



Fracht Kenya Limited & another v Kaloki & another (Civil Case E131 of 2023) [2025] KEHC 2222 (KLR) (Civ) (13 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2222 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE E131 OF 2023

JN MULWA, J

FEBRUARY 13, 2025

BETWEEN

FRACHT KENYA LIMITED 1ST PLAINTIFF

FRACHT AG 2ND PLAINTIFF

AND

IRENE WAMBOI KALOKI 1ST DEFENDANT

ENDINGUELE SERVICES LIMITED 2ND DEFENDANT

RULING

1. Before the court are two applications. The 1st one is dated 17/10/2023 brought by the plaintiff seeking leave to amend its plaint dated 4/03/2022. It was allowed by the court on 31/07/2024 and an amended plaint filed. It is dated 2/08/2024.
2. The 2nd application is dated 27/02/2024 and brought by the defendants in which they seek orders to strike out and/or dismiss the plaintiffs suit in which the plaintiffs claim alleged fraud by the 1st defendant during her employment with the 1st plaintiff as the Managing Director for reason that the same issues have been determined in another suit Nairobi ELRC no. E043 of 2021 – Irene Wambui Kaloki v. Francht Kenya Limited and therefore this suit is resjudicata.
3. Remaining for determination is the 2nd application dated 27/02/2024. It is premised on provisions of Section 7 of the *Civil Procedure Act* that provides:-

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.

4. In its supporting affidavit sworn by Irene Wambui Kaloki the 1st Defendant, it is her case that her employment with the 1st plaintiff was terminated after which she filed a suit at the Nairobi ELC No. E043/2022 seeking damages against the 1st Plaintiff herein and upon hearing the case judgment was delivered on 10/11/2023 in which the 1st Plaintiff's counterclaim on the issue of fraud during her employment was dismissed.
5. The 1st defendant avers that she preferred an appeal against the dismissal which appeal is pending hearing and determination.
6. I have perused the replying affidavit sworn on 4/07/2024 by Joram Nyanzi the Managing Director of the 1st Plaintiff in which he deposes that the suit as filed relates to enforcement and breach of the contract of a Business Purchase Agreement dated 6/04/2019, the Limited Power of Attorney granted by the 1st Respondent to the 1st applicant relating to withdrawal of funds from the Respondents' bank accounts without authorization of the Board of Directors through fraudulent commissions.
7. For the foregoing the 1st defendant argues that the instant suit against her by the 1st plaintiff is resjudicata, bad in law and ought to be dismissed and or struck out with costs.
8. It is further deposed that the said issue was heard and determined in the ELRC case, that was between the 1st Applicant and the 1st Respondent that it did not involve the 2nd applicant and the 2nd Respondent who are currently additional parties before the court.
9. Additionally the Respondents argue that the applications aim is to have the court determine the suit by way of affidavits by a trial within a trial, a procedure not provided for in law, and further that the applicant has failed to satisfy the conditions for a suit to be declared as resjudicata.

Analysis and Determination

10. As stated earlier in this ruling, the 1st application dated 17/10/2023 is spent; and an amended plaint dated 2/08/2024 filed.

Issues for determination

Whether the this suit is res-judicata

11. The court has considered in the affidavits for and in opposition together with Advocates oral submissions.

A party invoking the principle of resjudicata must satisfy the court, and meet the following parameters that:-

- a. The suit or issue was directly and substantially in issue in the former suit;
- b. That the 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 suit or issue was heard and determined in the former suit.



The above parameters were set out in the case, in addition to provisions of Section 7 of the [Civil Procedure Act](#); of Independent Electoral & Boundaries Commission V. Maina Kiai & 5 Others [2017] eKLR.

12. The parties in the ELC No. E043/2023 were Irene Kaloki v. Francht Kenya Limited. The Plaintiff therein sought damages for an alleged unfair termination of her employment by the 1st plaintiff.

13. The parties in this suit are Francht Kenya Limited (1st plaintiff) and Francht AG(2nd Plaintiff vs. Irene Wamboi Kaloki (1st Defendant and Edinguele Services Limited (2nd defendant).

A perusal of the pleadings show that the cause of action in this suit vide the plaint dated 12/06/2023 and the reliefs sought have nothing to do with employment issues; being breach of contract, fraudulent dealings by and or between the parties in respect of the contract.

14. Additionally, the plaintiffs herein seek special damages from the defendants jointly and severally as well as specific performance of business purchase agreements between the parties.

By the above, it is evidently clear that the causes of action in this suit and that at the ELC case have no relationship save that Irene Wamboi Kaloki and the 1st Defendant Francht Kenya Limited are parties to both cases.

The 2nd plaintiff in this case is not a party in the ELC case nor is the 2nd Defendant a party in the ELC case.

In that respect, the applicant has failed to demonstrate that the issues in this suit were directly and or substantially in issue in the former ELC suit.

15. The matter of fraud in the ELC court was dismissed. However substantively the issue before the ELC judge was on termination of employment wherein the plaintiff, now the 1st defendant sought damages for wrongful termination of her employment by the 1st plaintiff.

In the premises the court finds that the conditions set out at Section 7 of the [Civil Procedure Act](#) have not been met by the applicants in this suit.

16. Consequently, the court finds and holds that the Applicants application dated 27/02/2024 is devoid of merit.

It is dismissed with costs to the respondents.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 13TH DAY OF FEBRUARY 2025.

JANET MULWA

JUDGE

