



REPUBLIC OF KENYA



KENYA LAW
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**Ombati v County Government of Machakos (Cause E343 of 2025)
[2025] KEELRC 2596 (KLR) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2596 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E343 OF 2025
AK NZEI, J
SEPTEMBER 26, 2025**

BETWEEN

THOMAS OIRE OMBATI CLAIMANT

AND

COUNTY GOVERNMENT OF MACHAKOS RESPONDENT

RULING

1. The application before me for determination is the Claimant/Applicant's Notice of Motion dated 21st April, 2025. The Applicant seeks Orders:-
 - a. That the application be certified as urgent and be heard ex-parte and on priority basis.
 - b. That a declaration be issued that the Applicant's employment with the Respondent was terminated on 26th April, 2022 as per the Judgment of this Court delivered on the same date.
 - c. That the Respondent be compelled to issue a corrected certificate of service in strict compliance with Section 51 of the [Employment Act](#), and a last pay certificate reflecting:-
 - i. The correct termination date of 26th April, 2022.
 - ii. The removal of the false reason for termination referenced as "disciplinary case" from the certificate of service since termination was not based on any disciplinary proceedings but on prolonged inaction of the Respondent.
 - d. That the Court directs the Respondent to compute and to pay the Applicant's terminal dues based on the correct termination date, amounting to Kshs.5,366,690/= together with interest at Court rates from 26th April, 2022 (date of Judgment) until payment in full as set out in the supporting affidavit and annexures (thereto).
 - e. That the Court awards general damages to the Applicant for:-



- i. Breach of the Applicant’s statutory rights under Sections 18, 19, 51 and 75 of the *Employment Act*.
 - ii. Breach of Article 40 of *the Constitution* that guarantees right to fair labour practices and Article 47 of *the Constitution* that guarantees right to fair and lawful administrative action.
 - f. That in the alternative, the issues raised herein be preserved for full determination at the hearing of the main suit; and interim orders be issued as appropriate.
 - g. That the court grants such further or other reliefs as it may deems just and expedient.
 - h. Costs of the suit.
2. The application, expressed to be brought under Order 40 Rules 1, 2, 3 and 4 of the Civil Procedure Rules, Section 3A of the *Civil Procedure Act* and the *Employment Act*; is anchored on the Claimant/Applicant’s supporting affidavit sworn on 21st April, 2025. It is deponed in the said supporting affidavit, inter-alia:-
- a. that Judgment was delivered by this Court [in this Court’s Cause No. 379 of 2020] on 26th April, 2022 whereby the Court, inter-alia, directed the Respondent to issue the Claimant/Applicant with a Certificate of Service in strict compliance with Section 51 of the *Employment Act*, 2007.
 - b. that the Court made no finding on abscondment or any other valid ground for termination; and held that the Respondent’s disciplinary committee had no jurisdiction over termination of the Claimant/Applicant’s employment.
 - c. that despite the Court’s Orders, the Respondent issued a certificate of service dated 15th March, 2024 and a last pay certificate dated 20th May, 2024, both containing false and misleading [information] in the following respects:-
 - i. the termination date was inaccurately stated as 31st June, 2018 on the Certificate of Service and as 30th June, 2018 on the last pay certificate, instead of the 26th April, 2022 as declared by the Court.
 - ii. the reason for termination was falsely [stated] as “Disciplinary Case”, a reason that is not recognised in the *Employment Act*.
 - d. that the incorrect termination date has been used by the Respondent in computing the Claimant/Applicant’s dues, leading to unlawful denial of withheld salary from the date of stoppage to the date of termination.
 - e. that had the correct termination date been used, the total dues would amount to Kshs.5,366,690/=, which remains unlawfully withheld by the Respondent.
 - f. that failure by the Respondent to comply with the Court’s Order has caused the Claimant/Applicant great financial stress and hardship, while the misleading reason for termination has negatively affected his employability.
3. The documents referred to, and annexed to the said supporting affidavit include copies of this Court’s Judgement (in cause No. 379 of 2020 – Thomas Ombati Oire – vs – County Government of Machakos & County Public Service Board) delivered on 26th April, 2022, a certificate of service and a



certificate of last pay (both said by the Claimant/Applicant to contain incorrect information/dates), and a demand notice.

