



**Nyang’au v Kenya National Commission for UNESCO & 3 others (Cause E364 of 2024) [2025] KEELRC 443 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 443 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E364 OF 2024  
L NDOLO, J  
FEBRUARY 20, 2025**

**BETWEEN**

**CATHERINE NYAKOBOKE NYANG’AU ..... CLAIMANT**

**AND**

**KENYA NATIONAL COMMISSION FOR UNESCO ..... 1<sup>ST</sup> RESPONDENT**

**KENYA NATIONAL COMMISSION FOR UNESCO ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**ETHICS AND ANTI-CORRUPTION COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling determines the Notice of Motion dated 23<sup>rd</sup> August 2023, by which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents ask that the Claimant’s claim be struck out.
2. The Motion is supported by an affidavit sworn by the Acting Secretary General/Chief Executive Officer of the 2<sup>nd</sup> Respondent, Dr. James Njogu, HSC and is based on the following grounds:
  - a. That the entire claim is riddled with material non-disclosure, deliberate misrepresentation of facts and falsehoods, rendering it scandalous, vexatious and an abuse of the court process;
  - b. That the Claimant has deliberately failed to disclose and bring to the Court’s attention that she filed similar matters in this Court being Nairobi ELRC Petition No 82 of 2020: Catherine Nyakoboke Nyang’au v Kenya National Commission for UNESCO & others, Nairobi ELRC Petition No 38 of 2020: Catherine Nyakoboke Nyang’au v Kenya National Commission for UNESCO & others and Nairobi ELRC JR No 9 of 2020: Catherine Nyakoboke Nyang’au v Kenya National Commission for UNESCO & others;



- c. That the Claimant is clearly forum shopping, attempting to steal a match and blatantly abusing the court process;
  - d. That there is no cause of action against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents;
  - e. That the suit is otherwise an abuse of the court process;
  - f. That the claim is otherwise incompetent, scandalous, frivolous and vexatious and is in the interest of justice that it be struck out;
  - g. That it is in the interest of justice that the instant application is allowed as prayed.
3. In his affidavit in support of the application, Dr. James Njogu, HSC depones that Nairobi ELRC Petition No 82 of 2020: Catherine Nyakoboke Nyang'au v Kenya National Commission for UNESCO & others was struck out, with costs on 19<sup>th</sup> November 2021, for being a classic case of forum shopping, sub judice, vexatious and a waste of judicial resources.
  4. Dr. Njogu further depones that the issue of termination of the Claimant's employment is a matter still pending in Nairobi ELRC Petition No 30 of 2020: Catherine Nyakoboke Nyang'au v Kenya National Commission for UNESCO & others and Nairobi ELRC JR No 9 of 2020: Catherine Nyakoboke Nyang'au v Kenya National Commission for UNESCO & others.
  5. The Claimant opposes the application by her replying affidavit sworn on 3<sup>rd</sup> December 2024.
  6. She depones that Nairobi ELRC Petition No 82 of 2020 was struck out without being heard on merit, and the rule against sub judice and/or res judicata does not apply.
  7. The Claimant concedes having filed Nairobi ELRC Petition No 38 of 2020 and Nairobi ELRC JR No 9 of 2020, which she later withdrew. She maintains that there exists no other pending suit to warrant striking out of the present proceedings.
  8. The 4<sup>th</sup> Respondent supports the application by a replying affidavit sworn by Josphat Chirchir.
  9. Chirchir, who describes himself as a Forensic Investigator with the Ethics and Anti-Corruption Commission depones that the Commission received a letter dated 3<sup>rd</sup> February 2020, from the Kenya National Commission for UNESCO requesting for investigations into allegations on recruitment of the Claimant, who was said to have secured employment with a background check form containing false information.
  10. According to Chirchir, the Claimant has not presented a factual or substantial claim, controversy or dispute as between her and the 4<sup>th</sup> Respondent.
  11. Chirchir further depones that the Claimant deliberately failed to disclose to the Court that she had instituted two other similar matters against the Respondents, based on the same set of facts and seeking similar reliefs being; Nairobi ELRC Petition No 38 of 2020: Catherine Nyakoboke Nyang'au v Kenya National Commission for UNESCO & 6 others, Nairobi ELRC Petition No 82 of 2020: Catherine Nyakoboke Nyang'au v Kenya National Commission for UNESCO & 4 others and Nairobi ELRC JR No 9 of 2020: Catherine Nyakoboke Nyang'au v Kenya National Commission for UNESCO & others.
  12. Chirchir states that the Claimant filed a Notice of Motion dated 5<sup>th</sup> March 2020 in Nairobi ELRC Petition No 38 of 2020 seeking stay orders and while the application was pending determination, she filed a second suit being; Nairobi ELRC JR No 9 of 2010 on 25<sup>th</sup> March 2020, seeking similar orders.



