



**Motende v Teachers Service Commission (Cause E013 of 2025)
[2025] KEELRC 3513 (KLR) (9 December 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3513 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII
CAUSE E013 OF 2025
NZIOKI WA MAKAU, J
DECEMBER 9, 2025**

BETWEEN

JOHN MOTENDE CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. The Claimant commenced these proceedings through a Memorandum of Claim dated 10th April 2025 in which he alleged unlawful termination of employment. He sought several remedies including reinstatement, removal of his name from the list of deregistered teachers, payment of accrued terminal dues, salary arrears, unpaid leave days, gratuity, general damages for violation of constitutional and statutory rights, and costs and interest of the suit.
2. The Respondent opposed the claim by filing a Memorandum of Response dated 8th October 2025 together with a Notice of Preliminary Objection of even date. In the Preliminary Objection, the Respondent contended that the suit was res judicata as it raised issues previously determined in Kisumu ELRC Petition No. E016 of 2023, John Motende v TSC & another. The Respondent further argued that the claim was time-barred under section 90 of the Employment Act and was therefore liable to be struck out with costs.
3. When the matter came up for confirmation of compliance with pretrial directions on 5th November 2025, there was no appearance on behalf of the Claimant. Counsel for the Respondent informed the Court that a notice of withdrawal of the suit had been filed and indicated that he did not oppose the withdrawal save for costs.
4. In the circumstances, the Court reserved its ruling for 9th December 2025 in respect of costs.



Disposition

5. Costs are at the discretion of the Court and such discretion ought to be exercised judiciously. The general rule is that costs follow the event. However, in certain circumstances this is not the case. In the matter before this Court, the Claimant filed a suit against his erstwhile employer and to it, the Respondent raised a preliminary objection asserting the matter was res judicata as the cause of action had been articulated in a case being Petition E016 of 2023 which elicited a decision of the Court (per Radido J.) which was reported as *Motende v Teachers Service Commission & another* (Petition E016 of 2023) [2023] KEELRC 3033 (KLR) (29 November 2023) (Ruling). The decision in brief was that the Petitioner in that case, who is the Claimant herein, had preferred a Petition against his dismissal from service by the Respondent herein outside the time limited set by section 90 as his termination took place sometime in May 2019 and the suit ought to have been filed by May 2022. The claim comprised in this suit is precisely what the Respondent faced in the prior suit.
6. By res judicata we mean the legal doctrine that prevents abuse of court process by having the same parties re-litigating a matter that has already been decided by a court. According to Black's Law Dictionary, res judicata is a Latin phrase that means "a thing adjudicated". It is a legal principle that states that once a court has made a final judgment on a matter, the same issue cannot be relitigated by the same parties. That squarely applies to this case. In filing the suit, the Claimant knew he had no case and therefore the notice of withdrawal once challenged by the Respondent's preliminary objection indicated this knowledge. The case was as dead as a dodo and there was no judicial craft, innovation or legal gymnastics that could breathe life into the demised claim. It is my view that an order for costs is appropriate as the Claimant took a deliberate step knowing it to be improper to do so. I therefore order costs against the Claimant in this suit as the preliminary objection successfully determined the suit against the Respondent.

Orders accordingly.

DATED AND DELIVERED AT KISII THIS 9TH DAY OF DECEMBER 2025

NZIOKI WA MAKAU, MCIArb.

JUDGE

