



**Twaweza Apparel (EPZ) Limited v Mlala & another (Appeal
E161 of 2024) [2025] KEELRC 804 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 804 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E161 OF 2024
M MBARÚ, J
MARCH 6, 2025**

BETWEEN

TWAVEZA APPAREL (EPZ) LIMITED APPELLANT

AND

PHENNY NYADZUA MLALA 1ST RESPONDENT

HANTEX GARMENTS (EPZ) LIMITED 2ND RESPONDENT

*(Being an appeal from the ruling of Hon. L. Sindani delivered
on 1 August 2024 in Mombasa MCELRC Cause No.337 of 2019)*

JUDGMENT

1. The appeal arises from the ruling delivered on 1 August 2024 in Mombasa CMELRC Cause No.339 of 2019. The appellant is seeking that the verdict be set aside and substituted with an order allowing the appellant's objection application dated 2 April 2024 with cost to the effect that the warrants of attachment and sale given on 22 March 2024 and proclamation of attachment dated 27 March 2024 be lifted and or set aside.
2. The appeal is that the appellant filed objection proceedings through an application dated 2 April 2024 because it is a limited liability company operating as an export processing zone at warehouse No. 1 to 10 on LR. No. 1043/111/54/Mazeras Kenya (EPZ) Ltd under Licence No. 002979. The objections were filed because the appellant is not the judgment debtor in Mombasa CMELRC No.337 of 2019, which was against the 2nd respondent.
3. The attached motor vehicle in execution was registration No. KBR 817Q and KCB 624T, the property of the appellant. The execution was for recovery of Ksh.127, 456.30 awarded to the first respondent. The appellant argued that it was not a party to the proceedings between the respondents and did not have any lawful obligation to settle the decree.



4. The learned magistrate delivered a ruling on 1 August 2024 and held that the objections and issues raised were res judicata because, in MCELRC No.331 of 2019, Pauline Adhiambo Okoth v Hantex Garments (EPZ) Limited, the parties are the same. However, the appellant's case was that it was not established that there was a legal and equitable interest of the 2nd respondent judgment/debtor in the attached goods and properties that belong to the appellant.
5. The appellant's case was that the trial court ignored the fact that, arising from MCELRC No.331 of 2019 Pauline Adhiambo Okoth v Hantex Garments (EPZ) Limited, an appeal in ELRCA E012 of 2023 was pending determination.
6. On the appeal, the appellant submitted that the trial court erred in failing to address the issue of whether the objector had established a legal and equitable interest in the attached and proclaimed properties after submitting ownership documents for a motor vehicle attached in execution of the decree. The finding that the matter was res judicata due to MCELRC No.331 of 2019 Pauline Adhiambo Okoth v Hantex Garments (EPZ) Limited was in error since these were separate suits against different parties.
7. The appellant submitted registration certificates for the attached vehicles, which belong to them and not the 2nd respondent. Under Order 22 Rule 51 of the Civil Procedure Rules, the court should have determined whether the objector had established a legal or equitable interest in the whole or part of the attached property. In the case of Southern Bell Limited v National Social Security Fund Board of Trustees & 4 others [2023] eKLR, the court held that the objector bears the burden of proving that he is entitled to or has legal or equitable interest on the whole or part of the attached property. The appellant submitted evidence of ownership and has legal title to the attached property.
8. The appellant submitted that the Traffic Act provides that the person in whose name a vehicle is registered is deemed to be the owner unless otherwise proved, as held in Odhiambo Owiti & Company Advocates v Dominion Farms Limited, Sukari Industries Limited (Objector) [2021] eKLR.
9. The ownership of motor vehicle registration No. KBR 817Q and KCB 624T were not challenged and belong to the appellant. The connection given by the trial court that similar matters were in issue in a different case, CMELRC Case No.331 of 2019, was in error, and the principles of res judicata did not apply as addressed in Gladys Nduku Nthuki v Letshego Kenya Limited, Mueni Charles Maingi (intended interested party) [2022] eKLR. The parties are different, and the appellant only filed objection proceedings. Although objections were filed in both suits, the basis was different, out of which the appellant had filed ELRCA E012 of 2024.
10. The 1st respondent submitted that the appellant and 2nd respondent were represented by the same advocates before the trial court. Although a different law firm filed the objections, the correspondences were the same. In Gichuki King'ara & Company Advocates v Mugoya Construction & Engineering Limited [2013] eKLR, the court held that a fiduciary relation exists between two or more clients of the everyday advocate. As in the present case, an advocate privy in matters between two different clients should only act for one client.
11. The appeal is improper as it was filed and prosecuted by the same advocates. They are privy to information between the parties. The 1st respondent was at risk of being greatly prejudiced by the apparent conflict of interest and the undoubted collusion between the parties to impede justice.
12. The first respondent submitted that the claim that the attached vehicles, KCB 624T and KBR 817Q, belong to the appellant is without evidence. The decree has been settled through the advocates, and events overtake the appeal. Proceeding on the appeal is academic.



