



**Nairobi City Water and Sewerage Company Limited v Kimani (Civil Appeal E119 of 2023) [2025] KEHC 15382 (KLR) (Civ) (24 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15382 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL APPEAL E119 OF 2023  
AN ONGERI, J  
OCTOBER 24, 2025**

**BETWEEN  
NAIROBI CITY WATER AND SEWERAGE COMPANY LIMITED APPELLANT  
AND  
ANTONY MWANGI KIMANI ..... RESPONDENT**

*(Being an appeal from the Ruling of Hon. M. W. Murage (SRM) in Milimani CMCC No. 21 of 2022 delivered on 2nd December 2022)*

**JUDGMENT**

1. The trial court delivered a Ruling on 2<sup>nd</sup> December 2022 in which the court found that the Appellant was in contempt of court having disobeyed a court order issued on 25<sup>th</sup> August 2021 which directed the Appellant to reconnect water in the Respondent's premises.
2. The Appellant was fined Kshs. 100,000/= for being in contempt of court.
3. The Appellant has appealed to this court against the said Ruling on the following grounds:-
  - i. That the Learned Trial Magistrate erred in fact and in law in rendering a decision on a matter that is res judicata.
  - ii. That the Learned Trial Magistrate erred in fact and in law by failing to appreciate that the court lacked the jurisdiction to entertain the matter.
4. The parties filed written submissions as follows:- the appellant submitted that the Respondent herein first approached the court vide Milimani CMCC No. 4908 of 2017-Antony Mwangi Kimani versus Regional Manager, Nairobi Water & Sewerage Company Limited & Another. After filing the suit, the respondent failed to prosecute it and the same was dismissed for want of prosecution.



5. In Milimani CMCC No. 4908 of 2017, the respondent filed an application similar to the application filed in Milimani CMCC No.21 of 2022 dated 25/8/2022 which is the subject of the instant appeal. Both the application and the suit were never prosecuted and were dismissed for want of prosecution.
6. The appellant submitted that after Milimani CMCC No. 4908 of 2017 was dismissed for want of prosecution the respondent never filed an application to reinstate the suit but instead filed another suit being Milimani CMCC No. E12346 of 2021 Antony Mwangi Kimani versus Nairobi City Water and Sewerage Company.
7. After the suit had been filed the respondent equally filed a notice of motion application dated 5/11/2021 which application was similar to the one dated 25/8/2022 in CMCC No. 21 of 2022 and that dated in 6/7/2017 in CMCC No. 4908.
8. The appellant submitted that suit Milimani CMCC No. 12345 of 2021 was dismissed for lack of jurisdiction.
9. The respondent went ahead and filed for a third time a fresh suit Milimani No. E036 of 2022 Antiny Mwangi Kimani vs State Law and the high court judge issued an order transferring the matter to the Chief Magistrates court and thus the subject of this appeal.
10. The appellant argued that all the aforementioned suits relate to the same subject matter and between similar parties with similar issues regarding the provision of water services.
11. The appellant subsequently argued that it is clear that the suit filed by the respondent Milimani CMCC No. 21 of 2022 is res judicata and the trial magistrate erred in fact and in law in rendering a decision on a matter that is res judicata.
12. The appellant further argued that the court lacked jurisdiction to issue the order as the dispute ought to have been determined by the Water Services Regulatory Board.
13. The respondent did not file submissions
14. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence before the trial court.
15. This is an interlocutory appeal against an order which found the Appellant in contempt of court and fined the Appellant Kshs. 100,000/=.
16. The primary task before this court, as a first appellate court, is to re-evaluate the evidence that was before the trial court and arrive at its own independent conclusions, while giving allowance for the fact that it did not have the opportunity to hear and see the witnesses.
17. The issues for determination that arise from the grounds of appeal and the submissions are twofold.
  - i. First, whether the trial court's proceedings and the subsequent Ruling on contempt were rendered in a matter that was res judicata, thereby ousting the court's jurisdiction.
  - ii. Second, whether the trial court lacked the requisite jurisdiction to entertain the dispute ab initio, as the subject matter allegedly fell within the exclusive purview of the Water Services Regulatory Board.
18. On the first issue of res judicata, the doctrine is a fundamental tenet of law, statutorily embodied in Section 7 of the *Civil Procedure Act*, Cap. 21.



19. It provides 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 the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.
20. The rationale for this doctrine, as eloquently stated in the case of *John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 5 Others* [2021] eKLR, is to prevent the endless litigating of the same dispute and to protect parties from the vexation of repeated lawsuits.
21. The chronology presented by the Appellant is compelling and uncontroverted by the Respondent.
22. That the Respondent first instituted Milimani CMCC No. 4908 of 2017, which was dismissed for want of prosecution.
23. He then filed a fresh suit, Milimani CMCC No. E12346 of 2021, which was dismissed for lack of jurisdiction.
24. Undeterred, he filed a third suit, which was transferred to become the subject matter, Milimani CMCC No. 21 of 2022.
25. The Appellant correctly avers that all these suits concern the same subject matter—the provision and disconnection of water services to the Respondent's premises—and involve the same parties, albeit with slight variations in the naming of the Defendant.
26. The applications filed in each of these suits, including the one dated 25th August 2022 which grounded the contempt proceedings, sought similar reliefs for reconnection of water.
27. The previous suits were not merely withdrawn; they were adjudicated upon and finally determined through dismissal.
28. Consequently, the matter in the trial court had indeed been directly and substantially in issue in the former suits between the same parties.
29. The trial court was therefore precluded from entertaining CMCC No. 21 of 2022. Its jurisdiction was extinguished by the doctrine of *res judicata*.
30. Regarding the second issue of jurisdiction, it is a settled principle of law that jurisdiction is everything. Without it, a court must down its tools, as held in the seminal case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR.
31. The Appellant contends that the dispute over water services is a matter for the Water Services Regulatory Board.
32. The *Water Act* provides a comprehensive mechanism for addressing disputes between water service providers and consumers, establishing a specialized body with the expertise to handle such matters.
33. While a court of law is not ousted from its jurisdiction over civil wrongs, the existence of a specialized statutory framework suggests that the initial recourse for such a dispute should lie with the designated regulatory body.
34. However, in light of the conclusive finding on the first issue, it is not strictly necessary to make a definitive determination on this point. The finding that the suit was *res judicata* is, on its own, dispositive of the entire appeal.



- 35. In conclusion, the Learned Trial Magistrate fell into error by proceeding to hear the application for contempt in a suit that was plainly barred by the doctrine of res judicata.
- 36. The substratum of the case had been extinguished by the prior dismissals of suits involving the same parties and subject matter.
- 37. A court cannot make binding orders, including findings of contempt for the violation of such orders, in a matter over which it lacks jurisdiction.
- 38. The foundation of the contempt proceedings was an order issued in a suit that was legally non-existent by virtue of Section 7 of the Civil Procedure Act.
- 39. Therefore, the Ruling delivered on 2nd December 2022, including the finding of contempt and the fine of Kshs. 100,000/= imposed upon the Appellant, cannot be allowed to stand.
- 40. The appeal is hereby allowed. The Ruling of the trial court delivered on 2nd December 2022 is set aside in its entirety.
- 41. Each party shall bear its own costs of this appeal.

**DATED, SIGNED AND DELIVERED THIS 24<sup>TH</sup> DAY OF OCTOBER, 2025 VIRTUALLY VIA MICROSOFT TEAMS AT VOI.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

.....for Appellant

.....for Respondent

