



**Pap Kalando Investments Limited v Kenya Hotels & Allied Workers Union & another  
(Miscellaneous Application E093 of 2021) [2022] KEELRC 1525 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1525 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
MISCELLANEOUS APPLICATION E093 OF 2021**

**CN BAARI, J  
JUNE 16, 2022**

**BETWEEN**

**PAP KALANDO INVESTMENTS LIMITED ..... APPLICANT**

**AND**

**KENYA HOTELS & ALLIED WORKERS UNION ..... 1<sup>ST</sup> RESPONDENT**

**YAMUKO AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a notice of motion dated 16<sup>th</sup> December, 2021, brought pursuant to Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* and Order 40 Rules 1, 2 and 5 and Order 50 Rule 1 of the Civil Procedure Rules, the Objector/Applicant seeks Orders THAT:
  - i. Spent
  - ii. Spent
  - iii. This Honourable court be pleased to issue orders restraining the Respondents from laying distress, executing and or interfering with the Applicant's business establishment.
  - iv. The costs of the application be borne by the Respondents.
2. The application is supported by grounds on the face of the motion and the affidavit of Nicholas Odhiambo Midia. The Applicant avers that it operates Fabrice Lounge which is registered in the names of Nicholas Odhiambo Midia and Cornel Opiko Kombudo.
3. The Applicant further avers that the 2<sup>nd</sup> Respondent has distressed against the Applicant's business establishment, and that the items distressed are owned by the Applicant and not Barizi Bar and Restaurant or Fabrice Lounge.



4. The Applicant avers that the decree holder in ELRC Cause No. 151 of 2017 is a total stranger to the Applicant and has never been an employee of the Applicant. The Applicant further avers that Fabrice Lounge and Barizi Bar and Restaurant are not the same entities and that there is an imminent risk of the Respondents executing against the wrong party.
5. The Respondents opposed the application vide a replying affidavit sworn by Chadwick Olotu Ng'ono on 17<sup>th</sup> January, 2022. The Respondents aver that the Applicant's purported ownership of the distressed goods is not true, and the application herein is only intended to mislead the court and to circumvent justice and deny the aggrieved employee the fruits of his judgment in ELRC Cause No. 151 of 2017.
6. The Respondents aver that the Applicant has filled multiple applications, which raise similar issues and hence an abuse of the process of the court. The Respondents state that the instant application is similar Miscellaneous Application No. E058 of 2021 and hence is res sub judice and should be dismissed with costs.
7. Parties filed submissions in the matter and which have been duly considered.

### **Determination**

8. I have considered the application, the grounds and affidavit in support thereof, the Respondents' replying affidavit in opposition and the parties' submissions.
9. The issue for determination is whether the instant application violates the sub judice rule. The Black's Law Dictionary 9th Edition defines the term 'sub-judice' as: "Before the Court or Judge for determination."
10. The purpose of the sub-judice rule is to stop the filing of multiple suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process, and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter.
11. 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. The Supreme Court of Kenya in Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) (2020) eKLR held that a party that seeks to invoke the doctrine of res sub-judice must 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.
12. The issues subject of the application in Misc. Application No. E058 of 2021 is proclamation emanating from the judgment in ELRC Cause No. 151 of 2017. Meaning therefore that the matter in issue in the instant application, is directly and substantially in issue in Misc. Application No. E058 of 2021, previously instituted. The High Court of Uganda in Nyanza Garage v Attorney General HCCS No. 450 of 1993 held thus:

In the interest of parties and the system of administration of justice, multiplicity of suits between the same parties and over the same subject matter is to be avoided. It is in the interest of the parties because the parties are kept at a minimum both in terms of time and money spent on a matter that could be resolved in one suit. Secondly, a multiplicity of suits clogs the wheels of justice, holding up resources that would be available to fresh matters, and creating



and or adding to the backlog of cases courts have to deal with. Parties would be well advised to avoid a multiplicity of suits.”

13. I find and hold that the Applicant has presented the same issues which were being litigated in Misc. Application No. E058 of 2021, and did not disclose in its pleadings the existence of the earlier applications.
14. This application squarely falls within the ambit of what constitutes abuse of the court process, and is hereby struck off with costs on grounds that it offends the sub judice rule, and hence is an abuse of court process.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 16TH DAY OF JUNE, 2022.**

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

N/A for the Objector/Applicant

Mr. E. Ngame present for the Respondent

Ms. Christine Omollo-C/A

