



Kenya Private Universities Workers Union v KCA University (Cause E475 of 2024) [2026] KEELRC 73 (KLR) (23 January 2026) (Ruling)

Neutral citation: [2026] KEELRC 73 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E475 OF 2024
SC RUTTO, J
JANUARY 23, 2026

BETWEEN
KENYA PRIVATE UNIVERSITIES WORKERS UNION CLAIMANT
AND
KCA UNIVERSITY RESPONDENT

RULING

1. Before the Court for determination is the Respondent's Preliminary Objection dated 16th July 2024, premised on the following grounds:
 1. The Application and the Entire Suit offends the doctrines of Res Judicata and Sub Judice, more specifically, the express provision of Sections 6 and 7 of the *Civil Procedure Act* - the issues raised having been dealt with at a Conciliation Ref no. MLSP/LD/AB/82.VOL 17, for which the conciliator has found against the Claimant in all issues raised herein and for which issues are also live before Hon Justice Ocharo Kebira in Milimani ELRC Petition No. E044 of 2022- KCA University V Kenya Private University Workers Union.
 2. The interim/interlocutory reliefs sought in the Application are incompatible with the Court of Appeal's decisions in *Vivo Energy Limited V Maloba Petrol Station Limited & 3 Others* (2015) eKLR, *Stephen Kipkebut t/a Riverside Lodge and Rooms V Naftali Ogola* (2009) eKLR, *Olive Mwaniki Mugenda & Another V Okiya Omtata Okoiti & 4 Others* (2016) eKLR, among others, that orders which may result in granting major reliefs claimed in the suit and/or amounting to final reliefs, ought not be granted an interlocutory stage.
 3. The Claimant lacks the locus standi to file the current suit/claim.
 4. The reliefs sought in the Application cannot be granted at interlocutory stage.



5. The Application seeks reliefs that are effectively in the nature of final orders, contrary to the prevailing jurisprudence on the grant of interim and interlocutory applications.
2. On 15th October 2025, the Court directed that the Respondent's Preliminary Objection be canvassed by way of written submissions, pursuant to which both parties complied.

Submissions

3. It was submitted on the part of the Respondent that the issues identified by the Claimant as being in dispute had already been determined by Hon. Justice J. W. Keli in a judgment delivered on 28th March 2025. To this end, the Respondent contended that the present matter offends the doctrine of res judicata, as expressly provided for under Section 7 of the *Civil Procedure Act*, the issues having been conclusively addressed in Milimani ELRC Petition No. E044 of 2022 – KCA University v Kenya Private University Workers Union.
4. The Respondent further submitted that the question of the rights of the Claimant's members under Article 36(1) read together with Article 41(2)(c) of *the Constitution*, Sections 3(a), (b) and (c), 4(1) (a) and (b), 5(1) and (2), as well as Sections 54–56 of the *Labour Relations Act*, No. 14 of 2007, were properly pleaded, canvassed and determined in the judgment in Milimani ELRC Petition No. E044 of 2022 – KCA University v Kenya Private University Workers Union.
5. In the same vein, the Respondent contended that issues relating to the rights of the Claimant's members to participate in trade union activities, including the mode of such participation, were the subject of the pleadings and were conclusively addressed by the Honourable Court in the said Petition.
6. In support of its position, the Respondent placed reliance on the decision in *Logistics Link Limited v Yalelo (U) Limited & another* (Civil Suit No. E067 of 2021) [2023] KEHC 27381 (KLR) (Ruling of 14th December 2023).
7. On its part, the Claimant submitted that the Respondent's plea of res judicata necessitates factual determination of matters such as the identity of the subject matter, the similarity of the issues, the existence and content of the previous judgment.
8. Relying on the decision in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] eKLR, the Claimant submitted that the subject matter and issues determined in Petition No. E044 of 2022 are neither directly nor substantially the same as those presently before this Honourable Court.
9. The Claimant further submitted that the doctrine of res judicata ought to be applied sparingly, as it is intended to safeguard the integrity of the judicial process from abuse rather than to unjustly bar litigants from accessing substantive justice, as the Respondent seeks to do. In support of this position, the Claimant relied on the decision in *John Florence Maritime Services Ltd & another v Cabinet Secretary for Transport & Infrastructure & 3 Others* [2015] eKLR.

