



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. E144 OF 2024

KENYA ORIENT INSURANCE CO. LTD
APPELLANT/APPLICANT

VERSUS

RENTCO AFRICA LIMITED 1ST
RESPONDENT

**LEWINA AFRICA & FRANCIS JUMA (Suing as the legal
representative of the estate of COLLINS MASINDE)
..... 2ND RESPONDENT**

***(Being an appeal from the ruling and order of Hon. Reuben S. Kipngeno
(PM) in Butali SRMCC E235 /2023 delivered on 6th August 2024)***

JUDGEMENT

1. The Appellant had filed a Notice of Motion application dated 7/2/2024 seeking that the suit filed by the 1st Respondent, being Butali SRMCC E235 of 2023, be struck out for being *sub-judice* and or an abuse of the court process.
2. According to the Appellant, the Interested party had instituted a suit against them in Butali SRMCC 55 of 2019 Lewina Amanyana &

Another (suing as the representatives of the estate of Collins Masinde (deceased)) vs Rentco Africa Ltd & 3 others seeking compensation as a result of an accident that occurred on 3/8/2018 and where the suit was heard and a judgment delivered in favour of the Interested Party for the sum of Kshs. 1,424,349/= together with costs and interests.

3. They aver that the Interested Party had filed a declaratory suit against them in Butali SPMCC 47 of 2023, Lewina Amanywa and another (suing as the Legal representatives of the estate of Collins Masinde) vs Kenya Orient Insurance Co. Ltd., seeking orders to enforce the judgment in Butali SRMCC 55 of 2019.
4. They claimed that the 1st Respondent, Rentco, filed another declaratory suit vide a plaint dated 31/10/2023 seeking orders for satisfaction of the judgment in Butali SRMCC 55 of 2019 entered for Kshs. 1,080,980.04/= in favour of the 2nd Respondents on 27/10/2022.
5. The Appellant/Applicant stated that the two suits were similar against them for the same cause of action and an abuse of the court process, and should not be allowed to proceed.
6. The Respondent filed their grounds of opposition, stating that the application was misconceived and bad in law and an abuse of the court process.
7. In a ruling dated 6/8/2024, the trial court analysed both the parties' pleadings and submissions. It held that the suit, being Butali PMCC No. 55 of 2019, involved the same parties, and that, in a letter dated 7/11/2023, the parties had entered into a

judgment by consent, and, in a letter dated 28/5/2024, the Appellant had already made a partial payment of Kshs. 400,000/=.

8. The trial court faulted the Appellant for taking the parties on a wild goose chase and refusing to fulfil part of its obligation to the Interested Party. It held that the declaratory suit by the 1st Respondent was to compel the Appellant to honour its obligation. Hence, it did not amount to *sub judice*. The trial court dismissed the Appellant's application for lack of merit and awarded costs.
9. Being dissatisfied with the ruling by the trial court, the Appellant appealed the ruling based on the following grounds;
 - a) *THAT the learned magistrate erred in law and in fact in holding that the Appellant's application seeking to have the suit in Butali SRMCC E235/2023; Rentco Africa Limited vs. Kenya Orient Insurance Co. Ltd and Lewina Amanyama Juma and Francis Juma, struck out was unmerited.*
 - b) *THAT the learned magistrate erred in law and in fact by failing to hold that suit Butali SRMCC E235 /2023; Rentco Africa Limited vs. Kenya Orient Insurance Co. Ltd and Lewina Amanyama Juma and Francis Juma is duplicitous.*
 - c) *THAT the learned magistrate erred in law and in fact by failing to hold that there indeed exists another ongoing suit with similar parties and similar cause of action, Butali SPMCC 47/2023 Lewina Amanyama and another vs Kenya Orient Insurance Co. Ltd.*

