



Ndiko v Riopl Coffee & Restaurant Limited & another (Cause E764 of 2024) [2025] KEELRC 2670 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2670 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E764 OF 2024
S RADIDO, J
OCTOBER 2, 2025**

BETWEEN

GLADYS GATHONI NDIKO CLAIMANT

AND

RIOPL COFFEE & RESTAURANT LIMITED 1ST RESPONDENT

RIO YARD LIMITED 2ND RESPONDENT

RULING

1. For determination is a Motion dated 28 January 2025, and filed in Court on 25 May 2025 by the Respondents seeking orders:
 - i. That the matter is res judicata since the issues raised by the Plaintiff were directly and substantially in issue in ELRC Cause No. E873 of 2023, Gladys Gathoni Ndiko v Riopl Coffee & Restaurant Ltd.
 - ii. That the Plaintiff's case herein be struck out for being an abuse of court process, vexatious and for duplicity.
 - iii. That the Plaintiff do pay the Defendants costs of the case and application.
2. The grounds in support of the Motion were that the Claimant had failed to disclose that she had instituted another Cause over the same subject matter, being Nairobi Cause No. E873 of 2024, where the parties were the same; the Cause was therefore not sustainable and the Cause was meant to waste precious judicial time and expose the Respondents to economic hardship.
3. The Court gave directions on the Motion on 19 March 2025, 26 May 2025 and 24 June 2025.
4. The Respondents had filed their submissions on 16 June 2025, where they contended that the Cause was sub judice and an abuse of the court process.



5. The Respondent drew the Court's attention to *Pkatai & Ar v Cloud Factory Kenya Ltd; Adanga (Interested Party) (2024) KEELRC 1328 (KLR)* and *Satya Bhama Gandhi v Director of Public Prosecutions & 3 Ors (2018) eKLR*.
6. The Claimant filed a replying affidavit and submissions on 1 September 2025 (should have been filed and served before 31 July 2025).
7. The Claimant deponed in the affidavit that this Cause was filed on 12 September 2024 and served on the Respondents on 24 September 2024, while Nairobi Cause No. E873 of 2024 was filed on 15 October 2024 without instructions.
8. The Claimant further deponed that he instructed the advocates on 27 May 2025 to withdraw the latter Cause and a Notice to Withdraw Nairobi Cause No. E873 of 2024 was filed in Court, and that res judicata did not arise because there had been no determination of any Cause on the merits.
9. The Claimant raised the same points in the submissions, save for citation of case law.
10. The Court has considered the Motion, affidavits and submissions and makes the following determinations.
11. One, the Respondents conflated the doctrines of res judicata and sub judice. The two are not the same. They are distinct, and different principles apply.
12. Two, the Respondents assert res judicata in the Motion under consideration. They have not placed before the Court any evidence that there is a parallel Cause No. E873 of 2024, between the same parties and that the Cause was heard and determined by a competent Court.
13. Three, the CTS system shows that there is a Cause No. E873 of 2024, *Gladys Gathoni Ndiko v Rio PLC Coffee & Restaurant Ltd*. The Cause was filed on 15 October 2024.
14. The instant Cause was filed on 12 September 2024.
15. Four, the Cause of action in Cause No E873 of 2024 is the same action advanced herein.
16. Five, the Claimant must have been aware of the instant Cause when she instructed an advocate to institute Cause No. E873 of 2024. She did not disclose the existence of this Cause therein.
17. However, the Claimant has now placed evidence before this Court that she filed a Notice to Withdraw the second Cause.

Orders

18. Flowing from the above, and to do substantive justice, the Court declines to grant the orders in the Motion dated 28 January 2025 but finds that the Claimant has abused the court process by instituting different Causes on the same subject matter.
19. Because of the abuse, the Respondents are awarded costs of the Motion.

DELIVERED VIRTUALLY, DATED AND SIGNED IN EMBU ON THIS 2ND DAY OF OCTOBER 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances



For Claimant Muteithia Kibira Advocates
For Respondents Abdirazak & Co. Advocates
Court Assistant Kemboi/Wangu

