dated 19th July 2021 and Second Further Charge dated 19th December, 2022)
 - vi. I am aware that the principal debtor and the Applicant herein defaulted on their repayment obligations almost in the various loan facilities advanced by the Bank. In response, the Bank exercised its post-default rights by initiating the exercise of the statutory power of sale over the securities being; Eldoret Municipality/Block/2464. Bank's agents had initially slated the sale of the suit property for 4th December 2024. This triggered the Applicant to Eldoret HCCC No. E029 of 2024 — Irene Chebet v. I&M Bank Limited & Antique Auctions Agencies.
 - vii. Contrary to the allegations raised the application and supporting affidavit, I confirm that apart from the Notification of Sale dated 16th October 2025, the Plaintiff was served with the requisite notices via registered post sent to P.O. Box 3592-30100, Eldoret, as outlined below:
 - a. Statutory Demand Notice: The Plaintiff was served with a statutory demand notice dated 16th November 2023, requiring payment of arrears amounting to Kshs. 3,620,867.66 within 14 days, failing which the security would be realized. Service is evidenced by the certificate of postage dated 21st November 2023. (Annexed and marked as FW -4 are true copies of the Demand Notice dated 16th November 2023 and the Certificate of Postage dated 21st November 2023).



- b. 90-Day Statutory Notice: The Plaintiff was also served with a 90-day statutory notice dated 18th December 2023 via her Ordinary Registered Mail (ORD), as evidenced by the certificate of postage dated 18th December, 2023 (Annexed and marked as FW-5 is a true copy of the 90-day Statutory Notice and the corresponding Certificate of Postage both dated 18th December, 2023).
 - c. 40-Day Statutory Notice: The Plaintiff was served with a 40-day statutory notice dated 30th July 2024, as evidenced by the certificate of postage dated 2nd August 2024. (Annexed and marked as FW-6 are true copies of the 40-day Statutory Notice dated 30th July 2024 and the Certificate of Postage dated 2nd August 2024).
 - d. 45-Day Redemption Notice and Notification of Sale: The Plaintiff was duly served with the 45-day redemption notice and notification of sale dated 30th September 2024, inviting her to redeem the property known as Eldoret Municipality/Block 14/2464 by settling the outstanding debt of Kshs. 46,947,395.16 as at 27th September 2024. Service was effectively completed on 2nd October 2024. (Annexed and marked FW -7 (a), (b) & (c) are true copies of the Redemption Notice and Notification of Sale both dated 30th September 2024 along with the corresponding postage receipt dated 1st October 2024.)
- viii. I am advised by the Bank's Advocates on record, whose advice I verily believe to be sound, that in her ruling delivered on 16th October 2025, Hon. Justice Emily Ominde, at paragraph 68, found and observed that she was fully satisfied that the Plaintiff herein had been duly served with all the requisite statutory notices. Based on that finding, the only remaining legal requirement was for the Bank to issue a Notification of Sale. There was therefore no obligation to re-issue a redemption notice or any other notice which the Court had already upheld as valid.
- ix. I am further advised that the Plaintiff's allegation that the arrears sought to be recovered by the Bank are barred by the in duplum rule under the Banking Act is misconceived and unique. In addition to her personal loan facility of Kshs. 29,000,000/= the Plaintiff, in her capacity as a director of Robinmart Petroleum Limited, executed several Letters of Guarantee and Indemnity, thereby guaranteeing facilities advanced to the said company, which are currently in default. As at 23rd November 2022, the aggregate sum of the facilities advanced to the Plaintiff and those she guaranteed on behalf of her company stood at Kshs. 37,215,000/=. The said Letters of Guarantee and Indemnity include: Letter dated 30th March 2021 for Kshs. 3,000,000/=Letter dated 27th April 2021 for Kshs 10,000/=Letter dated June 2021 for Kshs 24,600,000/=Letter dated 29th August 2022 for Kshs 22,000,000/=Letter dated 23rd November 2022 for Kshs 37,215,000/=
- x. Flowing from the above, I am advised by the Bank's Advocates on record whose advice I trust that:
- a. The intended sale of the suit property is lawful and not irregular as alleged by the Plaintiff;
 - b. All requisite statutory notices were properly served upon the Plaintiff in her capacities as both chargor and guarantor; and