- d) *THAT the learned magistrate erred in law and in fact by holding that the Appellant herein was seeking to avoid their obligations instead of realising that there indeed exists a similar suit with a similar cause of action.*
- e) *THAT the learned magistrate erred in law and in fact by failing to hold that the existence of the two suits, Butali SPMCC 47/2023 Lewina Amanyama and another vs. Kenya Orient Insurance Co. Ltd and Butali SRMCC E235/2023; Rentco Africa Limited vs. Kenya Orient Insurance Co. Ltd and Lewina Amanyama Juma and Francis Juma, allows the Respondent to obtain double compensation from the Appellant.*
- f) *THAT the learned magistrate misdirected himself by failing to consider the Appellant's submissions that were duly filed and on record.*
- g) *THAT the learned magistrate erred in law and in fact by totally failing to consider submissions filed by the Appellant's advocate and authorities cited therein.*
10. He prayed that the appeal be allowed and the Honourable court be pleased to set aside the entirety of the ruling delivered on 6th August 2024, and further to strike out Butali SRMCC E235/2023; Rentco Africa Limited vs Kenya Orient Insurance Co. Ltd and Lewina Amanyama Juma and Francis Juma on the basis that it is *sub judice*.
11. The appeal was canvassed by way of written submissions.

Appellant's Submissions

12. In their submissions dated 16th May 2025, the Appellant raised two issues for determination. on the first issue of whether the trial court erred in law and fact by failing to find that Butali SRMCC E235 of 2023 was *sub judice* in light of the pending suit in Butali SPMCC No. 47 of 2023, they quoted section 6 of the Civil Procedure Act on the principle of *sub judice* stating that the purpose of the rule was to prevent forum shopping and conflicting court decision of concurrent jurisdiction. They quoted the case of ***Republic v. Paul Kihara Kariuki, Attorney General & 2 others ex parte Law Society of Kenya (2020) eKLR.***
13. According to the Appellant, the suit filed by the 1st Respondent, Butali SRMCC E235 of 2023, should be struck out as it was similar to Butali SPMCC No. 47 of 2023 filed by the Interested Parties to enforce the insurance obligation which arose from the same road traffic accident and the same judgment in Butali SRMCC 55 OF 2019.
14. The Appellant submitted that the parties are the same, the decree holder and subject matter are the same, and they both seek to enforce an insurance obligation against the same judgment, which they held was a similar element under section 6 of the Civil Procedure Act, which the court failed to consider. The cited case of ***Wainaina vs Waibara & another (Civil Appeal 252 of 2023) [2024] KEHC 9501 (KLR).***
15. The Appellant submitted that if a judgment in SPMCC 47 of 2023 is entered compelling them to settle the decretal sum in SRMCC

E235 of 2023, they may be compelled to settle the same decretal sum by the Interested Party, exposing them to a double judgment and second execution.

16. They contended that the trial court erred in allowing the latter suit and allowed a serious risk of parallel and inconsistent outcomes.
17. On the second issue of failure by the trial court to consider their submissions and applicable legal principles, they claim that they filed their submission dated 22/7/2024 according to the trial court's directions and faulted the ruling delivered on 6/8/2024, where the trial Magistrate held that "*none of the parties filed any submissions.*" They argued that the trial court's failure to consider their submissions was an oversight that led to the wrong decision, denying them the right to be heard and tainting the ruling with procedural unfairness.
18. The Appellant prayed that the appeal be allowed and the ruling delivered on 6/8/2024 in Butali SRMCC No. E235 of 2023 be set aside and the Butali SRMCC No. E235 of 2023 Rentco Africa Limited vs Kenya Orient Insurance Co. Ltd & Lewina Amanyama Juma & Francis Juma be struck out for being *sub judice*. They prayed for costs of the appeal and application in the lower court.

1st Respondent's Submissions

19. The 1st Respondent filed their submissions dated 18/8/2025, although they referred to themselves as the 2nd Respondent. On the first issue of whether the ruling delivered on 6/8/2024 should be allowed, they quoted section 6 of the Civil Procedure Act and

Section 10 of the Insurance (Motor Vehicles Third Party Risks). On whether *res sub judice* sufficed in Butali SRMCC E235 of 2023 and whether the ruling delivered on 6/8/2024 should be upheld, they cited the Supreme Court case in **Ita vs Nyaga (2023) KEELC 22514 (KLR)** and **Kenya Commercial Bank Ltd vs Benjoh Amalgamated Ltd (2017) eKLR**.