4. The application was first placed before me under a certificate of urgency on 22nd April, 2025, and finding no urgency in the same, I directed that both the application and suit documents filed herein be served on the Respondent, and that an affidavit of service be filed. The Respondent has not filed response to either the application or the suit herein; despite service as per the affidavits of service filed herein.
5. The application, which stands unopposed, was orally argued by the Claimant in Court on 2nd July, 2025 pursuant to the Court's directions in that regard; and he (the Claimant/Applicant) urged the Court to grant the application and "to dispose of the suit in determining the application as the main suit raises the same issues as the application".
6. It ought to be noted that the application before me is not an application for review of this Court's Judgment in its Cause No. 379 of 2020 (Nzioki Wa Makau, J). The applicant has not told the Court why he has filed a fresh suit regarding this Court's Judgment issued in a different suit. Issues that fell for determination in the said determined suit, or which ought to have been raised in the said previous suit, cannot be raised in a subsequent suit. The declaratory Orders sought and the prayer for an award of damages set out in the application cannot be entertained, and cannot issue.
7. The Employment and Labour Relations Court (Procedure) Rules 2024 are silent on the foregoing issues; while the Civil Procedure Rules 2010 are quite articulate on the same. Order 3 Rule 4 of the Civil Procedure Rules 2010 provides as follows:-

- "(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim.
- (2) Where a plaintiff omits to sue in respect of or relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion omitted or relinquished.
- (3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, unless with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

8. The legality and/or fairness of termination of the Claimant/Applicant's employment by the Respondent having been a subject in a previous suit which the Court heard and determined on merit, any issue that was raised in the said previous suit is res-judicata, and cannot be legitimately raised in the suit and application herein. Section 7 of the [Civil Procedure Act](#) provides:-

- "7. 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."



9. I have perused the Court's said previous Judgment delivered on 26th April, 2022, and I have noted the trial Judge's rendition therein, whereby the Hon. Judge stated as follows:-

“ 10. . . . The Claimant has never received the outcome of the disciplinary action 40 months plus after the hearing. As held in the case of Rebecca Ann Maina & 2 Others – vs – Jomo Kenyatta University of Agriculture and Technology [2015] eKLR, a prolonged disciplinary process against an employee amounts to an unfair labour practice which must be deprecated. The Respondents have infringed on the Claimant's right to fair administrative action in terms of Article 47 of *the Constitution* of Kenya and must accordingly recompense the Claimant. This unexplained delay in determining the outcome of the hearing undertaken over 40 months was egregious. The lengthy and unconcluded disciplinary process has resulted in loss of employment for the Claimant as he has not worked for the Respondents since his alleged abscondment. In the final analysis, I enter Judgment for the Claimant for:-

- i. Compensation by payment of 12 months' salary for the unlawful termination of service – Kshs.1,364,160/=.
- ii. Certificate of service in strict compliance with Section 51 of the *Employment Act*.
- iii. Kshs.500,000/= being compensation for breach of his constitutional right to prompt disciplinary action per Article 47 of *the Constitution*
- iv. Costs of the suit.”

10. This court cannot be called upon to delve into, and to determine issues that were heard and finally determined in a previous suit. The Court, in the previous suit, determined the issues of unfair termination of the Claimant's employment by the Respondent, and compensated him accordingly. The Court also considered the issue of breach of the Claimant/Applicant's Constitutional rights by the Respondent and compensated him accordingly. The Court further awarded costs of the said previous suit to the Claimant; but did not award interest to him. It is quite amazing that the Claimant is now asking this Court to award him interest, and to “re-compute his terminal dues based on the correct termination date, amounting to Kshs.5,366,690.” He has not told the Court whether he had sought payment of terminal dues in the previous suit. The Claimant is also asking this Court to Order that he be paid general damages for breach of various constitutional and statutory rights; an issue that was dealt with in the aforesaid previous suit.

11. If the Claimant/Applicant was aggrieved by the said Court Judgment, he ought to have appealed to a higher court; but not to file a fresh suit as he has done herein. Both the Notice of Motion dated 21st April, 2025 and the suit herein are incompetent and are an abuse of this Court's process, and are hereby struck off with no order as to costs.

12. The Claimant may, if he so wishes, file an appropriate application in the aforesaid previous suit if any document issued to him, or if any computation done by the Respondent pursuant to the Court's Judgment therein did not accord with the said Judgment.

13. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER 2025



AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Thomas Oire Claimant in person

No appearance for Respondent

