



REPUBLIC OF KENYA



**KENYA LAW**  
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**Moindi v Transnational Bank Ltd & another (Civil Case  
12 of 2018) [2025] KEHC 9759 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9759 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CIVIL CASE 12 OF 2018  
CM KARIUKI, J  
JUNE 26, 2025**

**BETWEEN**

**JOHN CHEPKOROS MOINDI ..... PLAINTIFF**

**AND**

**TRANSNATIONAL BANK LTD ..... 1<sup>ST</sup> DEFENDANT**

**SANJOMU AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By Notice of Motion dated 16/6/2023 Applicant seek prayers:-
  - i. THAT pending interpartes hearing of this application, this Honourable Court be pleased to issue a temporary injunction to stop the Defendants/Respondents either by themselves, their agents, servants or anybody acting on their behalf from selling, entering, taking possession of or in any way interfering with the ownership of land parcel No. LR; Cismara/ololulunga/14681 pending the hearing and determination of this application.
  - ii. THAT pending interpartes hearing of this application, this Honourable Court be pleased to issue a temporary injunction to stop the Defendants/Respondents either by themselves, their agents, servants or anybody acting on their behalf from selling, entering, taking possession of or in any way interfering with the ownership of land parcel No. LR; Cismara/ololulunga/14681 pending the hearing and determination of this suit.
  - iii. THAT the consent order dated the 8<sup>th</sup> of March, 2019 be and is hereby set aside for being irregular, illegal, and fraudulent and this suit be re-opened for fresh hearing.
2. Same is based on grounds on the face of the Notice of the Motion and the supporting affidavit of John Chepkoros Moindi sworn on 16/6/2023 same is opposed via affidavit of Valence Mmuka sworn on 30/4/2024.



3. The parties were directed to canvass same motion via submissions. The Applicant filed same dated 5/2/2025 and Respondent filed substantive and supplementary submissions dated 18/2/2025 and 18/3/2025 respectively.

### **Applicant's submissions**

4. Applicant submits that, It is also trite law that a duly instructed advocate has an implied general or ostensible authority to compromise and settle a suit on behalf of a client, however the Plaintiff/Applicant's erstwhile advocates on record entered into the impugned consent of 8<sup>th</sup> March, 2019 without sufficient material facts and in misapprehension or ignorance of the fact that as at the time of the consent, the Applicant herein was only indebted to the 1<sup>st</sup> Respondent herein to the tune of Kshs.16,414,416.00 only and not Kshs.32,715,191.00 as indicated in the impugned consent reliance is made on Kenya Commercial Bank Ltd. Vs. Specialized Engineering Company Ltd. 1982, KLR 485 ,Mbugua Vs. Mbugua & 5 Others (Civil Case 11 of 2019) [2022] KEHC 11912 (KLR) (Commercial and Tax) ( 18 August 2022) and Hirani Vs. Kassam (1952) 19 EACA 131 at page 134
5. In any event, it is contended, the Applicant herein only became aware of the said consent order when the 1<sup>st</sup> Respondent herein advertised its intention to sell the Applicant's parcel of land known as Cismara/ololulunga/14681 vide the newspaper advert dated 16<sup>th</sup> February 2023.
6. The impugned consent order dated 8<sup>th</sup> March, 2019 ought to be discharged and/or set aside for having been entered into not only without the Plaintiff/Applicant's instructions but also for being unconscionable and for having been entered into in ignorance and misapprehension of the material facts by the Applicant's previous advocates.
7. It is for this reason that the Applicant herein seeks an order of temporary injunction from this Honourable Court not only to preserve the substratum of the instant application and suit but also to restrain the Respondent herein from disposing of the said parcel of land belonging to the Applicant, pursuant to Order 40 of the Civil Procedure rules, 2010.
8. The Applicant herein has not concealed any material facts from the Honourable Court since the cases cited by the 1<sup>st</sup> Respondent herein were filed by Sinende Wholesalers Limited, which is a separate or distinct entity from the Plaintiff/Applicant therein and hence the 1<sup>st</sup> Respondent's claim is unfounded and baseless.

### **Respondent's Submissions**

9. The respondent submits that, the Plaintiff/Applicant herein filed the instant suit vide plaint dated 11<sup>th</sup> October, 2018 claiming among others the release of certain motor vehicles, orders of injunction and declaration that the purported sale of land parcel No. Cismara/ololulunga/4150, Cismara/ololulunga/14681 and Cismara/ololulunga/12784 is illegal and void.
10. Before the matter was heard and/or before the main suit was set down for hearing. The parties herein entered into a consent which consent was adopted as an order of the court.
11. In the said consent judgment, the Plaintiff herein acknowledged indebtedness of Kshs.31,715,191.00 to the 1<sup>st</sup> Defendant/Respondent which amount was in arrears for the loan advanced to him by the 1<sup>st</sup> Defendant/Respondent.
12. While the matter was still pending in court, the Plaintiff/Applicant filed a similar suit seeking similar orders in Nairobi HCCCOMM No. E064 of 2023 wherein the Plaintiff also filed an application



