



REPUBLIC OF KENYA



KENYA LAW
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Kenya Agricultural Livestock Research Organization v Otiemo (Civil Appeal E048 of 2024) [2025] KEHC 13262 (KLR) (26 September 2025) (Judgment)

Neutral citation: [2025] KEHC 13262 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E048 OF 2024
A MABEYA, J
SEPTEMBER 26, 2025**

BETWEEN

KENYA AGRICULTURAL LIVESTOCK RESEARCH ORGANIZATION APPELLANT

AND

BENRARD ONYANGO OTIEMO RESPONDENT

(Being an appeal from the ruling/order of the Honourable R.S. Oanda (SPM) at Winam in Winam PMCC No. E038 of 2023 delivered on 11/2/2024)

JUDGMENT

1. By a Statement of Claim dated 4/4/2023, the respondent sued the appellant for special damages of Kshs. 58,080/- and lost income from the use of his motorcycle which was lost following an accident that occurred on the 2/11/2022.
2. The respondent contended that the aforementioned accident occurred as a result of the negligence of the appellant's driver who was driving motor vehicle registration number KCD 327G.
3. The appellant opposed the suit vide a statement of defence dated 9/5/2024 denying the respondent's claim and further raising a Preliminary Objection that the suit was *res judicata* Winam PMCC No. 283 of 2022 – Bernard Onyango Otiemo v Kenya Agricultural Livestock Research Organization that had been determined in a judgment dated 29.8.2023.
4. After considering the evidence, the trial court dismissed the appellant's Preliminary Objection stating that the two suits were fundamentally different even though they arose from the same cause of action.
5. Aggrieved by the said decision, the appellant appealed to this Court setting out 5 grounds of appeal which can be summarized into one broad ground; 'That the trial court erred in law in interpreting the doctrine of *res judicata* by holding that even though Winam CMCC No. 283 of 2022 (the previous



- one) and Winam CMCC No. 038 of 2023 (the subsequent suit) between the same parties arose from the same cause of action, the issues in the two suits are “fundamentally different” without providing any analysis and reasoning for delivering such a finding.”
6. The appeal was disposed by way of written submissions but at the time of writing this judgment, only the appellant’s submissions were on record.
 7. The appellant submitted that the respondent was under duty to bring all their issues before a single forum and have them determined once and for all to avoid being in breach of the doctrine of res judicata. He relied on the case of *Gladys Nduku Ntbuki v Letsbego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff) 2022*] eKLR.
 8. That by instituting the subsequent suit the respondent was guilty of material non-disclosure by deposing under oath that there was no previous and/or pending suit between the parties regarding the same cause of action contrary to the provisions of Order 4 Rule 1 & 2 of the *Civil Procedure Rules*.
 9. This being a first appellate Court, its duty is well defined, that is; to re-evaluate and analyse the evidence tendered before the trial court with a view to arriving at its own independent findings and conclusions. (See *Selle & Another –vs- Associated Motors Boat Company Ltd & Others*).
 10. Following the institution of Winam PMCC No. E038 of 2023 by the respondent, the appellant filed a preliminary objection raising the issue of Res Judicata.
 11. In response, the respondent filed a replying affidavit sworn on the 5/8/2024 in which he stated that Winam PMCC No. 283/2022 was distinct from Winam PMCC No. E038/2023 in that, the previous suit was for personal injuries while the subsequent case was for material damages.
 12. The trial court dismissed the appellant’s preliminary objection noting that the issues in the two suits were fundamentally different even though they arose from the same cause of action.
 13. The question this Court has to determine is the nature of the appellant’s claim before the trial court and consequently whether the respondent’s preliminary objection was valid.
 14. Section 7 of the *Civil Procedure Act*, 2010 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.”
 15. I think the principle behind the doctrine is that a cause of action or causes of action that arise from an incident or that are related and involve the same persons should be determined once and for all. That no more actions than one can be brought for the same cause(s) of action. That where there is but one cause of action, damages must be assessed once and for all. A cause of action is every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.
 16. In *Apondi v Canuald Metal Packaging* [2005] 1 EA 12, it was held that: -

“A party is at liberty to choose a forum which has the jurisdiction to adjudicate his claim, or choose to forego part of his claim and he cannot be heard to complain about that choice



after the event and it would be otherwise oppressive and prejudicial to other parties and an abuse of the Court process to allow litigation by instalments.”

17. In the present case, the respondent admitted that the only difference in the two suits he instituted at Winam was that Winam PMCC No. 283/2022 was for personal damages while Winam PMCC No. E038/2023 was for material damages. The cause of action was one, it was between the same parties and one of them had been determined.
18. There is no evidence on record that the respondent’s cause of action in Winam PMCC No. E038/2023 arose subsequent to the decision made on the 29/8/2023. In any case, lost income is a form of special damage which had been considered in the previous suit and awarded to the tune of Kshs. 550.
19. The drafters of the section 7 were clear in their mind that, if a claim could have been raised in the previous suit, the doctrine of res judicata applies. Explanation 4 to section 7 of the *Civil Procedure Act* provides: -

“ Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit”
20. In this regard, the claim for material damage should have been made in the 2022 suit. That it is evident from the record that Winam PMCC No. E038/2023 was res judicata Winam PMCC No. 283/2022.
21. Consequently, the trial court erred when it sought to differentiate the two claims. That ruling dated 11/2/2025 was in error. It is hereby set aside and substituted with an order striking out the respondent’s suit with costs. The appeal is successful and the appellant shall have the costs thereon.

It is so decreed.

DATED AND DELIVERED AT KISUMU THIS 26TH DAY OF SEPTEMBER, 2025.

A. MABEYA, FCI Arb

JUDGE