13. The 2nd respondent did not attend these proceedings despite being served.

Determination

14. As a first appeal, the court can review the entire record and reassess the findings with a conclusion. However, the trial court had the opportunity to hear the witnesses testify.
15. The 1st respondent has submitted that the decretal sum has since been paid in settlement of the matter and that proceedings with this appeal are purely academic. However, as a court of record, the determinations of the trial court in the matter and the appeal herein must be considered on the merits.
16. The appeal raises issues of whether the findings that the appellant's objections through an application dated 2 April 2024 offended the res judicata principles, whether the appellant held a legal and equitable interest in the attached and proclaimed goods and properties, and who should bear the costs of the appeal.
17. In the ruling of the trial court on 1 August 2024, the court held that the appellant's objections were similar to those in CMELRC Cause No.331 of 2019—Pauline Adhiambo Okoth v Hantex Garments (EPZ) Limited, and hence, the application and objections went against res judicata principles.
18. Indeed, under Section 7 of the *Civil Procedure Act*. The principles of res judicata is essentially a bar to subsequent proceedings involving the same issue as had been finally and conclusively decided by a competent court in a prior suit between the same parties or their representatives as held in John Florence Maritime Services Limited & Conken Cargo Forwarders Limited v Cabinet Secretary for Transport and Infrastructure, Attorney General, Kenya Maritime Authority & Office De Gestion Du Freit Maritime (OGEFREM) [2015] KECA 472 (KLR);
19. The doctrine of res judicata encompasses two main dimensions: cause of action, res judicata, and issue, res judicata.
20. Cause of action res judicata occurs when the cause of action in subsequent proceedings is identical to prior proceedings, provided that the latter involved the same parties (or their privies) and addressed the same subject matter. This type of res judicata also applies to points that could have been raised but were not decided in the earlier proceedings. In such cases, the bar is absolute, except for fraud or collusion.
21. Issue res judicata arises when a specific issue, a necessary element of a cause of action, has been litigated and settled. In subsequent proceedings between the same parties involving a different cause of action related to the same issue, one party cannot reopen that issue.
22. In this case, there was MCELRC Cause No.331 of 2019 Pauline Adhiambo Okoth v Hantex Garments (EPZ) Limited, and the cause of action arose out of the same series of events in MCELRC Cause No.337 of 2019 Penny Nyadzua Mlala v Hantex Garments (EPZ) Limited but the claimants moved the trial court under different suits. Each suit was heard separately on the merits.
23. The appellant filed objection proceedings under each suit, with different rulings on different dates: 17 June 2022 and 1 August 2024, respectively.
24. Arising from the MCELRC Cause No.331 ruling of 2019 Pauline Adhiambo Okoth v Hantex Garments (EPZ) Limited, the appellant filed ELRCA No.E012 of 2024.
25. Arising from the ruling delivered in MCELRC No.337 of 2019, there is this appeal.
26. Although the issues are similar, the parties to each suit are different. The suits should have been consolidated for ease of reference, but again, each claimant before the trial court had a right to move



the court at their own time and be represented by an advocate of choice. Such difference cannot be applied as res judicata. Each case is related to a different person seeking to urge employment claims.

27. In the objection proceedings, the appellant claimed it had legal title and ownership to motor vehicles KBR 817Q and KCB 624T. They produced registration certificates and log books as primary documents to confirm ownership. Without any evidence to the contrary, such records should have applied to set aside the execution proceedings levelled against the appellant by the judgment/creditor, 1st respondent. The court decree was directed at the 2nd respondent as the judgment/debtor. The warrants of attachment and sale dated 22 March 2023 and the proclamation served to the appellant on 27 March 2024 were irregular and should have been addressed to the judgment/debtor, the 2nd respondent.
28. Upon proving that it had the legal title and equitable interest in the motor vehicles attached, such obligation discharged and not challenged, the execution against the appellant was unlawful and irregular. Objections through an application dated 2 April 2024 should have been allowed.
29. On the submissions that the decretal sum has since been paid, the appellant did not disclose whether the appellant or the 2nd respondent paid this. The need to mark the appeal as settled arose from the 1st respondent, and the costs due in the appeal will be decided by the 1st respondent.
30. The appeal is with merit and is hereby allowed; the ruling in Mombasa MCELRC Cause No.337 of 2019 delivered on 1 August 2024 is hereby set aside with costs to the appellant to be met by the 1st respondent.

DELIVERED IN OPEN COURT AT MOMBASA THIS 6TH DAY OF MARCH 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

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