Masinde v Attorney General & another (Constitutional Petition 2 of 2020) [2023] KEHC 22252 (KLR) (19 September 2023) (Ruling)

Neutral citation: [2023] KEHC 22252 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KITALE

CONSTITUTIONAL PETITION 2 OF 2020

AC MRIMA, J

SEPTEMBER 19, 2023

BETWEEN

EMILY KAGGIA MASINDE ..... PETITIONER

AND

THE HON ATTORNEY GENERAL ..... 1ST RESPONDENT

ERICK PATRICK ODERO OBAT ..... 2ND RESPONDENT

RULING

Introduction:

1. On 12th July, 2022, the 2nd Respondent herein, Erick Patrick Odero Obat, filed an Amended Notice of Preliminary Objection duly amended on 8th July, 2022 in opposition to the Petition.

2. The objection was based on the doctrine of res judicata.

3. Whereas the 1st Respondent did not take part in the hearing of the objection, the Petitioner herein vehemently opposed it, hence, this ruling.

The Objection:

4. The objection prayed that the Petition be struck out with costs on the following grounds: -

    1. This Honorable Court has [sic] jurisdiction to entertain this Petition under the provisions of Section 6 and 7 of the *Civil Procedure Act* as the same is Res Judicata;

    2. The issues being raised by the Petitioner in this Petition were heard and determined by a competent court in Kitale CMCC No. 353 of 2015.

5. By the directions of this Court, the Objection was canvassed by way of written submissions. The proponent filed his submissions dated 29th September, 2022 on the 17th October, 2022. According to

the 2nd Respondent, the cause of action, issues, facts, evidence, reliefs and parties in this suit are the same as those in Kitale CMCC No. 353 of 2015. In the circumstances, the present suit stood in violation of the Res Judicata doctrine set out in Section 7 of the *Civil Procedure Act*.

6. Arguing that litigation must come to an end, the 2nd Respondent prayed that the suit be struck out with costs.

7. The Petitioner on the other hand filed her submissions dated 1st November, 2022 on the 3rd November, 2022. She argued that the issues in Kitale CMCC No. 353 of 2015 were on malicious prosecution distinct from the violation of the Petitioner's rights in the present suit. She continued that the lower Court lacked jurisdiction to hear and determine the present dispute which is a preserve of this Court in accordance with Article 165(3)(b) of the *Constitution*. She urged this court to dismiss the Preliminary Objection with costs.

Analysis:

8. The successful raising of the plea of res judicata is a complete bar to the jurisdiction of a Court.

9. The Court of Appeal in Nakuru Civil Appeal No. 119 of 2017 *Public Service Commission & 4 others v Cheruiyot & 20 others* (Civil Appeal 119 & 139 of 2017 (Consolidated)) [2022] KECA 15 (KLR) (8 February 2022) (Judgment) spoke to the doctrine of jurisdiction in general as follows: -

    36. Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in "*Words and Phrases Legally Defined*", Volume 3 at Page 113 defines court jurisdiction as follows:

        > By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

    37. The locus classicus on jurisdiction is the celebrated case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1. Nyarangi, JA. relying, inter alia, on the above cited treatise by John Beecroft Saunders held as follows:

        > ...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

38. A decision made by a court of law without proper jurisdiction amounts to a nullity ab initio, and such a decision is amenable to setting aside ex debito justitiae.

39. The Supreme Court in *In the Matter of Interim Independent Electoral Commission* [2011] eKLR, Constitutional Application No. 2 of 2011 held that jurisdiction of courts in Kenya is regulated by the *Constitution*, statute, and principles laid out in judicial precedent. The Supreme Court at paragraph 30 of its decision held in part as follows:

> ...a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of Legislation is clear and there is no ambiguity.

40. In *Samuel Kamau Macharia and Another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, Application No. 2 of 2011, the Supreme Court reiterated its holding on a court's jurisdiction. *In the matter of the Interim Independent Electoral Commission* (supra) at paragraph 68 of its ruling, the Supreme Court held as follows:

> (68). A Court's jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law.

10. In this matter, the plea of res judicata has been raised on the basis of Kitale CMCC No. 353 of 2015. As said, a Notice of Preliminary Objection was filed in furtherance of the urge to strike out the Petition.

11. This Court will, in the first instance, address the manner in which the plea of res judicata has been raised herein. To that end, a look at the general principles on the doctrine follows.

