



**Kombe & another v Malambo (Civil Case E036 of 2025)
[2025] SCC 4 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] SCC 4 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
CIVIL CASE E036 OF 2025
FM MULAMA, RM
JULY 25, 2025**

BETWEEN

WYCLIFFE MALAMBO KOMBE 1ST CLAIMANT

VAINES WALI NYAROBÉ 2ND CLAIMANT

AND

MUNJAU MALAMBO RESPONDENT

RULING

A. Background.

1. The application dated 9/7/2025 comes for ruling on the sole prayer that this claim be dismissed in its entirety for being res judicata to case number Taita Taveta small claims court number E004 of 2023.
2. The applicant further avers that the suit was heard and determined and a judgment delivered on 6th February 2024 and which judgment tackled conclusively the issues being raised in this instant claim. Aggrieved by the decision of the trial court in that matter the claimants appealed to the High Court vide Voi HCA No. E016 of 2024 where the learned judge in agreeing with the trial court's decision, dismissed the appeal with no orders as to costs
3. The claimants have since then filed this instant suit litigating with the same names and/or titles and raising the same issues and I dare say claiming the same reliefs as those sought in the dismissed cases aforementioned.
4. The court on the 11th July 2025 gave clear directions as to filing of responses and submissions and the claimants' ignored the said directions because as at 17th July 2025 they had not filed their responses to the application. I have none the less considered the application on its merits devoid of any technicalities.



B. Issues for Determination.

5. The following issues commend themselves for determination by this court.
 - a. Whether this instant claim is res judicata
 - b. What orders can issue in the circumstances.

C. Analysis and Determination.

a. Whether the claim is res judicata

6. I have had occasion to peruse the pleadings filed in case number E004 of 2023 and those filed herein and it is clear that they are similar in terms of the parties as well as the reliefs sought.
7. It is not in doubt that the issues raised and the reliefs sought are directly, materially and substantially in issue with those in E004 of 2023 where the court determined the issues on their merits and delivered a decision. The claimants were as of right granted another bite at the cherry but sadly the high court which is the last resort under the [Small Claims Court Act](#) did not agree with their case.
8. It is even said that lightning does not strike a tree twice but in this case the fate of dismissal struck the claimant twice and am afraid a third one is loading shortly.
9. For *res judicata* to be invoked in a civil matter the following elements had to be demonstrated:
 - a. there was a former judgment or order which was final;
 - b. the judgment or order was on merit;
 - c. the judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
 - d. there had to be between the first and the second action identical parties, subject matter and cause of action.
10. The doctrine of res judicata was based on the principle of finality which was a matter of public policy. The principle of finality was one of the pillars upon which the judicial system was founded and the doctrine of res judicata prevented a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensured that litigation came to an end, and the verdict duly translated into fruit for one party, and liability for another party, conclusively.
11. A party relying on res judicata must not only plead, frame and argue the issue of res judicata but they must also discharge the burden of proof to establish res judicata to the standard required by law.
12. The doctrine of “res judicata” is provided for under section 7 of the [Civil Procedure Act](#) in 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 issue in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
13. Whenever the question of *res judicata* is raised as the respondent has done in this claim, I am duty bound to look at the decision claimed to have settled the issues in question; the entire pleadings and



record of that previous case; and the instant case to ascertain the issues determined in the previous case, and whether these are the same in the subsequent case.

14. The court should ascertain whether the parties are the same, or are litigating under the same title; and whether the previous case was determined by a court of competent jurisdiction. This test is summarized in *Bernard Mugo Ndegwa v James Nderitu Githae & 2 others*, [2010] eKLR, under five distinct heads: (i) the matter in issue is identical in both suits; (ii) the parties in the suit are the same; (iii) sameness of the title/claim; (iv) concurrence of jurisdiction; and (v) finality of the previous decision.
15. I have had the occasion to peruse at the annexures to the application and I am satisfied that the matter in question is identical in both suits as the claimant is seeking judgment in the sum of Kshs.207,692 with interest from 18/10/2022 following the alleged destruction of their property by livestock allegedly owned by the respondent. I am also satisfied that the parties are the same, the title and claim is the same as the previous suit, there is concurrence of jurisdiction and there is finality of the decision on the issue in question this is after an appeal was preferred to the high court and was dismissed and the high court being the final court of appeal and which had the requisite jurisdiction to hear and determine the matter.
16. The doctrine of *res judicata*, in effect, allows a litigant only one bite at the cherry. The bite might not be sweet to the mouth and tongue but once bitten a litigant should be ready to live by the awful taste in his/her mouth.

b. What orders can issue in the circumstances.

17. Having found that the suit is *res judicata*, there are no orders that can issue in the circumstances save for an order for costs.
18. The basic rule on attribution of costs is that costs follow the event. It is also well recognized that the principle costs follow the event is not to be used to penalize the losing party rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case(application).
19. The claimant opposed the application and being the successful party in the circumstances, he is awarded costs of the application. I have awarded costs despite following the event the claimants unnecessarily dragged the respondent back in court while well aware that this claim was heard and determined at trial and appeal stages.

D. Conclusion and Disposition.

20. The court find that the claim as instituted in the statement of claim dated 11th June 2025 is *res judicata* to to case number Taita Taveta small claims court number E004 of 2023.
21. The application dated 9/7 /25 is thus meritorious and it is allowed with costs to the respondent/Applicant.
22. Consequently, the claim contained in the statement of claim dated 11th June 2025 is dismissed with costs to the respondent/Applicant.
23. As I pen off I should however state that counsel for the claimant had the unshaken audacity to file this claim knowing well that the claim has already been adjudicated upon up to the appeal stage and still had the audacity to insist in filing a response to the claim well aware of what has already transpired having been on record in the matters at the Taveta SCC court and the high court when the matters were dismissed.



24. In the future I hope such deliberate actions by counsel intended to mislead the court into giving conflicting decisions over the same subject matter shall be punishable by payment of ensuing costs by advocates personally who have failed and/or ignored to advise their clients on the import of such actions and still participate in the said mess.

25. Orders accordingly.

DATED, DELIVERED AND SIGNED AT VOI LAW COURTS THIS 25TH DAY OF JULY 2025.

F.M. MULAMA

ADJUDICATOR/RM

In the presence of:

Court Assistant:- Fathiya Loo.

Mr.Mwanyuma for /Respondent/Applicant.

Mr. Mwazighe for the Claimant.

