



National Housing Corporation v Odera (Miscellaneous Civil Application E145 of 2022) [2025] KEHC 5789 (KLR) (Commercial and Tax) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5789 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E145 OF 2022**

PM MULWA, J

MAY 8, 2025

BETWEEN

NATIONAL HOUSING CORPORATION APPLICANT

AND

JAMES ABOK ODERA RESPONDENT

RULING

1. Under consideration by this court are two applications. The first is dated 18th February 2022 and brought by the Applicant, National Housing Corporation, and the second is dated 23rd August 2023 and brought by the Respondent, James Abok Odera. Pursuant to directions of the Court, both applications were canvassed by way of written submissions.

The applications

2. The Applicant's motion is premised on Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 40 Rule 7 and Order 51 Rule 1 of the Civil Procedure Rules and seeks for orders to compel the Respondent to execute share transfer forms in respect of shares held in Research Development Unit Company Limited.
3. It is the Applicant's case that the Respondent and another were allotted shares in the said company in their capacities as Managing Director and Chairman, respectively. Upon their departure from the company, the Respondent declined or failed to execute share transfer documents. The Applicant avers that it is now unable to wind up the company due to the absence of executed share transfer forms.
4. In opposition, the Respondent filed a replying affidavit sworn on 7th March 2024, in which he raised, inter alia, the defence of res judicata.



5. The Respondent's own application, dated 23rd August 2023, is brought under Section 7 of the [Civil Procedure Act](#), Order 51 Rule 1 of the Civil Procedure Rules, and Sections 1A, 1B and 3A of the [Civil Procedure Act](#). It seeks to have the Applicant's motion dismissed on the ground that it is res judicata, the subject matter having allegedly been litigated in Milimani Employment Cause No. 2054 of 2014: James Abok Odera v National Housing Corporation.
6. The Respondent avers that his termination was fully addressed and determined in the said employment cause, and to entertain the present application would amount to double jeopardy.
7. In response, the Applicant's principal legal officer, Joan W. Gakuay, in a replying affidavit sworn on 17th May 2024, depones that the Employment and Labour Relations Court (ELRC) dealt solely with the issue of unfair termination and not the issue of transfer of shares in Research Development Unit Company Limited. She maintains that the issue now before this Court is distinct and has not been previously adjudicated.

Analysis and determination

8. Upon a careful perusal of the record, affidavits, and submissions, I find it prudent to first address the Respondent's application dated 23rd August 2023, as a determination on whether the suit is res judicata may be dispositive of the matter.
9. Section 7 of the [Civil Procedure Act](#), 2010 provides as hereunder:

“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 doctrine of res judicata serves to protect the integrity and finality of judicial decisions, conserve judicial time, and protect parties from being vexed twice over the same matter. Its rationale is aptly captured in *The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, [2017] eKLR), where the Court of Appeal outlined the following conjunctive elements that must be satisfied:

“For 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. It is not disputed that there was a previous suit - Milimani Employment and Labour Relations Court Cause No. 2054 of 2014 between the same parties. However, what is in contention is whether the



issue now raised, the execution of share transfer forms, was directly and substantially in issue in that proceeding.

12. The record shows that the earlier matter before the ELRC concerned allegations of unfair termination and entitlements to terminal dues. Those are matters that fall squarely within the exclusive jurisdiction of the ELRC as provided under Article 162(2)(a) of *the Constitution* and the *Employment and Labour Relations Court Act*.
13. There is no evidence on record that the issue of transfer of shares was raised, litigated, or adjudicated in the earlier suit. The Employment and Labour Relations Court is not clothed with jurisdiction to determine corporate or company law issues, including those involving shareholding and governance of private companies.
14. I am guided by the holding in *Uhuru Highway Development Ltd v Central Bank of Kenya & Others* [1999] eKLR, where it was held that for res judicata to apply, the issues must not merely involve the same parties but must also relate to the same issues.
15. Accordingly, I find that the issue of execution of share transfer forms is not res judicata. The Respondent's application dated 23rd August 2023 is thus devoid of merit and is hereby dismissed with costs.

Application dated 18th February 2022

16. Having held that the matter is not res judicata, I now turn to the application dated 18th February 2022. The Applicant seeks an order to compel the Respondent to execute share transfer forms in favour of the Applicant in respect of shares held in Research Development Unit Company Limited.
17. The application is brought under Sections 1A, 1B and 3A of the *Civil Procedure Act* and Orders 40 Rule 7 and 51 Rule 1 of the Civil Procedure Rules, which permit the Court to issue such orders as are necessary for the ends of justice or to prevent abuse of the court process.
18. The affidavit evidence of Stephen Muriuki Ngare establishes that the company, Research Development Unit Company Ltd, was incorporated with the Applicant's sponsorship and that the Respondent was allotted shares in a representative capacity as Managing Director. Upon his departure, he declined or failed to sign transfer forms thereby stalling the company's winding up and occasioning financial hardship to the Applicant. The Applicant now seeks to wind up the company but is impeded by the Respondent's inaction.
19. The Respondent has not tendered any lawful basis for his refusal to sign the transfer documents. There is no evidence of a dispute over shareholding, nor of fraud, coercion or improper conduct on the part of the Applicant.
20. In *Giella v Cassman Brown* [1973] EA 358, the Court set out the principles for the grant of equitable relief. Where a party's legal rights are being frustrated and damages are not an adequate remedy, the Court may intervene to grant a mandatory order.
21. In this case, I find that the Respondent's continued refusal to execute the transfer forms is unreasonable and without legal justification. This conduct is obstructive and inimical to the proper winding up of the company. In the interest of justice and finality, this Court is inclined to grant the orders sought.
22. In light of the above analysis, I make the following orders:
 - a. The Respondent's application dated 23rd August 2023 is hereby dismissed with costs.



- b. The Applicant's application dated 18th February 2022 is allowed. The Respondent is hereby ordered to execute the share transfer forms in favour of the Applicant in respect of shares held in Research Development Unit Company Limited within 14 days of this ruling.
- c. In default, the Deputy Registrar of this Court shall be empowered to sign the said transfer forms in place of the Respondent.
- d. The costs of the application dated 18th February 2022 shall be borne by the Respondent.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MAY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Odongo for Applicant

Ms. Wambua h/b for Mr. Opiyo for Respondent

Court Assistant: Carlos

