



**Kariuki v NCBA Bank Limited (Commercial Appeal E058 of 2023)  
[2024] KEHC 7706 (KLR) (Commercial and Tax) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7706 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL E058 OF 2023**

**PM MULWA, J**

**JUNE 27, 2024**

**BETWEEN**

**PETER WAMBUGU KARIUKI ..... APPELLANT**

**AND**

**NCBA BANK LIMITED ..... RESPONDENT**

*(An Appeal from the ruling delivered by the Adjudicator in Small  
Claims Court Case No. E1440 of 2022 delivered on 20th March 2023)*

**JUDGMENT**

1. The appellant instituted a claim against the respondent in the Small Claims Court, being SCCCOMM NO. E1440 OF 2022 whereby he sought declarations from the court that the respondent's actions with regard to his bank account were unjustified.
2. Upon considering the claim and the response filed against it, the lower court, in its judgement delivered on 20<sup>th</sup> March 2023, found that it did not have the authority to grant any of the declaratory orders sought and that the claim was res judicata as a similar suit had been filed by the appellant against the respondent in SCCCOMM NO. 308 OF 2021.
3. What is before this court is an appeal against the aforementioned judgement. The appellant's grounds of appeal are set out in its memorandum of appeal dated 22<sup>nd</sup> March 2023, to wit:

“...the Learned trial adjudicator erred in law in THAT;

1. She held that the Court under Section 36(1) of the *Small Claims Court Act* lacked Jurisdiction to entertain the appellants claim (though the respondent had not raised the issue even as it is appreciated a court can on its own raise the



issue even on Appeal) when it is clear that under subsection 36 (1), (a), (c) & (e) the court indeed had and has clear Jurisdiction to hear and determine the claim that was before it.

2. She held that under Section 13 (2) of the Small Claim Court Act the appellants claim was Res Judicata (for reasons that the cause of action was related to the same loan account) which holding was contrary to the principle consideration of the issues that are considered for Res Judicata to be concluded in a matter. Indeed, the pleadings and orders sought in the claim are not at all Res Judicata.”
4. Based on the grounds above, the appellant prayed for his appeal to be allowed and to set aside the judgement dated 20<sup>th</sup> March 2023. Further the appellant prayed for an order to have the matter heard afresh on its merits in the Small Claims Court by a different adjudicator.

**Analysis and determination:**

5. The respondent opposed the appeal and filed written submissions dated 30<sup>th</sup> October while the appellant filed submissions dated 7<sup>th</sup> September 2023. The court has considered the record of appeal dated 14<sup>th</sup> July 2023 and the submissions filed by the parties.
6. The following issues render themselves for determination:
  - i) Whether the Small Claims Court had the jurisdiction to hear and determine the claim before it.
  - ii) Whether the claim in the Small Claims Court was res judicata.
7. On the first issue, Section 36(1) of the *Small Claims Court Act* provides for the orders that the court can grant. These are:

- “(1) The court may, in relation to any claim within its jurisdiction, make one or more of the following orders-
  - (a) Order to pay money either in lump sum or by instalments;
  - (b) an order for the restitution of any movable property;
  - (c) an order for the recovery of any sum in relation to performance of a contract;
  - (d) an order dismissing the claim to which the proceedings relate; or
  - (e) any such consequential or ancillary orders as may be necessary including any stipulations or conditions for the enforcement of its orders or directions.”

8. The appellant sought the following orders in its statement of claim dated 16<sup>th</sup> March 2022 against the respondent in the lower court:

- “(a) A declaration that:
  - (i) The respondent did not account for the Kshs.6000/- the claimant deposited on 18/6/2021 as a top up for the June 2021 loan monthly instalment and that the demands dated 1/7/2021



to 15/2/2022 are totally unjustified, therefore not money due or genuinely owing as a loan amount.

(ii) The Kshs.21,600/- debited into the claimants account as auctioneers fees without notice and without any work done other than taking a picture of M/V. Reg. No. KCS 619P is unjustified and therefore not due & owing as a loan amount.

(iii) The Kshs.37,200/- debited into the claimant's account is contrary to the decree & certificate of costs in Small Claims Case No.308 of 2021 therefore unjustified and not due and owing unpaid loan since the correct amount is Kshs.27,200/-.

(b) Costs of and incidentals to suit.

(c) Any other/such other/further relief/orders as this Hon. Court might deem just/fit to grant.”

9. Having looked at the prayers sought by the appellant above, I find that the Small Claims Court does not have the jurisdiction to grant such orders as they are declaratory in nature which is not an order that may be granted under section 36(1) of the *Small Claims Court Act*.
10. I concur with the finding of the learned adjudicator that she did not have the jurisdiction to grant the prayers sought in the appellant's claim before it.
11. On the second issue the respondent submitted that the claim before the lower court was res judicata.
12. In its judgement, the lower court found that there was a similar suit filed by the claimant against the respondent in SCCC No. 308 of 2021 Peter Wambugu Kariuki v NCBA Bank Limited whereby judgement was entered.
13. The judgement in SCCC No. 308 of 2021 is annexed to the record of appeal on pages 70-72. A cursory look at it indicates that the parties and the claim in both SCCC No. 308 of 2021 and SCCC No. E1440 of 2022 are the same. The claim in both suits related to the transactions in the loan account held by the appellant in the respondent bank.
14. Section 7 of the Civil Procedure Rules states:

“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.”
15. It is the considered view of this court that the appellant's claim in SCCC No. E1440 of 2022 had already been directly and substantially in issue in SCCC No. 308 of 2021. In fact, the matter had already been conclusively determined by another court. It was therefore a violation of the principle of res judicata and the court process for the appellant to file a similar claim in a different court of equal status.
16. From the foregoing, I find that the judgment of the lower court dated 20<sup>th</sup> March 2023 in SCCC No. E1440 of 2022 was sound and there is no need for this court to interfere with it.
17. Consequently, the appeal herein lacks merit and is dismissed with costs to the respondent.



**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JUNE 2024.**

.....

**P. MULWA**

**JUDGE**

In the presence of:

Mr. Kariuki for Appellant

N/A for Respondent

Court Assistant: Carlos

