



REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT VOI
SCC COM NO. E065 OF 2025.

LION HILL SAFARI LODGE LTD.....CLAIMANT

-VERSUS-

MONACO HOLIDAYS LIMITED.....RESPONDENT

JUDGEMENT.

INTRODUCTION.

- 1) By way of a statement of claim dated 14th October 2025 the claimant sued the respondent seeking the following reliefs;
 - a) **Judgment in the sum of Kshs.390,100/=.**
 - b) **Costs and interests of the suit**
 - c) **Other appropriate reliefs.**

- 2) The claimant avers that on or about February 2025 she entered into an oral agreement with the respondent to offer accommodation to the respondent's workers at the claimant's lodge located in Voi. The respondent provided the service to a tune of Kshs. 390,100/= and the respondent has not paid the amount owing to date. That the respondent in an attempt to pay the amount, drew a cheque of Kshs.150,000/= but the claimant was later advised not to cash the said cheque hence no single cent has been paid hence the claim. Demand to pay has not been honoured.

- 3) The respondent on its part denies the claim in toto and avers that it never sought any services from the claimant and further that even the Kshs.150,000/= drawn vide a cheque allegedly towards payment of the

amount owing was drawn by another entity that is not the respondent. The respondent further avers that the claim is res judicata the facts and cause of action herein being similar as those in VOI SCCOMM E020 OF 2025 and that changing the name of the respondent does not breathe life to the claim once again.

- 4) By consent parties agreed to proceed by way of documents only pursuant to Section 30 of the SCC Act. I have perused the said documents and submissions

ISSUE FOR DETERMINATION.

- a) **Whether the claim is res judicata to the claim in VOI SCCOMM E020 OF 2025.**
- b) **Whether the claim has been proved.**
- c) **Who bears costs of the claim.**

ANALYSIS AND DETERMINATION.

- a) **Whether the claim is res judicata to the claim in VOI SCCOMM E020 OF 2025.**
- 5) The respondent has pleaded res judicata in his response and submitted on it. The claimant gave the issue a wide berth.
 - 6) Once the issue of res judicata was raised, I perused the proceedings in **VOI SCCOMM E020 OF 2025** and save for the name of the respondent, the substratum of the dispute is the same as that herein. In that case, the claimant obtained a default judgment in his favour and in the process of execution, the respondent herein instituted objection proceedings after one of its assets was attached and that is how the respondent herein became involved in this dispute.
 - 7) 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.
 - 8) 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.

9) The doctrine of *res judicata*, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.

10) Hence, whenever the question of *res judicata* is raised, a court will 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. 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.

11) That courts have to be vigilant against the drafting of pleadings in such manner as to obviate the *res judicata* principle was judicially remarked in ***ET v Attorney-General & another*, [2012] eKLR**, thus: The courts must always be vigilant to guard litigants evading the doctrine of *res judicata* by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in a form of a new cause of action which has been resolved by a court of competent jurisdiction.

12) In the case of ***Omondi v National Bank of Kenya Limited and others*, [2001] EA 177** the court held that, 'parties cannot evade the doctrine of *res judicata* by merely adding other parties or

causes of action in a subsequent suit.’ In that case the court quoted Kuloba J, in the case of ***Njangu v Wambugu and another Nairobi HCCC No 2340 of 1991 (unreported)*** where he stated, ‘If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face-lift on every occasion he comes to court, then I do not see the use of the doctrine of *res judicata*.....”

13) The claimant is not sure who has his debt because I cannot understand how after obtaining a judgment in a matter over the same subject matter it still chooses to sue yet another respondent for the same amount of money over the same kind of services offered.

14) The claimant is thus engaging in what in the betting world is called multibet. Suing all and sundry and hoping that one of the respondents will give in and pay the decretal sum. This will not be countenanced by this court. A litigant before approaching a court of law ought to know who are the proper parties to a suit. This is basic civil procedure 101. What the claimant is suggesting going by his previous conduct is that if he obtains judgment in his favour in this matter and tries to execute and hits a dead end and in the process becomes aware of an entity which in his view is somewhat connected to the person it offered a service to, he will sue that person or entity for the same amount over the same services offered. This is absurd to say the least.

15) The test as found herein above is whether the claimant in this claim is trying to bring before this court in another way and in a form of a new cause of action which has been resolved by a court of competent jurisdiction. This test has been met in my view. The claim is thus *res judicata*.

b) Whether the claim has been proved.

16) Having found the claim to be *res judicata*, I have taken the latitude to find out whether the claim would have been allowed had the suit not have been *res judicata*.

17) The respondent has denied owing the claimant any amount as claimed. It has further denied ever issuing any cheque to the claimant as part payment. I have perused the attached copy of the cheque. It is evident on the face of the cheque that the same emanates from Savanna Group of Companies which is not the respondent herein.

18) Further I have perused the alleged booking vouchers from Monaco Holidays Limited. On the face value, some have a section where there is a place for confirmation and issuance while some do not have yet they are the same. Furthermore, it appears the same to have been printed from an email. The only assumption then in the circumstances is that the email emanated from the respondent if that is to be true for argument sake then I do not understand the propriety of the claimant not annexing the email extract as a measure of proof as evidently the claim is hopeless evidence wise.

19) As if that is not enough there are invoices that are corresponding with the alleged booking vouchers but with different particulars. For instance, booking voucher serial number 786 dated 28/11/2024 indicates the date in as 13/02/2025 and the date out as 14/02/2025. The invoice from the claimant to the respondent that comes close to the dates in question is one invoice no. 23039 and dated 5/12/2024 and makes reference to voucher no. 786 and indicates the date in as 13/02/25 and out as 21/02/25. The invoices are not even signed by the claimant to authenticate them.

20) There are generally striking differences between the booking vouchers and the invoices raised yet in actual sense they should be a mirror of each other. My comments on the same will be limited to what I have already stated.

21) It is clear to my mind that had not even been the issue of res judicata, still the claimant wouldn't have been successful in its claim for the above stated reasons to wit the cheque having been issued by a different entity and the differences between booking vouchers and invoices.

b) Who bears costs of the claim.

22) As to the issue of costs, the respondent having been successful in the matter, it is awarded costs of the claim.

CONCLUSION AND DISPOSITION.

23) The upshot of the foregoing I make the following final orders;

a) The claimant's claim contained in the statement of claim dated 14/10/2025 is dismissed.

b) Costs are awarded to the respondent.

24) Orders accordingly.

**DATED, SIGNED AND DELIVERED AT VOI SMALL CLAIMS COURT
THIS....10thDAY OF ...December...2025.**

**F.M. MULAMA
ADJUDICATOR/RM**

In the presence of:

Court Assistant:- Vivian Wambui.

Mr. Mwazighe for claimant.

N/A for the Respondent.