Analysis and Determination

10. Having considered the Respondent's Preliminary Objection together with the rival submissions, I find that the issue falling for determination is whether the suit before the Court is res judicata.
11. It is the Respondent's case that the present suit offends the doctrine of res judicata, as expressly provided for under Section 7 of the *Civil Procedure Act*, on the basis that the issues raised herein were conclusively determined in Milimani ELRC Petition No. E044 of 2022 – KCA University v Kenya Private University Workers Union.



12. The Claimant has taken a contrary position, contending that the subject matter and issues determined in Petition No. E044 of 2022 are not directly and substantially the same as those presently before this Court.
13. The primary purpose of the doctrine of res judicata is to prevent multiplicity of suits and to ensure finality in litigation. The substantive law governing res judicata is set out in Section 7 of the [Civil Procedure Act](#), which provides as follows:

[7]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.
14. Addressing the question of res judicata, the Supreme Court of Kenya in the case of John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment) held as follows:

“For res judicata to be invoked in a civil matter the following elements must be demonstrated:

 - a) There is 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 must be between the first and the second action identical parties, subject matter and cause of action.”
15. Fundamentally, res judicata operates as a bar to subsequent proceedings concerning the same issue that has already been finally and conclusively determined by a competent court in a prior suit between the same parties or their representatives.
16. It has been held in a long line of authorities that the rationale behind res judicata is based on the public interest that there should be an end to litigation, coupled with the interest to protect a party from facing repetitive litigation over the same matter. Res judicata ensures the economic use of the court’s limited resources and the timely termination of cases.
17. In the present case, it is undisputed that the parties previously litigated in Milimani ELRC Petition No. E044 of 2022 – KCA University v Kenya Private University Workers Union. The point of contention, however, is whether the issues in that Petition are substantially similar to those raised in the current suit.
18. The Court has examined the judgment in Milimani ELRC Petition No. E044 of 2022 – KCA University v Kenya Private University Workers Union. It is noteworthy that in that matter, the Respondent herein was the Petitioner, and the primary issues related to the Claimant Union’s access to the employer’s premises. Indeed, the central theme running through the Court’s judgment concerned the rights of a trade union to access the employer’s premises under Section 56 of the [Labour Relations Act](#).
19. A review of the Claimant’s Statement of Claim dated 24th June 2024 reveals that several of the reliefs sought were not canvassed in Milimani ELRC Petition No. E044 of 2022 – KCA University v Kenya Private University Workers Union. These include the deduction and remittance of trade union dues,



allegations of victimization of the Claimant's members on account of their trade union affiliation and activities, and the recognition of the Claimant Union by the Respondent.

20. Indeed, it is evident from the record that the sole overlapping issue in the two matters concerns the Claimant Union's access to the Respondent's premises under Section 56 of the *Labour Relations Act*.
21. Accordingly, while there exists a similar issue in Milimani ELRC Petition No. E044 of 2022 – KCA University v Kenya Private University Workers Union, there remain other outstanding issues that are yet to be determined by any court of competent jurisdiction.
22. Put differently, there are substantial issues in the present matter that are clearly distinct from those addressed in Milimani ELRC Petition No. E044 of 2022 – KCA University v Kenya Private University Workers Union.
23. In the circumstances, the Court finds that the present Claim does not fall within the doctrine of res judicata.
24. The upshot of the foregoing is that the Preliminary Objection dated 16th July 2024 is overruled with an order that costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Owiti (Union Rep)

For the Respondent Mr. Muga

Court assistant Catherine

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