7. Which Application is supported by annexed affidavit sworn by Flaviah Wambui, deponed as follows:
- a. I am currently engaged by the Bank as a Senior Associate, Debt Recovery Unit and well conversant with the facts of the instant suit by virtue of my office and I have been duly authorized by the Bank, thus competent to swear this Affidavit on its behalf.
 - b. I am aware that the Claimants' have instituted two different suits before this Honourable Court being this present matter and Eldoret HCCC No. E029 of 2024 — Irene Chebet v. I&M Bank Limited & Antique Auctions Agencies, both of which arise from the same cause of action, based on identical set of facts, involve the same parties litigating under the same title, and involve the same suit property.(Annexed and marked FW-I (a) and (b) are copies ofPlaint and Notice ofMotion Application dated 20th November, 2024)
 - c. I am aware that Eldoret HCCC No. E029 0/2024 - Irene Chebet v. Bank Limited & Antique Auctions Agencies is scheduled for pre-trial on 17th November 2025 before Hon. Lady Justice Emily Ominde, while this present suit is fixed for ruling of an application on Sunday, 30th November, 2025.
 - d. I am advised that the interim orders issued by this honourable court on 5th November 2025 relates to issues that were conclusively determined in the decision of Hon. Lady Justice Emily Ominde delivered on 16th October 2025. (Annexed and marked FW-2 is a true copy of the ruling delivered on 16th October, 2025)
 - e. I am aware that the said decision has neither been set aside, appealed against, nor otherwise declared invalid. Consequently, the issue of restraining orders against the Bank is res judicata by virtue of the decision in the former suit.
 - f. The Plaintiff's act of seeking and obtaining interim orders from this Honourable Court, despite the existence of the said decision, amounts to forum shopping and concealment of material facts intended to mislead the Court.
 - g. I am advised by the advocates on record for the 1st Defendant/Applicant that Section 6 of the *Civil Procedure Act* expressly bars a court from proceeding with the trial of a suit or proceedings where the matter in issue is directly and substantially the same as that in a previously fristituted suit or pending proceedings between the same parties, or persons claiming under them, litigating under the same title.
 - h. I am further advised that the provision requires that where such an earlier suit or proceedings are pending before a court of competent jurisdiction in Kenya, the subsequent matter must be stayed to prevent duplication of litigation and to safeguard the integrity of judicial decisions.
 - i. I am also advised by the advocates on record for the 1st Defendant/ Applicant that the institution of two similar suits before the same court constitutes a gross abuse of the court process which is intended to vex, embarrass and prejudice the Applicant herein.
 - j. I am further advised by the advocates on record for the 1st Defendant/Applicant that the pendency of multiple suits on the same issues creates unnecessary multiplicity of proceedings and amounts to a waste of judicial time and the risk of conflicting decisions.
 - k. It is therefore in the interest of justice, equity and proper administration of justice that this Honourable Court grants the orders sought in this Application.



- l. All what is deposed to hereinabove is true to the best of my knowledge and belief save as to matters deposed to on information sources whereof have been disclosed and matters deposed to on belief, grounds whereupon have been set out.

Decision

8. This application by the Plaintiff/Applicant, raises serious fundamental procedural issues if the replying affidavit evidence by the Respondents dated 6.11.2025 is anything to go by. According to the Respondents the Applicant in HCC E029 of 2025 happens to be the same Applicant in HCC E029 of 2024 currently pending before Ominde J for hearing and determination. As at the time the Applicant/Plaintiff failed case docket HCC E029/2025 she did not disclose nor her legal counsel that there was already an ongoing proceeding on the same subject matter in HCCC E029 /2024. My reading of the record of the former suit before Justice Ominde a Notice of Motion dated 20.11.2024 is identical with the Notice of Motion filed in court dated 4.11.2025. The record is also clear that in HCCC E029/2024 the learned session Judge pronounced herself as follows with regard to grant or denial of temporary injunction.

