



**Waugh (Suing on behalf of the Estate of the Late Peter Waugh) v Kiiru & 3 others
(Environment & Land Case 74 of 2014) [2025] KEELC 899 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 899 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 74 OF 2014
JO OLOLA, J
FEBRUARY 27, 2025**

BETWEEN

**ANGELA EVELINE WAUGH (SUING ON BEHALF OF THE ESTATE OF THE
LATE PETER WAUGH) PLAINTIFF**

AND

**RHODA WACHUKA KIIRU 1ST DEFENDANT
GERALD WAROGO 2ND DEFENDANT
MARGARET WANGUI MERIA 3RD DEFENDANT
MWANGI RUIITHIA 4TH DEFENDANT**

RULING

1. By a Notice of Motion dated 18th December, 2023, Rhoda Wachuka Kiiru (1st Defendant/Applicant) prays for the following orders:
 1. Spent.
 2. That this Honorable Court be pleased to review and or revise the orders issued herein on 5th December, 2022.
 3. Spent.
 4. That there be stay of execution of the Judgment/Decree issued herein on the 16th June, 2022 and any consequential orders therein pending hearing and determination of the appeal lodged.
 5. That the costs of this Application abide the outcome of the appeal.
2. The application is supported by an Affidavit dated 18th December, 2023, sworn by the Applicant and is premised on the grounds that:



- a. The Applicant has lodged an Appeal in the Court of Appeal against the Judgment and decree issued herein on 16th June, 2022
 - b. The Appeal shall be rendered nugatory if the Judgment and decree are not stayed.
 - c. The Applicant will suffer substantial loss, damage, prejudice and injustice if the orders prayed for are not granted as her family shall be evicted from the suit land.
 - d. The Applicant is ready to abide by any conditions the Court so orders in granting the orders sought and
 - e. The Plaintiff will suffer no prejudice if the said orders are granted.
3. Angela Eveline Waugh (the Plaintiff) is opposed to the application. In here Replying Affidavit sworn on 27th January, 2024, the Plaintiff avers that the application as filed is frivolous, vexatious and a total abuse of the court process. The Plaintiff avers that the 1st Respondent's Advocate remains a stranger to these proceedings as he has not sought for any fresh leave to come on record after judgment
 4. The Plaintiff further avers that the orders of review being sought have not addressed the Ruling of the court delivered on 15th December, 2023 which Ruling dismissed similar prayers for stay of execution.
 5. In addition to the reply, the Plaintiff has filed a Notice of Preliminary Objection dated 27th January, 2024 wherein she objects to the 1st Defendant's application on the grounds:
 1. That the Notice of Motion dated 18th December, 2023 is a non-starter for being res-judicata the orders and ruling of this court (issued) on 15th December, 2023;
 2. That the Notice of Motion dated 18th December, 2023 is a total abuse of the court process as the Applicant had already instituted a similar motion dated 21st March, 2023 seeking similar prayers which was dismissed vide a Ruling delivered on 15th December, 2023; and
 3. That the Notice of Motion dated 18th December, 2023 is a non-starter for being frivolous and vexatious and an abuse of the court process as the Applicant's Advocate is a stranger to these proceedings having sort leave of court to come on record after Judgment in the Notice of Motion dated 21st March, 2023 which was dismissed vide the Ruling dated 15th December, 2023.
 6. I have carefully perused and considered the Notice of Preliminary Objection as filed by the Plaintiff. I have similarly perused and considered the 1st Defendant's Notice of Motion dated 18th December 2023.
 7. As to what would amount to a Preliminary Objection, Law J.A. rendered himself in the famous case of Mukisa Biscuits Manufacturing Co. Ltd. –vs- West End Distributors Ltd. (1969) EA 696, as follows:-

“So far as I am aware, a Preliminary Objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
 8. In the matter before me, the first limb of the Plaintiff's objection is that the 1st Defendant's Notice of Motion is res-judicata the Ruling and the orders rendered by this court on 15th December, 2023.



9. The doctrine of Res-Judicata is captured under the provisions of Section 7 of the *Civil Procedure Act* as follows:-

“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.”

10. From the material placed before the court and a perusal of the record herein, it is not in dispute that by a Notice of Motion application dated 21st March, 2023, the 1st Defendant/Applicant had sought for an order of stay of execution of the Judgment and/or decree issued herein on 16th June, 2022 pending the hearing and determination of the Appeal lodged herein.
11. Having considered the said Motion and by a Ruling rendered herein on 15th December 2023, this court declined to grant the same after noting that an earlier order authorizing execution herein had been made on 5th December, 2022 after the 1st Defendant failed to raise any objections thereto.
12. This court having declined to grant the 1st Defendant’s Motion for stay of execution dated 21st March 2023, the 1st Defendant proceeded to file this present application seeking a review of the orders of 5th December, 2022 and for a stay of execution of the Judgment on the ground that her Appeal shall be rendered nugatory and that she stands to suffer substantial loss. Those were the very issues that this court had dealt with in the Ruling of 15th December, 2023 and it was clearly an act in abuse of the court process for the 1st Defendant to file a similar application some 3 days after the Ruling and to urge the court to again consider the same.
13. As was stated in Nancy Mwangi T/A Worthlin Marketer –versus Airtel Networks (K) Ltd. & 2 Others (2014) eKLR:

“The court must always be vigilant to guard against litigants evading the doctrine of res-judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the Plaintiff in the second suit is trying to bring before the Court in another way and in another form a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi –versus- National Bank of Kenya Ltd. & Others (2001) EA 177 the court held that, ‘Parties cannot evade the doctrine of res-judicata by merely adding other parties or causes of action in a subsequent suit. In that case the court quoted Kuloba J., in the case of Njagu –versus- Wambugu & Another, Nairobi HCCC No. 2340 of 1991 (unreported) where he stated that, ‘If parties were allowed to go on litigation forever over the same issue with the same opponent before a court of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he comes to court, then I do not see the use of the doctrine of res-judicata...’”

14. In the instant matter, the parties and the suit remain the same. The Applicant herein had earlier on applied for stay of execution orders which application was rejected by this very court. In her new application she has sought a review of the earlier orders and for the same order of stay of execution to be granted. This court is however reminded that the doctrine of Res-Judicata cannot be defeated by a party merely giving her case some cosmetic face lift by introducing a new prayer in the same application.
15. At any rate, even if this court were to consider this as an application for review, the same was clearly filed after an inordinate delay. The application for review of the orders issued on 5th December, 2022



has been filed more than one year after the said orders were issued. No plausible explanation has been offered as to why the same was not filed earlier yet those orders were issued in the presence of the Applicant's Counsel.

16. In the premises herein, I was not persuaded that there is any merit in the Motion dated 18th December, 2023. The same was filed in abuse of the court process. This court having pronounced itself on the issue of stay of execution cannot be called upon again to deal with the same issue in the manner in which the 1st Defendant has attempted to do herein.
17. In the circumstances, I hereby uphold the Preliminary Objection and dismiss the 1st Defendant Motion dated 18th December, 2023 with costs to the Plaintiff.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 27TH DAY OF FEBRUARY, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Karanja Maina Advocate for the 1st Defendant/Applicant
- c. Mr. Mutuma Advocate for the Plaintiff/Respondent

