



**Mweya v Ndegwa & 4 others (Tribunal Case E736 of 2023)
[2023] KEBPRT 1335 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1335 (KLR)

**REPUBLIC OF KENYA
IN THE BUSINESS PREMISES RENT TRIBUNAL
TRIBUNAL CASE E736 OF 2023
M MAKORI, MEMBER
SEPTEMBER 21, 2023**

BETWEEN

SHADRACK NGUGI MWEYA APPLICANT

AND

MERCY WAITHIRA NDEGWA 1ST RESPONDENT

JANE NDEGWA 2ND RESPONDENT

MARY NJERI NDEGWA 3RD RESPONDENT

NDEGWA ELECTRICALS 4TH RESPONDENT

MORAAN AUCTIONEERS 5TH RESPONDENT

RULING

1. The Tenant/Applicant approached this court vide an application dated 31/6/2023 and which application was supported by affidavit of Shadrack Ngugi mweya and other grounds enumerated on the face of the said application.
2. The Tenant/Applicant averred that he had been staying as rent paying tenant on the premises located at Thika-Biafra, operating a hotel and Room services at a rent of Kshs 14,000.00 since June 2020.
3. Upon filing, the Honourable Court directed that the application be served and slated the same for hearing on 21/8/2023.
4. On the part of 1st Respondent/Landlord, they filed a Replying Affidavit dated 18/8/2023 and deponed by one Mercy waithira Ndegwa. The 1st Respondent/Landlord averred that the present suit is defective owing to the facts that a similar matter had been filed and was active. The 1st Respondent Landlord annexed as exhibit one Thika Civil Case No. E233 of 2023 between Shadrack Ngugi mweya, Mercy waithira Ndegwa and another.



5. Additionally, the 1st to the 5th Respondents/Landlords filed a Notice of Preliminary Objection dated 18/8/2023 and arguing that the this Honourable Court doesn't have jurisdiction to hear and determine a matter that is active and pending before another competent court.
6. The application and notice of Preliminary Objection were canvassed by way of written submission. The Applicant/Tenant filed submissions dated 1/9/2023 while the Respondents/Landlords filed their written submissions dated 7/9/2023.
7. Upon perusal of the pleadings and submissions filed by all parties the only single most issue for determination is whether this Honourable Court has jurisdiction to hear and determine an issue that is active before another competent court?
8. The perusal of the pleadings particularly the one filed by the Respondents/Landlords confirms two things that are at the center of dispute in this suit namely; the dispute is active in Thika Civil Case No. E233 of 2023 between Shadrack Ngugi mweya, Mercy Waithira Ndegwa and another and that the said premises was distressed on 24/5/2023.
9. As a result of the foregoing, the jurisdiction of this Court is challenged on the limb of the issue of Res Judicata which shall be deliberated as follows, Section 7 of the [Civil Procedure Act](#) on res judicata, reads as follows:

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.
10. The Court of Appeal held in *The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, [2017] eKLR), that:

[F] or the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;
 - a) The suit or issue was directly and substantially in issue in the former suit.
 - b) That former suit was between the same parties or parties under whom they or any of them claim.
 - c) Those parties were litigating under the same title.
 - d) The issue was heard and finally determined in the former suit.
 - e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.
11. In *C.K. Bett Traders Limited & 2 others v Kennedy Mwangi & another* [2021] eKLR while citing the Court of Appeal in *The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, [2017] eKLR) noted that;

The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and commonsensical protection against wastage of time and resources in an



endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.

12. The Applicant/Tenant in Reply to Respondents' Notice of Preliminary Objection admitted the existence Thika Civil Case No. E233 of 2023 between Shadrack Ngugi mweya, Mercy Waithira Ndegwa and another.
13. In light of the foregoing I find that the Notice of Preliminary Objection dated 18/8/2023 succeeds, the reference before this court stands dismissed on account of Res- Judicata.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 21ST DAY OF SEPTEMBER 2023.

HON. MIKE MAKORI

MEMBER

In the absence of the parties.