12. The doctrine of res judicata is not novel. Its genesis is in Section 7 of the *Civil Procedure Act*, Cap. 21 of the Laws of Kenya which provides that: -

> 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.

13. The Supreme Court in *John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 others* [2021] eKLR comprehensively dealt with the different facets making up the doctrine of *res judicata*.

14. In the first instance, the Apex Court framed the issues for determination as follows: -

a) Did the High Court procedurally consider the plea of res judicata?

b) Did the finding by the High Court on res judicata infringe on the Petitioner's right to fair hearing condemning them unheard?

c) Were the learned Judges of the Court of Appeal justified in holding that the doctrine of res judicata applied to the current case; was the Paluku case the same as the Appellants' herein?

d) Is this doctrine of res judicata applicable to constitutional litigation and interpretation, just as in other criminal and civil litigation?

e) If the doctrine of res judicata is applicable to constitutional matters with the rider that it should be invoked in constitutional litigation only in the rarest and clearest of cases, on whom lies the burden of proving such rarest and clearest of cases?

f) What constitutes such "rarest and clearest" of cases?

g) Who bears the costs of the suit.

15. On the procedure for raising the plea of res judicata, the Supreme Court alluded to the position that the plea is anchored on evidential facts and that such facts ought to be properly raised in a matter. In that case, the plea of res judicata had been raised by way of Grounds of opposition and in the Replying Affidavit.

16. The Court, in dismissing the argument that the issue was improperly raised before Court, stated as follows: -

> (53) Instead, and contrary to the Appellants submissions, the plea of res judicata was raised through both grounds of opposition and replying affidavits in response to the Appellants application. It is also evident that through the Replying Affidavits of the 3rd and 4th Respondents, evidence by way of the Judgment of JR No. 130 of 2011 was introduced through an affidavit to bolster the plea of res judicata.
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> (54) It is further evident that the Appellants were not condemned unheard or shut out from the proceedings. The proceedings demonstrate that the Court accorded the Appellants the two justiciable elements of fair hearing: (i) an opportunity of hearing must be given; and (ii) that opportunity must be reasonable.
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> (55) This ground of appeal must therefore fail.

17. On whether the doctrine of res judicata applies to constitutional Petitions, the Supreme Court endeavoured an extensive discussion and comparative analysis in various jurisdictions. It also captured the various opposing schools of thought on the issue.

18. In the end, the Court found that the doctrine, rightly so, applies to constitutional Petitions. This is what the Court partly stated: -

> (81) We reaffirm our position as in the Muiri Coffee case that the doctrine of res judicata is based on the principle of finality which is a matter of public policy. The principle of finality is one of the pillars upon which our judicial system is founded and the doctrine of res judicata prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.....
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> (82) If we were to find that the doctrine does not apply to constitutional litigation, the doctrine may very well lose much of its legitimacy and validity. We say this in light of the fact that constitutional tenets permeate all litigation starting with the application of Article 159 of the *Constitution* in both civil and criminal litigation, and its application now embedded in all procedural statutes. Further

> Article 50 on right to fair hearing and Article 48 on access to justice are fundamental rights which every litigant is entitled to. Such a holding may very well lead to parties, that whenever they need to circumscribe the doctrine of res judicata, they only need to invoke some constitutional provision or other.

19. The Apex Court went ahead and rendered itself on the threshold for proving the applicability of the doctrine. The Court stated as follows:

> (86) We restate the elements that must be proven before a court may arrive at the conclusion that a matter is *res judicata*. For res judicata to be invoked in a civil matter the following elements must be demonstrated:
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> a) There is a former Judgment or order which was final;
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> b) The Judgment or order was on merit;
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> c) The Judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
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> d) There must be between the first and the second action identical parties, subject matter and cause of action

20. On the commonality of the parties, the Court noted as follows: -

> (93) The commonality is that the Appellants herein and the Applicants in Jr 130 of 2011 were persons, juridical and natural, engaged in the business of clearing and forwarding of goods for various importers of goods destined to the Democratic Republic of Congo. They have the same interests and therefore the raise the complaints regarding the two certificates, FERI & COD. The answer is in the affirmative and we find we cannot fault the High Court or the Court of Appeal for concluding as such.

