



Ombra Investment Company Ltd v Inanga (Environment and Land Case E174 of 2024) [2025] KEMC 358 (KLR) (6 November 2025) (Ruling)

Neutral citation: [2025] KEMC 358 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
ENVIRONMENT AND LAND CASE E174 OF 2024
PA NDEGE, SPM
NOVEMBER 6, 2025**

BETWEEN

OMBRA INVESTMENT COMPANY LTD PLAINTIFF

AND

BISHOP PETER IKATWA INANGA DEFENDANT

RULING

1. This ruling determines a Notice of Motion application dated 04/09/2024, through which the applicant seeks the following orders: -
 - a. That the Plaintiff's suit filed and commenced through a plaint dated 11/04/2024 be struck out for being res-judicata Nakuru CMELC No. 197 of 2019 (Peter Ikatwa Inanga vs Ombra Investment Ltd)
 - b. That the Plaintiff's suit is statutorily time barred.
 - c. That the costs of this application and suit be borne by the Plaintiff/ Respondent.
2. The application is supported by the Supporting Affidavit of the defendant/applicant dated 04/09/2024. The plaintiff/ respondent responded and opposed the application by way of the Replying Affidavit of Moses Waithaka Muraya, sworn at Nakuru on 05/11/2024. The application was canvassed by way of written submissions. Parties herein filed and, I do believe, exchanged their written submissions and arguments while citing several impressive authorities on the issues herein.
3. I have gone through the written submissions and the authorities cited therein. On the issue of whether this suit is res judicata, I refer to the case of Qayrat Foods Limited v Safiya Ahmed Mohamed & 6 others



(2020) eKLR, where the court cited James Karanja alias James Kioi (Deceased) (2014) e KLR, which outlined the ingredients of res judicata as:

For the doctrine of Res Judicata to apply, three basic conditions must be satisfied. The party relying on it must show: -

- a) That there was a former suit or proceeding in which the same parties as in the subsequent suit litigated.
 - b) The matter in issue in the latter suit must have been directly and substantially in issue in the former suit.
 - c) That a court competent to try it had heard and finally decided the matters in controversy between the parties.
4. That there was a former counterclaim, which is a distinct suit, between the parties herein with the same issues as the present suit is not in dispute. I have however gone through the judgment in the previous suit, which was annexed herein and I do agree with the learned counsel for the plaintiff/ respondent that the counterclaim in the former suit was struck out on account of technicality and therefore nothing bars the plaintiff/ respondent from bringing the instant suit against the Defendant/ Applicant for purpose of ensuring that justice is served. I thus do not find this suit to be res-judicata as claimed.
5. On the other issue of whether this suit is statutorily time -barred, I again do agree with the learned counsel for the plaintiff/ defendant that the time starts to run when the contract of sale herein was breached. The plaintiff pleaded at paragraph 8 of the plaint that the breach occurred in the year 2019 when it received a letter dated 01/07/2019 through which the defendant claimed to rescind the sale agreement due to purported breach subsequent to which he moved into possession of the plot using hired goons in blatant breach of the law. Thus the time started to run from the year 2019. This suit is therefore not statutorily time barred as prayed.
6. The upshot is that the defendant's application herein lacks merit and is hereby dismissed with costs to the plaintiff/ respondent. Hearing of the suit herein shall therefore proceed on merit.

DATED, SIGNED AND DELIVERED AT NAKURU THIS _06TH_ DAY OF NOVEMBER, 2025

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: Mwango

Defendant's Counsel: Karanja

Defendant: N/A

Karanja: We are yet to comply. Praying for a mention date for Pr-trials with leave to comply.

Mwango: We can equally be granted leave in case we need to further comply.

CT: Parties to finalise compliance with order 11. Mn on 20/02/26 for PTD.

