



**Elpa & 212 others v Majani Mingi Group of Companies Limited; Kenya Plantation & Agricultural Workers Union & 3 others (Interested Parties) (Employment and Labour Relations Petition 18 of 2019) [2025] KEELRC 2636 (KLR) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2636 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
EMPLOYMENT AND LABOUR RELATIONS PETITION 18 OF 2019  
AN MWAURE, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**EKIRU ELIGOI ELPA & 212 OTHERS ..... PETITIONER**

**AND**

**MAJANI MINGI GROUP OF COMPANIES LIMITED ..... RESPONDENT**

**AND**

**KENYA PLANTATION & AGRICULTURAL WORKERS UNION ..... INTERESTED PARTY**

**NATIONAL HOSPITAL INSURANCE FUND BOARD OF MANAGEMENT ..... INTERESTED PARTY**

**NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES . INTERESTED PARTY**

**COMMISSIONER OF DOMESTIC TAXES ..... INTERESTED PARTY**

**RULING**

**Introduction**

1. The Respondent filed a Preliminary Objection (P.O) dated 21<sup>st</sup> January 2025 on the following grounds that:
  1. The petition herein be dismissed as the same is *res judicata* pursuant to section 7 of the [Civil Procedure Act](#), having been decided by courts of competent jurisdiction in Nakuru Industrial Cause No. 76 of 2013 and Nakuru Industrial Cause No. 15 of 2020.



2. The petition herein is statute barred as it offends the provisions of section 90 of the [Employment Act](#), which makes the entire petition fatally defective and ripe for dismissal ab initio.
  3. That from decided authorities, this suit is for striking out ex debito justitiae.
2. Parties canvassed the P.O by way of written submissions.

### **Respondent's Written Submissions**

3. The Respondent submitted that the petition before this Honourable Court is *res judicata* as the matter was already settled in Nakuru Industrial No. 76 of 2013 and Nakuru Industrial Cause No. 15 of 2020. The Respondent relied on Section 7 of the [Civil Procedure Act](#), which provides 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.”
4. The Respondent submitted that the doctrine of *res judicata* in Kenyan civil procedure law prevents the re-litigation of matters that have already been conclusively decided by a competent court. As affirmed in the case of [Gladys Nduku Nthuki v Letsbego Kenya Limited; Mueni Charles Maingi \(Intended Plaintiff\)](#) [2022] KEHC 2227 (KLR) and [Lotta v Tanaki](#) [2003] 2 EA 556, the doctrine of *res judicata* applies when the same parties or those litigating under the same title bring a subsequent suit involving the same subject matter and issues that were directly and substantially in dispute in a previous suit. The earlier decision must have been final and rendered by a court with proper jurisdiction. Its core purpose is to ensure finality in litigation and avoid multiplicity of suits. In the cases of [Gurbachan Singh Kalsi v Yowani Ekori](#) Civil Appeal 62 of 1958, [Apondi v Canuald Metal Packaging](#) [2005] 1 EA and [Electoral & Boundaries Commission v Maina Kiai & 5 Others](#) (2017) eKLR, reiterate the doctrine of *res judicata*.
5. The Respondent submitted that the current petition merely replicates issues previously litigated in Nakuru Industrial Cause No. 76 of 2013 and No. 015 of 2020, both involving the same parties and claims for compensation and terminal dues. The first suit was conclusively settled by consent, while the second was dismissed for being *res judicata* and statute-barred, as confirmed by the ruling of Justice David Nderitu dated 26<sup>th</sup> January 2023. Rather than pursuing review or appeal, the Petitioners have now filed a constitutional petition in an apparent attempt to circumvent prior judgments, amounting to forum shopping and abuse of court process.
6. The Respondent also submitted that the petition is statute-barred under Section 90 of the [Employment Act](#), which limits employment-related claims to three years from the date the cause of action arose. The petition, filed approximately eight years after the Petitioners exited employment in 2011 and received compensation, is therefore time-barred. The Respondent argues that the Petitioners have improperly framed an employment claim as a constitutional petition to evade the limitation period, rendering the petition an abuse of the court process.
7. The Respondent relied on Section 90 of the [Employment Act](#), which provides that, despite what Section 4(1) of the [Limitation of Actions Act](#) states, any civil claim related to the Act or a contract of service must be filed within three years from the date of the act, neglect, or default. If the issue involves ongoing harm, the claim must be brought within twelve months after the harm ends. The Respondent



also relied on the case of *Gichuhi v Shamiyah and Another* [2024] KEELRC 1919 (KLR), where the court found that the Preliminary Objection raised a valid legal issue concerning the limitation of time, which affects its jurisdiction to hear the case. Guided by the principles established in the *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA. 696, the court concluded that the objection met the required threshold for a proper Preliminary Objection.