21. In dealing with the contention as to whether the issues raised in the two suits therein were directly and substantially the same, the Supreme Court noted that the initial suit was instituted by way of a judicial review application whereas the subsequent suit was by way of a constitutional Petition. The Court also noted that the issues raised in the constitutional Petition were more than those decided in the judicial review application.

22. The Supreme Court disagreed with the Court of Appeal and found that the doctrine was not applicable in the matter. The Court held that: -

> (97) From the face of it, it would appear that the issues in the present suit and JR 130 of 2011 are directly and substantially the same. However, the Appellants herein predicated their petition on inter alia grounds that the bilateral agreement should have been approved by Parliament in order to form party of Kenyan law and in failing to do so, the Respondents contravened Article 2. They further alleged that the Respondents herein purported to usurp to the role of Parliament and in doing so contravened Articles 94(5) and (6) of the *Constitution*. They further alleged that the FERI and COD certificates threatened to infringe their right to property under Articles 40(1)(a) and (2)(a) when the Respondents threatened to arbitrarily deprive them of their property. The Court sitting in determination of a judicial review application did not have jurisdiction to render itself on these issues. We

therefore find that the principle of res judicata was wrongly invoked on this ground. (emphasis added).

23. On the competency of the Court deciding the matters in issue, the Supreme Court noted the close relationship between the issue as to whether the current suit had been decided by a competent court and whether the matter in dispute in the former suit between the parties was directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar.

24. The Apex Court had a lengthy discussion on the matter. It made reference to several decisions and in the end rendered itself as follows: -

> [107] The Court when determining a constitutional petition is empowered to look beyond the process and not only examine but delve into the merits of a matter or a decision. The essence of merit review is the power to substitute a decision which the Court can do when determining a constitutional petition. Further the Court is further empowered to grant not just judicial review orders but any other relief is deems fit to remedy any denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights. This Court in its decision in *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae)* [2021] eKLR went ahead to reaffirm use of structural interdicts and supervisory orders to redress the violation of a fundamental right in order to allow the development of Court-sanctioned enforcement of human rights as envisaged in the Bill of Rights.
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> [108] We arrive at the inescapable conclusion that the High Court in determining a judicial review application, exercises only a fraction the jurisdiction it has to determine a constitutional petition. It therefore follows that a determination of a judicial review application cannot be termed as final determination of issues under a constitutional petition. The considerations are different, the orders the court may grant are more expanded under a constitutional petition and therefore the outcomes are different.
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> [109] The Court in hearing a constitutional petition may very well arrive at the same conclusion as the Court hearing a judicial review application. However, the considerations right from the outset are different, the procedures are different, the reliefs that the court may grant are different, the Court will be playing fairly different roles.
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> [110] We consequently arrive at the conclusion that the Court of Appeal erred in holding that the doctrine of res judicata applied to the current case. The Court of Appeal should have at that point found that the High Court was wrong in its conclusion.

25. The Supreme Court also discussed two exceptions to the doctrine of res judicata. The Court stated as follows: -

> (84) Just as the Court of Appeal in its impugned decision noted that rights keep on evolving, mutating, and assuming multifaceted dimensions it may be difficult to specify what is rarest and clearest. We however propose to set some parameters that a party seeking to have a court give an exemption to the application of the doctrine of res judicata. The first is where there is potential for substantial injustice if a court does not hear a constitutional matter or issue on its merits. It is our considered opinion that before a court can arrive at such a conclusion, it must examine the entirety of the circumstances as well address the factors for and against exercise of such discretionary power.

(85) In the alternative a litigant must demonstrate special circumstances warranting the Court to make an exception.

26. The Supreme Court had earlier expressed itself on the doctrine of *res judicata* in Petition 14, 14A, 14B & 14C of 2014 (Consolidated) *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR where it delimited the operation of the doctrine of res-judicata in the following terms;

(317) The concept of res judicata operates to prevent causes of action, or issues from being relitigated once they have been determined on the merits. It encompasses limits upon both issues and claims, and the issues that may be raised in subsequent proceedings. In this case, the High Court relied on "issue estoppel", to bar the 1st, 2nd and 3rd respondents' claims. Issue estoppel prevents a party who previously litigated a claim (and lost), from taking a second bite at the cherry. This is a long-standing common law doctrine for bringing finality to the process of litigation; for avoiding multiplicities of proceedings; and for the protection of the integrity of the administration of justice? all in the cause of fairness in the settlement of disputes.

