

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E321 OF 2024

LAQUEEN NJOKI WAITITU

.....CLAIMANT/RESPONDENT

VERSUS

LPC GLOBAL LOGISTICS

LIMITED.....RESPONDENT/APPLICANT

RULING

1. For determination is the Respondent/Applicant's Notice of Motion application dated 26th November, 2025, brought pursuant to Sections 1A, 1B, 3A, 6, 7 and 8 of the Civil Procedure Act and Order 2 Rule 15 (1), (b), (c) and (d), Order 3 Rule 4 & Order 51 Rule 1 of the Civil Procedure Rules, 2010, seeking the following reliefs: -

- i. THAT this Honourable Court be pleased to strike out the instant suit in toto for offending the provisions of Section 6 of the Civil Procedure Act, CAP 21, in so far as a similar matter is already pending before this Honourable Court, being Nairobi ELRCJR No. E041 of 2023 Laqueen Nioki v LPC Global Logistics Limited.
- ii. THAT, in the alternative to prayer I above, this Honourable Court be pleased to strike out the instant suit in toto for offending the provisions of Section 7 of the Civil Procedure Act, CAP 21, in so far as a similar matter has been heard and determined by this

Honourable Court, being Nairobi ELRCJR No.E041 of 2023 Laqueen Nioki v LPC Global Logistics Limited.

iii. THAT this Honourable Court be pleased to award the costs of this application and the entire suit to the Respondent.

2. The application is supported by grounds on the face of the motion and the affidavit of **CAROL NASIMIYU**, the Finance and Administration Manager of the Respondent/Applicant herein.
3. The Applicant contends that the Claimant did not disclose to the court that she had already filed a separate case against the same Respondent (Nairobi ELRCJR No. E041 of 2023), which is based on similar facts and seeks similar remedies. It avers that the Claimant personally initiated that earlier case on an urgent basis, and submitted a statutory statement dated 14th November 2023.
4. The Applicant states that the Claimant's earlier case (Nairobi ELRCJR E041 of 2023) between the same parties was already heard and decided on 8th March 2024, and despite this, she filed a new case on 23rd April 2024 through an advocate, and based on the same claim of unfair termination.
5. The Applicant avers further that the law requires a Claimant to bring all claims in one suit, but instead the Claimant has resorted to filing multiple cases over the same issue, and the duplication risks conflicting court decisions and

increases costs for the Respondent. It avers that as a result, the current suit is an abuse of the court process and should be struck out.

6. The court directed parties to canvass the Motion by written submissions. The Applicant filed submissions; the Claimant/Respondent did not.

Determination

7. The issue arising for my determination is whether the Respondent/Applicant's Notice of Motion dated 26th November 2025 meets the threshold for striking out the suit on grounds of sub judice (Section 6) or res judicata (Section 7) under the Civil Procedure Act.
8. Section 6 bars a court from proceeding with a matter where a previously instituted suit between the same parties, over the same subject matter, is pending before a court of competent jurisdiction. This position was affirmed in ***Kenya National Commission on Human Rights v Attorney General & another (2015] KEHC 7634 (KLR)***, where the Court held that for sub judice to apply there must be two or more suits, the matters in issue must be directly and substantially the same, the suits must be between the same parties or parties claiming under them, and the earlier suit must be pending before a competent court.
9. The Applicant's position is that a similar matter to this exists in ***Nairobi ELRCJR No. E041 of 2023***. It, however,

simultaneously states that the earlier suit was heard and determined on 8th March 2024.

- 10.** In my considered view, once a matter has been determined, it ceases to be pending. Sub judice applies only where the earlier suit is still active and undetermined. This position was affirmed in ***Thiba Min Hydro Co. Ltd v Josphat Karu Ndwiga [2013] KEHC 2017 (KLR)***, where the court held that Section 6 cannot apply where the earlier matter has already been concluded.
- 11.** In light of the foregoing, the plea of sub judice fails on the simple basis that there is no pending suit.
- 12.** On the plea of Res judicata, Section 7 bars re-litigation of matters already conclusively determined. In ***Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] KECA 477 (KLR)***, the Court of Appeal outlined the ingredients of res judicata as where the matter in issue is identical in both suits, the parties are the same or litigating under the same title, the issue was heard and finally determined and that the court that determined the earlier matter was a court of competent jurisdiction.
- 13.** Further, in ***Henderson v Henderson (1843) 3 Hare 100, 67 ER 313 (Ch)***, the court emphasized that parties must bring forward their whole case, and cannot later litigate matters that ought to have been raised earlier.

- 14.** From the material presented before this court, it is evident that the earlier suit was a judicial review motion, which only examined the legality of the decision making process and whether or not there was procedural fairness and jurisdiction.
- 15.** A judicial review application does not usually determine the substantive employment rights, such as wrongful dismissal, unfair termination, and the award of damages or compensation for unfair termination, which are the subject of the instant Claim.
- 16.** It is evident that the Judicial review application only dealt with procedural legality, and not the merits of the case. It is also clear that the instant claim raises distinct causes of action from those raised in the Judicial review application, and the remedies sought are also different from those sought in the Judicial Review Motion.
- 17.** For the foregoing reasons, I do not find the instant Claim to amount to a re-litigation of the same cause of action that was earlier determined under the Judicial review application.
- 18.** I thus conclude that the Claim herein is not res judicata.
- 19.** The Motion is dismissed with costs in the cause.
- 20.** It is ordered.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 19TH DAY OF MARCH, 2026.

C. N. BAARI
JUDGE

Appearance:

Mr. Ndegwa h/b for Mr. Wepor for the Claimant/Respondent

Mr. Gakungu present for the Respondent/Applicant

Ms. Esther S-C/A