

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
HCCOMM NO. E558 OF 2025

AUTOCHECK LIMITED T/A GET GARI.....
PLAINTIFF

VERSUS

MOTORHUB LIMITED.....1ST
DEFENDANT

EDWARD KARAU GACHANI.....2ND
DEFENDANT

RULING

1. This ruling determines the Defendants Notice of Preliminary Objection dated 1st October 2025. The objection is premised on the ground that the present suit offends the doctrine of *sub judice* by reason of the existence of Nairobi HCCC No. E095 of 2025, *Motor Hub Limited v Autocheck Limited & Optiwise Auctioneers* (hereinafter “the earlier suit”).
2. The objection is supported by the affidavit of Edward Karau Gachani sworn on 10th February 2026, in which he depones that the Defendants in the earlier suit were duly served on 7th April 2025 through WhatsApp.
3. The Preliminary Objection is opposed. The Plaintiff filed a replying affidavit sworn on 23rd January 2026 by John Egwu, its Chief Operating Officer. He depones that the present suit was instituted on 4th August 2025 upon payment of the requisite filing fees and that the Plaint and accompanying

documents were duly served upon the Defendants on 3rd September 2025. He further avers that the Plaintiff has never been served with any pleadings, summons, or court process in respect of the earlier suit. He contends that a search of the e-filing portal reveals that no affidavit of service has been filed in the earlier suit to demonstrate service, and that the absence of such service deprived the Plaintiff of knowledge of the existence of that suit.

4. Notwithstanding the foregoing, the Plaintiff has indicated its intention to withdraw the present suit but seeks reimbursement of the filing fees in the sum of Kshs. 71,000/= on account of the Defendants' failure to serve the earlier suit.
5. The sole issue for determination is whether the present suit is barred by the doctrine of *sub judice* under section 6 of the Civil Procedure Act.
6. A preliminary objection, however, must be founded on a pure point of law and must not be entangled with contested facts. The classic exposition is found in **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd**, where it was held that a preliminary objection cannot be raised where facts are in dispute or where the court is required to ascertain facts through evidence.
7. The doctrine of sub judice is codified under **section 6** of the **Civil Procedure Act**, which provides that:

“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...where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

8. For *sub judice* to apply, the following conditions must be met: the matter in issue must be directly and substantially the same in both suits; the suits must be between the same parties or parties under whom they claim; and the earlier suit must be pending before a court of competent jurisdiction.
9. It is not disputed that the earlier suit, Nairobi HCCC No. E095 of 2025 exists and is pending before a court of competent jurisdiction. From the material placed before the court, the parties in both suits are substantially the same and the dispute arises from the same transaction, thereby satisfying the requirement that the issues are directly and substantially similar.
10. The Plaintiff has taken the position that it was not served with process in the earlier suit and therefore lacked knowledge of its existence. While service is a fundamental aspect of due process, the application of section 6 of the Civil Procedure Act does not hinge on whether a party had knowledge of the earlier proceedings, but rather on the existence of a previously instituted suit involving the same subject matter and parties.
11. In other words, once it is demonstrated that there exists a prior suit meeting the statutory criteria, the court is divested of jurisdiction to proceed with the subsequent suit,

irrespective of whether service has been effected. To hold otherwise would defeat the very purpose of the doctrine, which is to prevent parallel litigation, avoid multiplicity of suits, and guard against the risk of conflicting decisions.

12. Consequently, the question of whether or not the Plaintiff was served in the earlier suit does not displace the applicability of the doctrine of *sub judice*.
13. As regards the Plaintiff's claim for reimbursement of filing fees in the sum of Kshs. 71,000/=, the court reiterates that filing fees are payable upon institution of proceedings and are not refundable. In any event, such a claim does not arise for determination within a preliminary objection and is not a relief that can be granted in these proceedings.
14. In the premises, I find merit in the Notice of Preliminary Objection dated 1st October 2025, and I uphold the same.
15. The present suit is hereby struck out for being *sub judice* Nairobi HCCC No. E095 of 2025.
16. The Plaintiff's claim for reimbursement of filing fees is declined.
17. Costs of the Preliminary Objection are awarded to the 3rd Defendants.

RULING delivered virtually, dated and signed at **NAIROBI**

This **30th** day of **April** 2026.

P.M. MULWA
JUDGE

In the presence of:

Ms Njoroge for Plaintiff

Mr. Sundwa h/b for Ms. Ngugi for Defendants

Court Assistant: *Lispa*