(318) This concept is incorporated in Section 7 of the *Civil Procedure Act* (Cap. 21, Laws of Kenya) which prohibits a Court from trying any issue which has been substantially in issue in an earlier suit. It thus 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.

(319) There are conditions to the application of the doctrine of res judicata: (i) the issue in the first suit must have been decided by a competent Court; (ii) the matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and (iii) the parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title *Karia and another v The Attorney General and others*, [2005] 1 EA 83, 89.

(320) So, in the instant case, the argument concerning res judicata can only succeed when it is established that the issue brought before a Court is essentially the same as another one already satisfactorily decided, before a competent court.

(333) We find that the petition at the High Court had sought to relitigate an issue already determined by the Public Procurement Administrative Review Tribunal. Instead of contesting the Tribunal's decision through the prescribed route of judicial review at the High Court, the 1st, 2nd and 3rd respondents instituted fresh proceedings, two years later, to challenge a decision on facts and issues finally determined. This strategy, we would observe, constitutes

the very mischief that the common law doctrine of "issue estoppel" is meant to forestall. Issue estoppel "prevents a party from using an institutional detour to attack the validity of an order by seeking a different result from a different forum, rather than through the designated appellate or judicial review route" (*Workers' Compensation Board v Figliola* [2011] 3 SCR 422, 438 (paragraph 28)).

(334) Whatever mode the 1st, 2nd and 3rd respondents adopted in couching their prayers, it is plain to us, they were challenging the decision of the Tribunal, in the High Court. It is a typical case that puts the Courts on guard, against litigants attempting to sidestep the doctrine of "issue estoppel", by appending new causes of action to their grievance, while pursuing the very same case they lost previously. In *Omondi v National Bank of Kenya Ltd. & Others*, [2001] EA 177 the Court held that "parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit."

(352) The Judicial Committee of the Privy Council, in *Thomas v The Attorney-General of Trinidad and Tobago*, [1991] LRC (Const.) 1001 held that "when a plaintiff seeks to litigate the same issue a second time relying on fresh propositions in law he can only do so if he can demonstrate that special circumstances exist for displacing the normal rules." That court relied on a case decided by the Supreme Court of India, *Daryao & Others v The State of UP & others*, (1961) 1 SCR 574 to find that the existence of a constitutional remedy does not affect the application of the principle of res judicata. The Indian Court also rejected the notion that res judicata could not apply to petitions seeking redress with respect to an infringement of fundamental rights. Gajendragadkar J stated:

> But is the rule of *res judicata* merely a technical rule or is it based on high public policy? If the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law, then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now the rule of res judicata...has no doubt some technical aspects...but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32.

(353) Kenya's High Court recently pronounced itself on the issue of the applicability of res judicata in constitutional claims. In *Okiya Omtatah Okoiti & Another v Attorney General & 6 Others*, High Court Const. and Human Rights Division,

Petition No. 593 of 2013 [2014] eKLR, Lenaola J. (at paragraph 64) thus stated:

> Whereas these principles have generally been applied liberally in civil suits, the same cannot be said of their application in constitutional matters. I say so because, in my view, the principle of res judicata can and should only be invoked in constitutional matters in the clearest of cases and where a party is relitigating the same matter before the Constitutional Court and where the Court is called upon to redetermine an issue between the same parties and on the same subject matter. While therefore the principle is a principle of law of wide application, therefore it must be sparingly invoked in rights-based litigation and the reason is obvious.

(354) On the basis of such principles evolved in case law, it is plain to us that the 1st, 2nd and 3rd respondents were relitigating the denial to them of a BSD licence, and were asking the High Court to redetermine this issue.

(355) However, notwithstanding our findings based on the common law principles of estoppel and res- judicata, we remain keenly aware that the *Constitution* of 2010 has elevated the process of judicial review to a pedestal that transcends the technicalities of common law. By clothing their grievance as a constitutional question, the 1st, 2nd and 3rd respondents were seeking the intervention of the High Court in the firm belief that, their fundamental right had been violated by a state organ. Indeed, this is what must have informed the Court of Appeal's view to the effect that the appellants (respondents herein) were entitled to approach the Court and have their grievance resolved on the basis of Articles 22 and 23 of the *Constitution*.