8. In *Wariabe v Teachers Service Commission* [2023] KEELRC 2777 (KLR), the court emphasized that it has no power to extend the time limit for filing claims under a contract of employment, and the court cited the cases of *Beatrice Kabai Adagala v Postal Corporation of Kenya* [2014] KEELRC 925 (KLR) and *Divecon Ltd v Samani* (1995-1998) 1 EA 48 affirming that section 90 of the *Employment Act* sets a strict three-year limit for such claims, and this period cannot be extended under any circumstances even if the delay was sympathetic or justified.
9. The Respondent urges this Honourable Court to uphold the preliminary objection and dismiss the petition for being time-barred, having been filed eight years after the cause of action arose. In *Beatrice Kabai Adagala v Postal Corporation of Kenya* (*supra*), it is argued that limitation periods in contractual matters are strict and non-extendable. Accordingly, the Court is invited to decline jurisdiction and dismiss the petition with costs to the Respondent.

### **Petitioner's Submissions**

10. The Petitioners submitted that the legal threshold for a valid preliminary objection was set out in the case of *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696.
11. The Petitioners argue that the Respondent's Preliminary Objection is unfounded, as the facts in dispute, such as alleged non-payment, coercion in signing discharge vouchers, and constitutional violations, require a substantive hearing and cannot be resolved through a preliminary objection. The Petitioners contend that the objection is a tactical move to undermine their pending application for production of payment records and to avoid scrutiny of the claims raised by all 213 petitioners. Given the contested facts and the need for a full hearing, they assert that entertaining the objection would deny them justice and circumvent due process.
12. The Petitioners relied on the case *Oraro v Mbaja* [2005] KEHC 3182 (KLR), Ojwang J (as he then was) stated that a true preliminary objection must be based purely on points of law and not require factual investigation or evidence. If an objection involves disputed facts needing proof, it ceases to be a proper preliminary objection. As rightly noted by Mr. Ougo, any matter that calls for factual inquiry cannot be validly raised as a preliminary point.
13. The Petitioners contend that the Respondent's objection is inherently defective, as it fails to grasp the true character of the Petition. This matter goes beyond a routine employment dispute; it is a constitutional petition asserting breaches of fundamental rights. In *Monica Wangu Wamwere v Attorney General* [2019] KECA 579 (KLR), the court affirmed that the *Limitation of Actions Act*, Cap 22 Laws of Kenya, does not apply to cases involving violations of constitutional rights and freedoms. It held that such matters are not subject to time limits and must be assessed individually based on their specific circumstances. In *Beatrice Wanjiru & 2 others v Attorney General & another* [2017] KEELRC 510 (KLR), the court held that the issue of limitation of time in constitutional petitions alleging violations of rights and fundamental freedoms should be treated as a substantive issue rather than a preliminary one. This allows for a full evaluation of evidence and case merits, which is necessary when such claims are clearly pleaded. The court emphasized that limitation challenges are best addressed during the full hearing, and in this case, it was appropriate to consider the limitation period substantively.



14. The Petitioners submitted that their constitutional petition concerning employment rights violations is timely and valid, countering claims that it is time-barred under section 90 of the [Employment Act](#), which sets a three-year limit from the date of termination. The Petitioners contend that the respondent failed to provide written employment contracts, and the documents submitted, such as undated letters of appointment and a limited number of retirement letters and discharge vouchers, do not adequately represent the employment history of all 213 petitioners. The petition emphasizes that each individual is litigating based on personal grievances, and the respondent's documentation is insufficient to dismiss the broader claims of constitutional violations.
15. The Petitioners submitted that the claim of the petition being statute-barred is unfounded, as documentary evidence, including retirement letters dated between 2016 and 2019, shows that many claims were filed within the permissible period. The Petitioners further submitted that there is a pending application dated 9<sup>th</sup> February 2024, seeking production and inspection of employment records under the [Employment Act](#), which remains unheard due to the prioritization of the preliminary objection. Additionally, the Petitioners allege coercion in signing discharge vouchers, particularly among illiterate individuals unaware of the legal implications, amounting to vitiated consent. The Petitioner relied on the case of [Thomas De La Rue \(K\) Ltd v David Opondo Omutelema](#) [2013] KECA 492 (KLR) where the Petitioners emphasized that discharge vouchers do not automatically absolve employers of statutory obligations or preclude judicial inquiry. The court must assess, on a case-by-case basis, whether such vouchers were executed freely and with informed consent, and cannot rely on blanket presumptions without evaluating supporting evidence.
16. The Petitioners argued that their case is a legitimate constitutional petition seeking redress for violations of fundamental rights, particularly access to justice under Article 48 of the [Constitution](#), and not an attempt to circumvent section 90 of the [Employment Act](#). The Petitioners cited the case of [Mongare v Judicial Service Commission](#) [2022] KEELRC 13570 (KLR), asserting that the [Employment Act](#) does not bar constitutional claims. The Petitioners further contend that the Respondent has failed to substantiate its limitation defence with specific dates or evidence for each of the 213 claims, relying instead on general assertions. The Petitioner relied on the case of [CMC Aviation Ltd v Cruisair Ltd. \(No. 1\)](#) (1978) KLR 103 (1976-80) 1KLR 835, the court emphasize that pleadings alone are not evidence and must be tested through proof. Therefore, the burden of demonstrating time-barred claims remains unmet without detailed scrutiny and cross-examination.
17. In [Maroa v Edgelock Security Limited](#) [2025] KEELRC 1007 (KLR), the court stated it is clear that the exact date of the claimant's termination cannot be conclusively established through affidavit evidence alone, especially without cross-examination. Therefore, the question of whether the claim is time-barred under section 90 of the [Employment Act](#) should be resolved only after the court has assessed all facts and evidence on record, following a hearing involving viva voce testimony.
18. The Petitioners argue that the doctrine of *res judicata* is inapplicable to the current petition, as the Respondent has failed to identify which of the 213 Petitioners were parties to prior proceedings or whether the issues were conclusively determined. The Petitioners relied on [Kibundi v Mukobwa & Another](#) [1993] eKLR; where they emphasized that the need for positive identification of parties, especially where names may be similar. Additionally, in [George Kamau Kimani & 4 Others v County Government of Trans-Nzoia](#) [2014] eKLR, the court held that *res judicata* should not be raised as a preliminary objection but through a formal application with supporting pleadings, allowing proper judicial assessment.
19. The Petitioners submitted that Industrial Cause No. 76 of 2013 and No. 15 of 2020 are distinct, with the former addressing salary arrears and retirement benefits, and the latter involving 15 claimants