The above said, from the evidence tendered in court, and the averments in the in the affidavits, the court is very well satisfied that contrary assertions, the applicant was duly served with all the requisite statutory by the respondent. In this regard, I find that the Applicant has failed to e prima facie case with a high probability of success. This being the ca as was held in the case of Nguruman Limited v Jan Bonde Nielsen the court need not delve into the other requirements for the issuance injunction to wit irreparable loss and balance of convenience.

The upshot then is that the application lacks merit and the same is n dismissed in its entirety and the applicants' prayer for an interim in denied. Accordingly, having found that the 1st respondent correctly its statutory power of sale, the prayer for the supply of the lo statements is equally dismissed as the burden of proof of any pay towards the settlement of the borrowed sums fell squarely on the applicant. Having failed to discharge this burden, the same transferred to the applicant. The conclusion from the foregoing is that the application is di entirety with costs to the Respondents.

9. In the same context the Applicant/Plaintiff in HCCC E029/2024 filed yet another Notice of Motion 4.11.2025 seeking the following orders:
 - a. That this application be certified as urgent and service of the same be dispensed with in the first instance
 - b. That interlocutory injunctions do issue restraining the Defendants/Respondents, there agents servants and or employees from advertising, offering for sale by way of public auction or private treaty and/or transferring, depositing off and/or in any manner dealing with all that 1st Plaintiff's parcel of Land known as parcels of Land known as LR Eldoret/Municipality/Bock 14/2464 pending the hearing and determination of this application inter-parties.
 - c. That a permanent injunction do issue restraining the Defendant/Respondents, their agents, servants and/or employees from advertising, offering for sale by way of public auction or private treaty and/or Transferring disposing off and oar in any manner dealing with all that parcel of land known as parcels of Land known as LR Eldoret municipality /block 14/2464 pending the hearing and determination of the main suit



- d. That an order do issue to the 1st Defendant/respondent ordering them to supply all the loan account statements relating to the loans advanced to the 2nd plaintiff and the further charge documents
10. My comparative analysis of the record as submitted to the court registry in case dockets HCCC E029/2024 and HCCC E029/2025 the justiciable issues capable of being adjudicated by a court of competent jurisdiction remain to be similar and identical. This litigation by the Applicant/Plaintiff against the Respondents/Defendants can better be Described as an abuse of the Court process. The key principles in which a litigation can be described as an abuse of the Court Process includes filing Multiple suits on the same issue, forum shopping, vexatious claims, or Using proceedings to harass opponents as it is the case here. The abuse of the court process often involves bad faith, harassment, or using the court for ulterior motives beyond genuine legal remedy with courts halting such actions to protect justice integrity. (See JWK V IKE (2024) KEHC 11647.), Ideru v Hussein & 10 Others (2025) KEEELC 1180 (KLR)
11. The import of this proceedings being conducted by the Applicant/ Plaintiff in the two case dockets registered at different periods with separate session judges handling each one of them is a violation of Section 7 of the *Civil Procedure Act* on the doctrine of Res-judicata. The court in the case of Kenya Commercial Bank Limited Vs. Muiri Coffee Estate Limited (2016) eKLR the court stated as follows:-

“Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights. Such a perception has a basis in comparative jurisprudence; in the Ugandan case of Hon. Norbert Mao v. Attorney-General, Constitutional Petition No. 9 of 2002; [2003] UGCC3, the petitioner brought an action on behalf of 21 persons from his constituency, for declarations under Article 137 of the Uganda Constitution, and for redress under Article 50 of that Constitution. The matter arose from an incident in which officers of the Uganda Peoples Defence Forces attacked a prison, and abducted 20 prisoners, killing one of them. Unknown to the petitioner, another action had already been filed under Article 50, seeking similar relief; and Judgment had been given in Hon. Ronald Reagan Okumu v. Attorney- General, Misc. Application No.0063 of 2002, High Court HCT 02 CV MA 063 of 2002. The Constitutional Court dismissed the petition, on a plea of res judicata, declining the petitioner’s pleas that certain important constitutional declarations now sought, had not been accommodated in the earlier Judgment.