27. The Court of Appeal in *John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 others* [2015] eKLR (which decision was overturned by the Supreme Court) also, and so correctly, discussed the doctrine of res judicata at length. The Court stated in part as follows: -

> The rationale behind res judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res judicata ensures the economic use of court's limited resources and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably. In a nutshell, res judicata being a fundamental principle of law may be raised as a valid defence. It is a doctrine of general application and it matters not whether the proceedings in which it is raised are constitutional in nature. The general consensus therefore remains that res judicata being a fundamental principle of law that relates to the jurisdiction of the court, may be raised as a valid defence to a constitutional claim even on the basis of the court's inherent power to prevent abuse of process under Rule 3(8) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013. On the whole,

it is recognized that its scope may permeate broad aspects of civil law and practice. We accordingly do not accept the proposition that Constitution-based litigation cannot be subjected to the doctrine of res judicata. However, we must hasten to add that it should only be invoked in constitutional litigation in the clearest of the cases. It must be sparingly invoked and the reasons are obvious as rights keep on evolving, mutating, and assuming multifaceted dimensions.

We also resist the invitation by the appellants to hold that all constitutional petitions must be heard and disposed of on merit and that parties should not be barred from the citadel of justice on the basis of technicalities and rules of procedure which have no place in the new constitutional dispensation. The doctrine is not a technicality. It goes to the root of the jurisdiction of the court to entertain a dispute. If it is successfully ventilated, the doctrine will deny the court entertaining the dispute jurisdiction to take any further steps in the matter with the consequence that the suit will be struck out for being res judicata. That will close the chapter on the dispute. If the doctrine has such end result, how can it be said that it is a mere technicality" If a constitutional petition is bad in law from the onset, nothing stops the court from dealing with it peremptorily and having it immediately disposed of. There is no legal requirement that such litigation must be heard and determined on merit.

From our expose of the doctrine above, we are now able to formally answer the issues isolated for determination in this appeal earlier as follows: -

i. The doctrine of res judicata is applicable to constitutional litigation just as in other civil litigation as it is a doctrine of general application with a rider, however, that it should be invoked in constitutional litigation in rarest and in the clearest of cases.

ii. There is no legal requirement or factual basis for the submission that the doctrine must only be invoked and or ventilated through a formal application. It can be raised through pleadings as well as by way of preliminary objection.

iii. The ingredients of res judicata must be given a wider interpretation; the issue in dispute in the two cases must be the same or substantially the same as in the previous case, parties to the two suits should be the same or parties under whom they or any of them is claiming or litigating under the same title and lastly, the earlier claim must have been determined by a competent court.

28. Having endeavored an elaborate discussion on the doctrine of res judicata, this Court will now apply the foregoing to the matter at hand.

29. It appears that the plea of res judicata in this matter was improperly raised. As guided by the Supreme Court, the doctrine of res judicata is anchored on evidential facts and that such facts ought to be properly raised in a matter.

30. The 2nd Respondent only filed the Notice of Preliminary Objection. Therein, it referred to Kitale CMCC No. 353 of 2015. The lower Court suit was not in any way introduced in this Petition. This Court, therefore, has no way of addressing its legal mind to the said suit in the instant proceedings.

31. The 2nd Respondent ought to have formally introduced the pleadings and proceedings, if any, relating to Kitale CMCC No. 353 of 2015 in this matter. That would have been by way a formal application where evidence would be adduced vide an Affidavit.

32. Having failed to properly introduce the plea of res judicata herein, the Amended Notice of Preliminary Objection duly amended on 8th July, 2022 suffers a false start.

33. Having found as much, a further consideration of the objection cannot be sustained.

34. The upshot is, therefore, that the following orders and directions do hereby issue: -

    a. The Amended Notice of Preliminary Objection duly amended on 8th July, 2022 is hereby struck out.

    b. Further directions on a date to issue.

Orders accordingly.

DELIVERED, DATED and SIGNED at KITALE this 19th day of September, 2023.

A. C. MRIMA

JUDGE

Ruling No. 1 virtually delivered in the presence of:

Mr. Oduor, Counsel for the Petitioner.

Mr. Leting, Learned Counsel for the 1st Respondent.

Mr. Nyakundi, Learned Counsel for the 2nd Respondent.

Regina/Chemutai – Court Assistants.