excluded from the original consent judgment. The Petitioners also submitted that the current petition predates the 2020 ruling, undermining claims that it is a reaction to it. They challenge the fairness of the Kshs.17 million award against a Kshs.74 million claim, question whether excluded employees, like management, were compensated, and cite the lack of discharge vouchers. The Petitioner invoke *res judicata*, asserting that all relevant issues should have been resolved in the initial proceedings.

20. The Petitioners invoke the equitable maxim *ubi jus ibi remedium*, where there is a right, there must be a remedy to emphasize each individual's entitlement to seek judicial redress. The Petitioners submitted that the doctrine of *res judicata* does not bar their petition, citing two key exceptions recognized in *Eric Omari Wanyamah v Independent Electoral & Boundaries Commission (IEBC)* [2022] KEHC 2860 (KLR): one where the issues in the new suit are substantially different, and second where new, critical evidence has emerged that could affect the fairness of the earlier decision. In Additionally, in *Okiya Omtatab Okoiti & Another v Attorney General & 6 Others* [2014] KEHC 8157 (KLR), Lenaola J stated that the principle of *res judicata*, though broadly applied in civil cases, should be used cautiously in constitutional matters. It is only appropriate in the clearest cases where the same parties are attempting to relitigate identical issues before the constitutional court. Given the nature of rights-based litigation, this doctrine must be invoked sparingly to avoid unjustly barring legitimate claims. In *Kabita Institute v Judicial Service Commission & 2 Others; Kenya Magistrates and Judges Association & 2 Others (Interested Parties)* [2022] eKLR, the court stated that the Employment and Labour Relations Court has jurisdiction not only over employment contract disputes but also over constitutional rights violations arising from employer-employee relationships. However, for the Court to hear such constitutional claims, the alleged breach must be closely connected and incidental to the employment matters outlined in section 12 of the *Employment and Labour Relations Court Act*.
21. In conclusion, the Petitioners urged this Honourable Court to dismiss the Preliminary objection with costs.

### **Analysis and Determination**

22. The court has considered the preliminary objection together with the rival submissions of both parties; the issue of determination is whether the preliminary objection is merited.
23. The locus classicus case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (*supra*) provides as follows:

“A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which, if argued as a preliminary point, may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

At page 701, paragraph B-C, Sir Charles Newbold, P. added the following:

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion....”

24. The Respondents alleged that the petition before this Honourable Court is *res judicata* as it was already determined in Nakuru Industrial No. 76 of 2013 and Nakuru Industrial Cause No. 15 of 2020. In Nakuru Industrial No. 76 of 2013 was conclusively settled by consent, while Nakuru Industrial Cause



No. 15 of 2020 was dismissed for being *res judicata* and statute-barred, as confirmed by the ruling of Justice David Nderitu dated 26<sup>th</sup> January 2023.

25. Sections 107, 108 and 109 of the *Evidence Act* provide that who alleges must prove, and the Petitioners have not produced any documentation to confirm that the petition before this Honourable Court, litigated in Nakuru Industrial Cause No. 76 of 2013 and Nakuru Industrial Cause No. 15 of 2020 is similar to the present petition. The application is a mere allegation and has no support document/pleadings so that it can be verified that this Petition is *res judicata* to the two cited cases.

26. The claim of time bar is equally unsupported as is not clear the time of the occurrence of the exact cause of action of the 213 Petitioners. The principles set out in proving a preliminary objection in the case of *Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd (supra)* the court held that a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose a suit. These tenets are not met in this case. It is safer for the petition to go for hearing and final determination be made.

The application for Preliminary objection is therefore found unproved and is dismissed accordingly.

Costs will be in the cause.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**Order**

In view of the declaration of measures restricting Court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

