



Chege v Kenga Equatorial Hotels t/a Mombasa Continental (Cause E052 of 2025) [2026] KEELRC 1193 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEELRC 1193 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E052 OF 2025**

**K OCHARO, J
APRIL 30, 2026**

BETWEEN

FREDRICK MWANGI CHEGE CLAIMANT

AND

**KENGA EQUATORIAL HOTELS T/A MOMBASA
CONTINENTAL RESPONDENT**

RULING

1. By their Notice of Motion Application dated 30th October 2025, the Respondent seeks the following orders;
 - a. That the Claimant’s suit herein, Mombasa ELRC Cause No. E 052 of 2025, Fredrick Mwangi Chege v Kenga Equatorial Hotels Ltd, be struck out for being res judicata, the same dispute having been previously heard and determined between the same parties in Mombasa ELRCA No. E 087 of 2024.
 - b. That in the alternative, without prejudice to prayer [1] above, this Honourable Court be pleased to find and hold that the instant suit is an abuse of the court process and strike it out in its entirety pursuant to Order 2 Rule 15[1][d] of the Civil Procedure Rules.
 - c. That the costs of this Application be provided for.
2. The Application is based on the grounds that;
 - I. The Claimant previously instituted Mombasa CMELRC NO. E 454 OF 2022 against the Respondent, founded upon the same facts and cause of action relating to his alleged unlawful termination as Finance Manager.
 - II. The suit was fully heard and determined, culminating in Mombasa ELRCA NO. E 084 OF 2024, in which a judgment was delivered on 30th January 2025.



- III. That the current suit replicates the same issues, facts, and reliefs already adjudicated upon, and therefore barred by the doctrine of res judicata under section 7 of the *Civil Procedure Act*.
 - IV. That the filing of the instant suit amounts to a gross abuse of the judicial process, and is only intended to reopen a matter settled and finalised.
3. The Claimant opposes the application on the following ground discernible from his two paragraphed replying affidavit. Thus;
 - I. The current suit does not offend Section 7 of the *Civil Procedure Act*.

Analysis and Determination

4. There is no dispute that the Claimant in the present suit initially filed Cause MCELRC No. E 454 of 2022 against the Respondent, alleging unfair termination of his employment. Further, in that suit, the Respondent raised a preliminary objection, contending that the lower Court lacked the pecuniary jurisdiction to entertain the suit. The Court rejected the objection, prompting the Respondent to file the appeal mentioned above.
5. Justice Mbaru, while allowing the appeal, expressed;

“On the facts presented before the trial Court, the objections based on *the Constitution* under Article 162[2], Section 29[4] of the *Employment and Labour Relations Court Act*, Sections 7 and 9 of the Magistrates Court Act, read together with Gazette Notice No. 6024 of 10 June 2018, the trial Court lacked the requisite jurisdiction to hear and determine the claim before it. Lack of Jurisdiction of court cannot be abrogated or arrogated by application of Article 159 of *the Constitution*.

Filing of the claim before the trial court rendered the matter moot. Filing a claim before the wrong court cannot be cured through any judicial craft. The suit should have been dismissed based on the preliminary objection.

Accordingly, the appeal is with merit, and the objections dated 14th November 2023 are well-founded and are hereby allowed. The ruling delivered on 18th April 2024 is set aside.

The claim filed in Mombasa MCELRC E 454 of 2022 was before a court without jurisdiction and is hereby dismissed. Costs to the Appellant.”
6. Contrary to the Respondent’s position, neither the appeal hereinabove mentioned nor the initial suit resolved the dispute between the Claimant and the Respondent on its merits. The substantive issues of the Claim were not addressed, and a decision was rendered on them. Under these circumstances, this Court is compelled to question what could reasonably underpin the Respondent’s application, aside from a conscious disregard for fundamental principles of law.
7. For the doctrine of res judicata to properly arise, it must first be shown that the previous dispute was conclusively determined on the merits. This means that the court or tribunal did not merely dispose of the matter on procedural or technical grounds, but undertook a substantive evaluation of the issue in controversy and rendered a final decision addressing the parties’ rights and obligations. A determination on the merits signifies that the core questions in the dispute were heard, evidence [where applicable] was considered, and a reasoned judgment was issued.
8. Equally critical is the requirement that the prior determination must have been made by a court or tribunal of competent jurisdiction. Jurisdiction goes to the root of the adjudicative authority,



encompassing both the legal mandate to hear the subject matter and the capacity to bind parties. A decision rendered without jurisdiction is a nullity, incapable of grounding a plea of res judicata, regardless of how conclusively it may appear to resolve the issues. Therefore, the party invoking the doctrine must demonstrate that the earlier forum was properly seized of the matter, had the legal authority to adjudicate upon it, and its decision was valid and binding. Only then can the principle operate to bar subsequent proceedings on the same issues between the same parties.

9. Undoubtedly, applying the above principles, it cannot be said that the previous suit can operate against the present one.
10. In conclusion, I find the Respondent's application without merit. It is hereby dismissed with costs.

READ SIGNED AND DELIVERED THIS 30TH DAY OF APRIL 2026.

OCHARO KEBIRA

JUDGE