- seeking orders of injunction. The court delivered its ruling, allowed the application and ordered the 1<sup>st</sup> Defendant to issue fresh notices to the Plaintiff.
13. It is upon the said ruling that the 1<sup>st</sup> Defendant/Respondent commenced a fresh process and advertised the sale of Cismara/ololulunga/14681. Upon learning of the said sale of Cismara/ololulunga/14681, the Plaintiff/Applicant filed the application dated 16<sup>th</sup> June, 2023 now before this Honourable Court.
  14. The 1<sup>st</sup> Defendant/Respondent opposed the said application vide a replying affidavit sworn by the 1<sup>st</sup> Defendant's/Respondent's Legal Officer. The Plaintiff/Applicant thereafter filed his supplementary affidavit sworn on 12<sup>th</sup> November, 2024.
  15. The application came up for mention on several occasions as can be noted from the court record when the Plaintiff/Applicant did not attend court. On 23<sup>rd</sup> January, 2025 when the matter came up for mention the court directed parties to file their respective submissions hence these submissions.
  16. There is no proof that the consent was entered by coercion, undue influence or even fraud. A consent judgment is a contract and can only be set aside if the court finds that the same was entered into by coercion, undue influence or even fraud. The Plaintiff/Applicant has challenged the consent judgment on the ground that the said consent was entered into by his advocate without any authorization from him.
  17. It is nonetheless that in entering the consent, the Plaintiff/Applicant was all along represented in court by counsel.
  18. The Plaintiff/Applicant case alleges lack of knowledge of the consent. In fact, the Plaintiff/Applicant alleges that the consent was illegally and fraudulently entered into by his advocate. Reliance is made on Supreme Court Practice 1976 (Vol.2) paragraph 2013 page 620 which states as follows: -

“ Authority of Solicitor – A solicitor has a general authority to compromise on behalf of his client, if he acts bona fide and not contrary to express negative direction; and it would seem that a solicitor acting as agent for the principal solicitor has the same power (RE Newen, (1903) 1 Ch pp 817,818; Little Vs. Spreadbury, [1910] 2 KB 658). No limitation of the implied authority avails the client as against the other side unless such limitation has been brought to their notice-see Welsh Vs. Roe [1918 – (9) All E.R. Rep. 620.”
  19. It is contended that, after the consent judgment was entered into, the 1<sup>st</sup> Defendant/Respondent attempted to set aside the said consent vide an application filed in court on 26<sup>th</sup> July, 2019 together with an application seeking stay of execution.
  20. The Plaintiff was well represented and attended court when the consent judgment was entered into and cannot come back to claim that the consent judgment was entered into fraudulently as he had not authorized his counsel to enter into the consent. He is bound by the terms therein as he was present and consented to the terms therein.
  21. The Plaintiff/Applicant ought to have provided proof of the elements required to successfully invite the Honourable Court to delve and even consider setting aside the elements of the consent entered by the parties.
  22. On the other hand, even if the accurate or the amount due is in dispute, such a dispute cannot form a sufficient reason to stop the 1<sup>st</sup> Defendant/Respondent from exercising the statutory right of sale. Reliance is made on the case of Giro Commercial Bank Limited Vs. Halid Hamad Mutesi [2002] eKLR.



23. The respondent contend that, based on the foregoing, we are convinced that the Plaintiff/Applicant has failed to satisfy the Honourable Court of the threshold established in the case of Giella Vs. Cassman Brown (1973) EA 358 and in Mrao Limited Vs. First American Bank Limited & 2 Others (2003) KLR as regards laying the foundation for the grant of the orders sought to warrant the orders sought and thus the same should not be granted.

### **1<sup>st</sup> Defendant's supplementary submissions**

24. The 1<sup>st</sup> Defendant submits further that the application herein is res judicata for reasons: -in hat the Plaintiff filed a similar application being Hcccomm No. E064 OF 2023. The suit is filed by Sinende Wholesalers, which company the 1<sup>st</sup> Defendant not only advanced the loan facility to, but also the Plaintiff is a director.

a. The application is over the same subject matter.

25. Secondly, both the application herein dated 6<sup>th</sup> June, 2023 and the application dated 22<sup>nd</sup> February 2023 filed by the Plaintiff in Hcccomm No. E064 OF 2023 is over the same subject matter. The subject matter is the property known as Cismara/ololulunga/14681.

26. The issues raised in both applications are the similar and were determined. And reliance is made on In Uhuru Highway Development Ltd – Vs – Central Bank of Kenya, Exchange Bank Ltd (in voluntary liquidation) and Kamlesh Mansukhlal Pattni .

