



**Jacob v County Government of Mombasa (Cause E051 of 2024)  
[2025] KEELRC 448 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 448 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E051 OF 2024  
M MBARÚ, J  
FEBRUARY 20, 2025**

**BETWEEN**

**MICHAEL CHIRUDI JACOB ..... CLAIMANT**

**AND**

**COUNTY GOVERNMENT OF MOMBASA ..... RESPONDENT**

**RULING**

1. The respondent, the County Government of Mombasa filed a Notice of Preliminary Objections dated 3 October 2024 on the grounds that;
  - a. The instant suit offends the provisions of Section 7 of the Civil Procedure Rules.
  - b. The claimant’s entire suit is res judicata as the same was determined in ELRC No.E077 of 2021 Erick Ochieng & 108 others v The County Government of Mombasa.
  - c. The entire suit is brought in bad faith, is frivolous, vexatious and an abuse of the court process and should be struck out with costs.
2. Parties attended court and agreed to address the objection by oral submissions and to file skeleton written submissions.  
Only the respondent attended.  
The claimant has since remained absent.
3. The respondent submitted that under paragraph 3 of the Memorandum of Claim, the claimant has admitted that he filed the same cause of action under ELRC Cause No.E077 of 2021 – Erick Ochieng & 108 others v the County Government of Mombasa. The claimant was listed as No.49 in the suit. On 27 February 2023, the suit was dismissed for nonattendance. The claimants filed an application seeking reinstatement of the suit and on 7 March 2023, the same was allowed in a ruling delivered on



28 June 2023 on the condition that the claimants should prosecute the suit within 12 months. There was no compliance. Instead and claimant has filed this suit.

4. The current suit offends the doctrine of res judicata. It cannot be used to revive the earlier suit. In *Co-operative Bank of Kenya Limited v Cosmas Mrombo Moka & Legacy Auctioneering Services Civil Appeal 122 of 2018*, the court held that there is no justifiable reason to allow a party who had litigated on the same issues to re-institute a similar suit. That offends the doctrine of res judicata. In the case of *Njue Ngai v Ephantus Njiru Ngai & Irene Marigu Ngai Civil Appeal 29 of 2015* the court held that a dismissal of suit for want of prosecution was as good as a final judgment. Where no application is filed to set aside the judgment, the same stands.
5. In this case, the objections by the respondent should be allowed and the instant suit dismissed with costs.

### **Determination**

6. As noted above, the claimant did not file any response in the form of affidavits or written submissions.
7. Despite being aware of the objections, the claimant has opted not to attend.
8. Indeed, under paragraph 3 of the Memorandum of Claim, the claimant has admitted that there is Mombasa ELRC Case No.E077 of 2021. Under the suit, he was claimant No.49.
9. The orders sought in this suit are similar to the orders sought by the claimants under Mombasa ELRC Case No.E077 of 2021. The issue in dispute is the employment of the claimant as a casual employee without benefits for long and continuous service. Under Mombasa ELRC Case No.E077 of 2021, the orders sought are that;
  - a. A declaration that the claimants have attained/qualified for permanent employment with full benefits.These orders are similar to what the claimant is seeking herein.  
He was a party to the earlier suit.
10. The principles of res judicata are addressed under Section 7 of the *Civil Procedure Act*. For res judicata to be invoked in a civil matter the following elements have 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.
11. In the case of *John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR)* the elements of res judicata under Section 7 of the *Civil Procedure Act* are addressed with each analyzed.
12. In this case, the claimant has had the same matter litigated under a different cause, there is a determination and conclusion. The determination is by this court over the same subject matter as herein.



13. The claimant cannot justify the duplication of suits over the same cause of action against the same party. Such offends provisions of Section 7 of the Civil Procedure Act. Well aware of the previous suit and outcome, filing this cause is an abuse of court process.

14. The claim herein being res judicata is dismissed. Costs to the respondent.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 20TH DAY OF FEBRUARY 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

