



**Cardamom Restaurant v Nairobi Connection Services Auctioneers & another (Tribunal Case E881 of 2023) [2023] KEBPRT 1336 (KLR) (Civ) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1336 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
CIVIL  
TRIBUNAL CASE E881 OF 2023  
M MAKORI, MEMBER  
NOVEMBER 21, 2023**

**BETWEEN**

**CARDAMOM RESTAURANT ..... TENANT**

**AND**

**NAIROBI CONNECTION SERVICES AUCTIONEERS ..... 1<sup>ST</sup> RESPONDENT**

**MIRIHI LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Tenant/Applicant filed the application dated 9/9/2023 seeking a myriad of orders against the Respondents being an Auctioneer and the Landlord.
2. The Honourable Court in the interim granted prayers number 2 and 3 of the said Notice of Motion Application dated 9/9/2023.
3. On the other hand, the Respondents filed Grounds of Opposition dated 13/10/2023 and a Replying Affidavit 13/10/2023. Importantly, the Respondents avers that there exists a similar matter in a court of competent jurisdiction between the same parties.
4. Chief Magistrates Application No. E1254 of 2023 is cited as the other matter alive and between the same parties namely Nairobi Connection Services Auctioneers and Mirihi Limited v Cardamom Restaurant.
5. At this juncture, the preliminary issue for determination that this Court begs to determine is whether the present suit is substantially in issue before another court of competent jurisdiction contrary to section 6 of the [Civil Procedure Act](#).



6. In analyzing the above issues, the court is minded to note that the doctrine of res sub-judice prevents a court from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with the previously instituted suit between the same parties pending before same or another court with jurisdiction to determine it.
7. The provisions of Section 6 of *Civil Procedure Act* defines the above principle or the doctrine as follows;
 

“..... No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim litigating under the same title, where such suit or proceeding is pending in the same court or any other court having jurisdiction in Kenya to grant the relief claimed.”
8. Now before I paraphrase the suit pending in this court, the suit filed by the Respondent vide Chief Magistrates Application No. E1254 of 2023 going by what has been laid before me, reveals that the Respondent’s cause of action was the issue of distress of rent of Kshs 1,136,290/= situated at Diamond Plaza II, LR. No. 209/2013/2,3 & 4 2<sup>nd</sup> Flr 01.
9. In the present suit before this court the Applicant who was a Respondent in Chief Magistrates Application No. E1254 of 2023 seeks orders to have the Respondent and who was the Applicant in Chief Magistrates Application No. E1254 of 2023 prohibited and restrained from unlawfully levying distress, proclaim, carting away and attaching movable properties in relation to the suit property.
10. Clearly the issues raised in the present suit and between the same partes are equally raised and/or have potential of being raised in Chief Magistrates Application No. E1254 of 2023.
11. In MCCCCMISC/E1254/2023 the parties are Nairobi Connection Services Auctioneers and Mirihi Limited v Cardamom Restaurant which are the same parties in the preset suit. The said matter is pending a Ruling before Hon. Hosea Mwangi Nganga –PM and which is slated for 21/11/2023.
12. In my mind therefore the issues before this court are equally issues for determination in MCCCCMISC/E1254/2023 between Nairobi Connection Services Auctioneers and Mirihi Limited v Cardamom Restaurant thus offending the provision of Section 6 *Civil Procedure Act*.
13. It cannot be gainsaid that the rationale behind sub-judice rule is to prevent situation of having conflicting orders emanating from two or more different courts over the same subject matter. That is exactly the mischief Section 6 of the *Civil Procedure Act* is supposed to cure by providing for a stay of suit or proceedings. In the case of; *David Ndiu & others v Attorney General & Others* [2021] eKLR, a bench of five Judges inter alia stated; -
 

“The rationale behind this provision (Section 6 of the *Civil Procedure Act*) is that it is vexatious and oppressive for a claimant to sue concurrently in two courts. Where there are two courts faced with substantially the same question or issue, that question or issue should be determined in only one of those courts, and the court will....”
14. Additionally, and in a recent decision Justice Mativo discussed the concept sub judice. This was in *Republic v Paul Kibara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya* [2020] eKLR where he stated as follows: -
 

“...there exists the concept of sub judice which in Latin means “under Judgement.” It denotes that a matter is being considered by a court or judge. The concept of sub judice that where



an issue is pending in a court of law for adjudication between the same parties, any other court is barred from trying that issue so long as the first suit goes on. In such a situation, order is passed by the subsequent court to stay the proceeding and such order can be made at any stage.”

15. The import of the concept is that as soon as the Court finds a matter sub judice it stays immediately the proceedings until the prior one is heard and determined. On this point, the Supreme Court of Kenya in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)*, stated therein as follows: -

“(67) The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of 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. 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. A party that seeks to invoke the doctrine of res sub-judice must therefore 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.”

16. In upshot and for the reasons advanced above, this court finds merit in the Grounds of Objection dated 13/10/2023 and makes the following orders namely:
- i. The orders issued by this court on 18/9/2023 by Hon. Joyce Murigi are hereby set aside.
  - ii. The suit pending / proceedings herein, is hereby stayed under Section 6 of *Civil Procedure Act*, pending determination of Nairobi Chief Magistrate’s Court vide MCCCCMISC/E1254/2023 between Nairobi Connection Services Auctioneers and Mirihi Limited v Cardamom Restaurant
  - iii. This court, owing to the nature of this matter, I shall make no order as to costs at this stage. Each party to bear its own costs.

**RULING DATED, SIGNED & DELIVERED VIRTUALLY THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2023.**

**HON. MIKE MAKORI (MR.) MEMBER**

**21. 11.2023**

No appearance for both parties