27. It is submitted that on setting aside of the consent order dated 8<sup>th</sup> March, 2019 the Honourable Judge on the second page of his ruling at paragraph 5 and 6 made a finding on the validity of the consent order. At paragraph 6, the court held: -

‘The aforesaid consent recorded in the court corroborates the letter of offer relied on by the Bank. Since it is a consent recorded by the parties, the Plaintiff is estopped from denying that it was not advanced facilities as contended by the Bank and that it is not indebted to the extent that it agreed in the consent.’

28. By virtue of the findings of the court on both injunction and the consent agreement dated 8<sup>th</sup> March, 2019, the 1<sup>st</sup> Defendant contends that the instant application is res judicata, pursuant to Section 7 of the *Civil Procedure Act* Cap 21 Laws of Kenya .

29. In HCCCOMM No. E064 of 2023 at page 2 paragraph 5 of the ruling the Honourable Court noted that the Plaintiff had failed to disclose that he had filed the current suit against the Defendants. The Plaintiff's failure to disclose that he had filed HCCCOMM No. E064 of 2023 against the 1<sup>st</sup> Defendant, we submit, constitutes non-disclosure of material facts. Due to Plaintiff's failure to make the fullest possible disclosure to this Honourable Court, the consequences of which, he cannot obtain any advantage from the proceedings and he will equally be deprived of any advantage he may have already obtained by him.

### **Issues, Analysis And Determination**

30. After going through parties' pleadings, affidavits, submissions and the entire record, I find the issues are; Whether the matter the is res judicata which if established disposes the instant matter without going to the other grounds advanced. If the answer is in negative, whether the application has merit? What is the order as to costs?



31. The Plaintiff filed a similar application in HCCCOMM NO. E064 OF 2023; Sinende Wholesalers Limited Vs. Transnational Bank Limited and Sanjomu Auctioneers. Which he does not deny. The suit is filed by Sinende Wholesalers, which company the 1<sup>st</sup> Defendant not only advanced the loan facility to, but also the Plaintiff is a director. both the application herein dated 6<sup>th</sup> June, 2023 and the application dated 22<sup>nd</sup> February 2023 filed by the Plaintiff in HCCCOMM NO. E064 OF 2023 is over the same subject matter. The subject matter is the property known as Cismara/ololulunga/14681. The issues raised in both applications are similar and were determined.
32. It is stipulated in Section 7 Civil Procedure Act Cap 21 in summary...

“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. Explanation. — (1) The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it. Explanation. — (2) For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court. Explanation. — (3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other. Explanation. — (4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Explanation. — (5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused. Explanation. — (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.”

1. It is not contested that Plaintiff filed HCCCOMM E063/2023. Filed similar application in same case. The same were under same subject matter. The application dated 6/6/2023 and 22/2/2023 in HCCCOMM E064/2023 subject matter is CISMARA/OLOLULUNGA/14681. Same were determined. Applicants sought similar orders to wit injunction reliefs to stop sale of same subject matter. Majaja J. as he then was, in a ruling of 30/6/2023 attached to affidavit as VM-I i-HCCCOMM E064/2023 relied on both consent and injunction. As injunction and consent were dealt with, the matter is res judicata. That ground being adequate to dispose of the suit and the application, the same warrant court to dismiss application without labouring in determining other grounds advanced.
2. In Uhuru Highway Development Ltd – Vs – Central Bank of Kenya, Exchange Bank Ltd (in voluntary liquidation) and Kamlesh Mansukhlal Pattni as thus:

‘... the court in an earlier application 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.’

33. On setting aside the consent order dated 8<sup>th</sup> March 2019 the Honorable Judge on the second page of his ruling at paragraphs 5}} and 6}} made a finding on the validity of the consent order. At paragraph 6}}, the court held: -

‘The aforesaid consent recorded in the court corroborates the letter of offer relied on by the Bank. Since it is a consent record by the parties, the Plaintiff is estopped from denying that it was not advanced facilities as contended by the Bank and that it is not indebted to the extent that it agreed in the consent.’

3. By virtue of the findings of the court on both injunction and the consent agreement dated 8<sup>th</sup> March 2019, the instant application is res judicata, pursuant to Section 7 of the *Civil Procedure Act* Cap 21 Laws of Kenya.
4. Thus, in view of the above finding, the ground of res judicata is adequate to dispose of the suit and the application, the same warrant court to dismiss application and the suit without laboring in determining other grounds advanced.
5. Thus, the court makes the orders.
  - i. The application and the entire suit are struck out with costs to the respondents.

**RULING DELIVERED, DATED AND SIGNED THIS 26<sup>TH</sup> DAY OF JUNE 2025.**

**JUSTICE CHARLES KARIUKI**

**JUDGE**