20. According to the 1st Respondent, the Appellant had failed to establish all the conditions necessary to invoke the sub-judice doctrine. They asserted that Butali PMCC No. 47 of 2023 was filed as a declaratory suit by the 1st Respondent against the Appellant, and the 2nd Respondent was not a party to that suit; hence, the Appellant cannot invoke the sub-judice doctrine.
21. They further stated that the subject matter of the two suits was different since Butali No. 47 of 2023 was a declaratory suit to oblige the Appellant to settle the decretal sum in Butali Senior Resident's Magistrate court civil number 55 of 2019, while Butali SRMCC No. 235 of 2023 seeks to compel the Appellant to fulfil its statutory contractual obligation of indemnifying the 1st Respondent as agreed in the Insurance agreement.
22. The 1st Respondent averred that they had settled the contractual sum supposed to be settled by the Appellant and are seeking reimbursement and remedies for breach of contract.
23. On whether the parties are litigating under the same title, they relied on the case of **Nguruman Limited vs Limited Nielsen & another (Civil Appeal 20 of 2018) [2023] KECA 274 (KLR)**. They contend that the 1st Respondent sued the Appellant herein

in Butali PMCC No. 47 of 2023 is that of a plaintiff(1st Respondent) compelled judgment debtor's insurer(Appellant) to settle the decree passed against the insured (1st Respondent), which was the declaratory suit. When the Appellant failed to fulfil the terms agreed with the 1st Respondent, the 1st Respondent paid the decretal sum. After being aggrieved by the circumstance, the 2nd Respondent instituted Butali SRMCC NO. 235 of 2023 in their capacity as the insurer for failure to fulfil its contractual obligation to indemnify the 2nd respondent; hence, the two parties came in a different capacity.

24. On whether the issues had finally been heard and determined in the former suit and whether the court that tried the former suit has jurisdiction to try the subsequent suit, they submitted that Butali PMCC No. 47 of 2023 did not mirror Butali SRMCC No. 235 of 2023 as both suits sought for different reliefs as they had been aggrieved differently and that both suits were tried before courts with competent jurisdiction.
25. The 1st Respondent posited that the Appellant's appeal was a way of stalling to avoid accountability, arguing that the Appellant was their insurer. They entered into a contract by signing the insurance agreement on 15/1/2018, and the Appellant seeks to dodge their statutory contractual obligation to the 1st Respondent and prays that the application be dismissed as the Appellant is abusing the judicial process by breaching the consent entered into before the court.

26. They pray that the appeal be dismissed and the 1st Respondent be allowed to proceed with the hearing and determination of their case in Butali SRMCC No. 235 of 2023 to completion in the interest of justice.

Analysis and Determination

27. This being a first appeal, this Court is enjoined to reconsider the evidence tendered before the trial court and determine whether the learned magistrate exercised his discretion judiciously and upon sound legal principle. See ***Selle v. Associated Motor Boat Co. Ltd [1968] EA 123.***
28. From the memorandum of appeal and submissions, two issues arise:
- a) Whether the suit in Butali SRMCC E235 of 2023 is *sub-judice* to Butali SPMCC No. 47 of 2023.
 - b) Whether the trial court failed to consider the Appellant's submissions, thereby occasioning procedural unfairness.
29. On the doctrine of *sub-judice*, Section 6 of the Civil Procedure Act provides:-
- “No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”***

30. The Supreme Court of Kenya in ***Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] KESC 54 (KLR)*** had to pronounce itself on the subject of *sub judice*. It aptly stated: -

“(67) The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to prevent the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter, to avoid abuse of the Court process, and to diminish the chances of courts with competent jurisdiction issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub judice must therefore establish that there is more than one suit over the same subject matter, that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction, and lastly, that the suits are between the same parties or their representatives.”

