

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
COMMERCIAL CASE NO. E006 OF 2025

ALFRED JUMA MALOBA PLAINTIFF/RESPONDENT

-VERSUS-

STANDARD CHARTERED BANK 1ST DEFENDANT/APPLICANT
PHILLIPS INTERNATIONAL

AUCTIONEERS 2ND DEFENDANT/APPLICANT

R U L I N G

1. Before Court is a Motion on Notice dated **6/10/2025** by the applicants. The same was brought under *sections 3A & 7 of the Civil Procedure Act & Order 51 rules 1 of the Civil Procedure Rules 2010*.
2. The applicants sought to have the entirety of the respondent's suit struck out on account of it being *sub-judice/res-judicata*, similar suits that revolve around the same issue being the intended sale of the suit property, **Title Number Kisumu Municipality Block 6/15**. That the respondent has lodged those suits in both the Nairobi & Kisumu registries.
3. The grounds upon which the application was made were set out in the body thereof and in the Supporting affidavit of **Boniface Machuki** sworn on **6/10/2025**. These were that, the Plaintiff has since **2022** filed 4 other previous suits with the intention of obtaining ex-parte interim injunctions stopping the 1st applicant's exercise of its statutory power of sale over **Title**

Number Kisumu Municipality Block 6/15 (“the Suit Property”) being, **Nairobi HCCOMM E429 of 2022, Kisumu MCCC No. E171 of 2023, Kisumu HCCC E006 of 2024 and Kisumu HCCC E004 of 2025.**

4. That the respondent’s application for an injunction was substantively considered by Honourable Lady Justice Roselyne Aburili in **Kisumu HCCC E006 of 2024** and a Ruling delivered thereon on **12/11/2024** dismissing the said Application with costs to the applicants.
5. That Omido J had struck out the respondent’s previous suit, **Kisumu HCCC E004 of 2025** vide a Ruling delivered on **4/4/2025** for being incompetent as it violated **Section 7 of the Civil Procedure Act**, and additionally an abuse of the Court process.
6. The respondent filed a replying affidavit sworn on the **7/10/2025** in response to the application. He contended that the previous applications and suits referred to by the applicant were in respect of different sales or intended sale of the suit property arising out of distinct and separate times when the applicant attempted to sell the suit property.
7. That the present suit includes prayers beyond restraining the sale of the suit property but includes an order praying for taking of accounts in respect of the loan account between himself and the 1st applicant and consequently, the suit is not barred by the doctrine of *res judicata*.

8. I have considered the pleadings, the response and the submissions on record. *Section 7 of the Civil Procedure Act Cap 21 Laws of Kenya* defines the doctrine of *res judicata* in the following terms: -

“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.”

9. In *re Estate of Riungu Nkuuri (Deceased) [2021] eKLR*, the court stated as follows: -

“The test for determining the Application of the doctrine of res-judicata in any given case is spelt out under Section 7 of the Civil Procedure Act. In Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR, the Supreme Court while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked. That is:

(a)The suit or issue was directly and substantially in issue in the former suit.

(b) That former suit was between the same parties or parties under whom they or any of them claim.

(c) Those parties were litigating under the same title.

(d) The issue was heard and finally determined in the former suit.

(e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

10. In this regard, the doctrine implies that for a matter to be *res judicata*, the matters in issue must be similar to those which were previously in dispute between the same parties and the same having been determined on merit by a court of competent jurisdiction.
11. I have considered the respondent’s prior suits in **Nairobi HCCOMM E429 of 2022, Kisumu MCCC No. E171 of 2023, Kisumu HCCC E006 of 2024** and **Kisumu HCCC E004 of 2025**. In the aforementioned suits, the respondent sought to stop the sale of the suit property by the 1st applicant. The said suits were dismissed.
12. In **Kisumu HCCC E006 of 2024**, Aburili J. noted in paragraph 57 of her ruling that the applicant therein (respondent herein) had filed 2 previous suits and even participated in earlier scheduled sales of the suit property and as such he was merely forum shopping and consequently abusing the court

process. In **Kisumu HCCOMM E004 of 2025** Omido J. similarly dismissed the respondent's similar application and awarded costs against him.

13. In the present case, the respondent deposed that the instant suit is distinct from his previous suits in that it goes beyond restraining the sale of the suit property and includes an order praying for taking of accounts in respect of the loan account.
14. In my view, this is duplicitous as was noted by Aburili J. in **Kisumu HCCC E006 of 2024** that the respondent had previously participated in 2 sales of the suit property. Therefore, it is evident that the respondent has at all times been well aware of the details of his loan account and request for an order over the same is an effort to stop the 1st applicant from exercising its statutory power of sale over the suit property.
15. The prayer for accounts was well within his right to pray for in his previous suits. This is the mischief that **Explanation 4 of section 7 of the Civil Procedure Act** was intended to address. That explanation provides: -

“.....

16. In the circumstances, I find that the entire suit **Kisumu Commercial Case E006 of 2025** is *res judicata* and as such, this Court has no jurisdiction to entertain it. The same is hereby struck out with costs to the applicants.

It is so ordered.

DATED and **DELIVERED** at Kisumu this 12th day of **February, 2026**.

A. MABEYA, FCI Arb

JUDGE