



REPUBLIC OF KENYA



**Makau v I & M Bank Limited (Commercial Case E012 of 2022)
[2025] KEHC 3729 (KLR) (Commercial and Tax) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3729 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E012 OF 2022
A MABEYA, J
MARCH 26, 2025**

BETWEEN

ELIAS MAUNDU MAKAU PLAINTIFF

AND

I & M BANK LIMITED DEFENDANT

RULING

1. This ruling determines the application dated 26/9/2023. The same was brought by the applicant under section 13 of the *Environment and Land Court Act*, Section 104 of the *Land Act* 2012, Section 1A, 1B & 3A of the *Civil Procedure Act*, Order 40 Rule 2 (1), 3, 4 of the *Civil Procedure Rules 2010*.
2. It sought a prohibitory order restraining the respondent, its agents or servants from alienating, disposing of and/or selling his residential house known as Abardaire 23 in Phenom Park Estate erected on LR No. 209/21054 purchased by loan under account No. 00101xxxxxxx.
3. The application was based on the grounds set out on the face of the Motion as well as the applicant's supporting affidavit of even date. These were that on 11/8/2023, the applicant was issued with an unlawful 40-day notice under section 96 (3) (h) of the *Land Act* on the grounds that he had failed to adhere to a 90-day Statutory Notice issued to him on the 22/4/2021.
4. That the unlawful 40-day notice was issued under the guise that he had an outstanding debt of Kshs. 132,637.08 as at the 9/8/2023 which was not the case as he owed no sums to the respondent. That therefore, the 40-day notice was aimed at unlawfully disposing off the suit property.
5. That the respondent had resorted to unlawfully intimidating and harassing him on account of ongoing litigation between the parties at the Employment and Labour Relations Court. That in the premises, the orders sought should issue.



6. In opposition, the respondent filed a replying affidavit sworn by one Peris Wairimu Chege on 6/10/2023 as well as a Notice of Preliminary Objection of the same date. The respondent contended that this Court lacked jurisdiction as the issues raised by the applicant violated the doctrine of res judicata as the issues raised in the instant application were similarly raised in the applicant's Notice of Motion dated 11/2/2022 which was heard and determined by way of a ruling dated 17/3/2023.
7. I have carefully considered the pleadings, submissions and authorities relied on. There are two issues for determination namely: -
 - a. Whether the instant application is *res-judicata*.
 - b. Whether the applicant merits grant of the prohibitory orders sought.
8. Regarding res judicata, in *Uhuru Highway Development Ltd v Central Bank of Kenya, Exchange Bank Ltd (in voluntary liquidation) and Kamlesh Mansukhlal Pattni* [1996] eKLR, the Court of Appeal ruled that the application before it was res judicata as the issue of injunction had been twice rejected both by the High Court and the Court of Appeal on merits and that the ruling by the High Court had not been appealed against. The Court further emphasized that the same application having been finally determined "thrice by the High Court and twice by the Court of Appeal", it could not be resuscitated by another application.
9. The Court of Appeal further stated that:

"That is to say, there must be an end to applications of similar nature, that is ... the principles of res judicata apply to applications within the suit. If that was not the intention, we can imagine that the courts could and would be undated by new applications filed after the original one was dismissed. There must be an end to interlocutory applications as much as there ought to be an end to litigation. It is this precise problem that section 89 of or *Civil Procedure Act* caters for."
10. A decision of the Court must be respected as fundamental to any civilised and just judicial system. Judicial determinations must be final, binding and conclusive. There is injustice if a party is required to litigate afresh matters which have already been determined by the Court. A decision of the Court, unless set aside or varied in a manner provided for by law, must be accepted as incontrovertibly correct.
11. In the instant case, it is undisputed that the applicant made an application dated 11/2/2022 seeking a prohibitory order restraining the respondent from disposing or selling the suit property as well as an order compelling the respondent to discharge its interest in the log book of motor vehicle registration number KCG 265Z.
12. Despite the applicant's submission to the contrary, it is clear that the prohibitory order no. 3 in the present application mirrors prayer no. (c) in the application dated 11/2/2022. In her ruling delivered on the 17/3/2023, Chepkwony J found that the applicant had failed to establish a prima facie case and did not therefore merit grant of the orders. The said has not been appealed against and if it has, that fact was not brought to the attention of the Court.
13. Accordingly, it is this Court's finding that the issue of prohibitory orders is res-judicata and cannot fall for determination by this Court again. This Court is divested of jurisdiction under section 7 of the *Civil Procedure Act* and must immediately down its tools.
14. The upshot of it is that I find that the preliminary objection is meritorious and is sustained. Accordingly, the application dated 26/9/2023 is hereby struck out with costs to the respondent.



It is so ordered.

SIGNED AT KISUMU THIS 18TH DAY OF MARCH, 2025.

A. MABEYA, FCI Arb

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF MARCH, 2025.

F. GIKONYO

JUDGE