31. For the doctrine to apply, four cumulative conditions must be satisfied:

(i) *there must be two or more suits over the same subject matter;*

(ii) *one suit must have been instituted before the other;*

(iii) *both suits must be pending before courts of competent jurisdiction; and*

(iv) *the suits must be between the same parties or their representatives litigating under the same title*

32. In ***National Institute of Mental Health & Neuro Sciences v C. Parameshwara, (2005) 2 SCC***, it was stated that the basic purpose and the underlying object of *sub judice* is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject matter and the same relief. This is to pin down the parties to one litigation to avoid the possibility of contradictory verdicts by two courts in respect of the same relief, and is aimed at preventing multiplicity of proceedings.
33. The burden lay upon the Appellant to demonstrate that these elements were satisfied. The first issue to be determined is whether the two suits are directly and substantially the same.
34. A perusal of the record reveals that in Butali Civil Suit No. 47 of 2023, the 2nd Respondent sought declaratory orders that the Appellant, as the insurer of the 1st Respondent, was statutorily bound to settle the decree in Butali SRM's Court Civil Case No. 55 of 2019.

35. On the other hand, the 1st Respondent filed a suit against the Appellant, citing the 2nd Respondent as an Interested Party and praying that the court make a declaratory order that the Appellant was obligated to indemnify them by virtue of an Insurance Agreement dated 16/1/2018 and for an order compelling the Appellant to pay the Decree Holder in Butali SRMCC. No. 55 of 2019.
36. Upon re-evaluation, this court finds as follows:- First, the parties in the two suits are different. Secondly, the parties are not litigating under the same title. Therefore whereas the two cases emanate from one judgement and decree, the subject matters in issue in the two suits are distinct and separate from the primary suit.
37. The legal capacities and reliefs sought are substantially different. One seeks statutory enforcement by a third-party decree holder under Section 10 of the Insurance (Motor Vehicles Third Party Risks) Act Cap 405, while the other is a contractual indemnity claim by the insured under a private contract of insurance. The Respondent has a distinct legal right to seek a declaration of indemnity to protect their assets from attachment by the 2nd Respondent. It therefore cannot be said that the two matters are directly and substantially the same.
38. Ultimately, I find that there is no duplicity as the matters in issue and the remedies sought by the Respondents serve different and distinct legal interests as one seeks to satisfy a judgement debt

directly to the victim. In contrast, the other seeks to enforce the policyholder's contractual protection.

39. On the final issue, the Appellant complains that the trial Magistrate stated that “*none of the parties filed any submissions*”, yet its submissions dated 22/7/2024 were on record. While a court should acknowledge all filed submissions, this Court has perused the ruling. It is satisfied that the Magistrate addressed the core arguments raised by the Appellant on *sub-judice*, abuse of process and the consent judgment. No material prejudice or violation of the right to be heard has been demonstrated. Even if there was a procedural oversight, it did not affect the correctness of the ruling's outcome.
40. There is therefore no real risk, as raised by the Appellant, of conflicting decisions or double compensation. The Appellant's fear of “double judgement” is, in my view, speculative and not borne out by the pleadings.
41. In the result, I find that the learned trial Magistrate did not err in law or fact in dismissing the Appellant's application. The doctrine of *sub judice* does not operate to bar an insured from enforcing their contract merely because a third party is also pursuing the insurer under statute. The trial Magistrate correctly found that the 1st Respondent's suit is a legitimate claim to enforce the insurer's statutory and contractual obligations under the policy. The suit in Butali SRMCC No E235 of 2023 is not *sub-judice* and is properly before the court.

42. The upshot is that I do find that the appeal lacks merit. It is hereby dismissed, and the ruling delivered on 6/8/2024 upheld.
43. The Appellant shall bear the costs of this appeal.
44. It is so ordered.

Dated, signed and delivered at Kakamega, this 5th day of March 2026.

**A. C. BETT
JUDGE**

In the presence of:

Ms. Gati for the Appellant

No appearance for the Respondent

Court Assistant: Polycap