13. He adds that Petition No 38 of 2020 was withdrawn on 3<sup>rd</sup> June 2020 while JR No 9 of 2020 was withdrawn on 19<sup>th</sup> June 2020 after the Claimant misleading the Court and obtaining stay orders in Petition No 82 of 2020 on 26<sup>th</sup> May 2020. Petition No 82 of 2020 was subsequently struck out on 19<sup>th</sup> November 2021 for being a classic case of forum shopping, sub judice, vexatious and a waste of judicial resources.
14. In their written submissions on the application, the parties expended a lot of effort discussing the twin principles of sub judice and res judicata. In my view however, what is before me is the broader issue of abuse of the court process.
15. As held by Kimaru J (as he then was) in Stephen Somek Takwenyi & another v David Mbutia Githare & 2 others (Nairobi (Milimani) HCCC No 363 of 2009) every court is clothed with inherent power to prevent abuse of the court process. This power extends beyond codified rules of procedure and established principles such as sub judice and res judicata.
16. In the submissions filed on behalf of the 4<sup>th</sup> Respondent, reference was made to the decision in Unlimited (Africa) Ltd & 2 others [2009] KLR 229 where the Court of Appeal stated thus:

“The term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding, which is wanting in bona fides and is frivolous, vexatious or oppressive...Examples of the abuse of the judicial process are: -

  - i. Instituting multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of action on the same matter between the same parties even were there exists a right to begin the action.
  - ii. Instituting different actions between the same parties simultaneously in different courts even though on different grounds.
  - iii. Where two similar processes are used in respect of the exercise the same right for example, a cross appeal and a respondent’s notice.
  - iv. Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness.”
17. The foregoing was reiterated in the more recent decision in Graham Rioba Sagwe & 2 others v Fina Bank Limited and 5 others [2017] eKLR.
18. In the instant case, it is not disputed that the Claimant had, prior to filing the present cause, filed three previous actions against the same parties and on the same subject matter being; Nairobi ELRC Petition No 38 of 2020, Nairobi ELRC Petition No 82 of 2020 and Nairobi ELRC JR No 9 of 2020.
19. The Claimant herself states that she had withdrawn Nairobi ELRC Petition No 38 of 2020 and Nairobi ELRC JR No 9 of 2020, while Nairobi ELRC Petition No 82 of 2020 was struck out by the Court.
20. I have taken time to scrutinise the Claimant’s pleadings and submissions in the application, with a view to establishing her motivation in filing a multiplicity of suits on the same subject matter.



21. Overall, I find no justification for the Claimant's conduct and the only conclusion to make is that she set out to deliberately abuse the court process.
22. I therefore invoke the inherent powers of the court and proceed to strike out the present claim with an order that each party will bear their own costs.
23. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Manwa for the Claimant

Ms. Tuwei h/b for Mr. Kirimi for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Mr. Ochola for the 4<sup>th</sup> Respondent

No appearance for the 3<sup>rd</sup> Respondent