In *Silas Make Otuke v. Attorney-General & 3 Others*, [2014] e KLR, the High Court of Kenya agreed with the Privy Council decision in *Thomas v. The AG of Trinidad and Tobago* (1991) LRC (Const.) 1001, in which the Board was “satisfied that the existence of a constitutional remedy as that upon which the appellant relies does not affect the application of the principle of res judicata”.

The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.



It emerges that, contrary to the respondent's argument that this principle is not to stand as a technicality limiting the scope for substantial justice, the relevance of res judicata is not affected by the substantial-justice principle of Article 159 of *the Constitution*, intended to override technicalities of procedure. Res judicata entails more than procedural technicality, and lies on the plane of a substantive legal concept.

12. It is trite law that the doctrine of res judicata is to protect courts from having to adjudicate more than once on issues arising from the same cause of action and to protect the public interest that there should be finality in litigation and that justice be done between the parties. The unique circumstances of this matter is that Ominde J in HCCC E029/2024 had adjudicated the issue of grant of temporary injunction in terms of order 40 Rule 1&2 of the Civil Procedure Rules with finality. Apparently, we share the same concurrent jurisdiction with the leered Judge currently presiding over High Court No. 3 as appropriately constituted under Article 50 (1) of *the constitution*. It is also true to state that the same Applicant who lost the application in HCCC E029/2024 filed yet another notice of motion dated 4.11.2025 which was pending determination on the merits with the background of this court having been persuaded at the exparte stage to issue structural interim interdict pending the full hearing of a foresaid Notice of Motion.
13. The position in law is not in dispute on such multiplicity of suits and applications. In my considered view the principle of cause of action estoppel in so far as the two interlocutory applications are concerned applies to limit any such litigation by the Applicant /Plaintiff to pursue a remedy in the Notice of Motion dated 4.11.2025. The cause of action estoppel arises where the cause of action in later proceedings is identical to that in earlier proceedings. The latter having been between the same parties or their privies and having involved the same subject matter. For clarity purposes the land parcels of land known as LR Eldort Municipality/Block 14/2464 happens to be the same in the earlier litigation namely HCCC E029/2024. In the landmark case in *Henderson v Henderson* (1843) 3 Hare 100, 114-115 Sir James Wigram V-C stated:

In trying this question, I believe I state the rule of the court correctly, when I say, that 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 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 judgment, 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.”

14. Likewise the Supreme Court in *Kenya Commercial Bank Limited v Muiri Coffee Estate Limited* (2016) eKLR explained the doctrine of res judicata as follows:

“(52) Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights. The same court also in *John Florence Maritime Services Limited & another* opined as follows: “The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons



claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively. It emerges that, contrary to the respondent's argument that this principle is not to stand as a technicality limiting the scope for substantial justice, the relevance of res judicata is not affected by the substantial-justice principle of Article 159 of *the Constitution*, intended to override technicalities of procedure. Res judicata Constitutional Petition No. E536 of 2022 – Ruling Page 18 of 26 entails more than procedural technicality, and lies on the plane of a substantive legal concept. 56. The learned authors of Mulla, Code of Civil Procedure, 18 th Ed 2012 have observed that the principle of res judicata, as a judicial device on the finality of court decisions, is subject only to the special scenarios of fraud, mistake or lack of jurisdiction”

16. I have applied my mind with the facts of this case as ventilated by the parties in their respective affidavits in support and against the Notice of Motion in HCCC E029/2025 and further taken the view points on the facts and the law by my sister Judge Ominde J in HCCC E029 /2024 and the comprehensive ruling delivered on 16.10.2025. It is my finding that the main issue at hand has been properly articulated by the Respondents in their application together with the replying affidavits which outlines the evidential material to render any such litigation in E029/2025 an abuse of the court process. The proceedings in HCCC E029/2025 stand impeached on two fronts being the criteria for cause of action estoppel and the doctrine of Res-judicata which full fills the societal interest of finalizing litigation in one case docket at a time to avoid multiplicity of suits and applications by the same parties in the same subject matter. For that matter HCCC E029/2025 be and is hereby struck out as the remedy on the cause of action being pursued by the Applicant/Plaintiff is capable of being determined in HCCC E029/2024. The Respondents shall have the costs of this application.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 14TH DAY OF JANUARY 2026

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R. NYAKUNDI

JUDGE

