



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Commissioner for Co-operatives & another; Gachungwa & 3 others
(Exparte) (Suing on behalf of themselves and over Three Hundred and Ninety-five
former workers of the defunct Tetu Coffee Farmers' Co-operative Society Limited)
(Judicial Review E008 of 2024) [2025] KEELRC 1457 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1457 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI

JUDICIAL REVIEW E008 OF 2024

ON MAKAU, J

MAY 15, 2025

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF
MANDAMUS UNDER ARTICLE 47 OF THE CONSTITUTION, SECTION 8 & 9 OF THE
LAW REFORM ACT (CAP 26), AND ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010**

AND

**IN THE MATTER OF: ARTICLES 201 (D) AND
221 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF: THE PUBLIC FINANCE MANAGEMENT ACT, 2012

AND

IN THE MATTER OF: THE GOVERNMENT PROCEEDINGS ACT (CAP 40)

AND

IN THE MATTER OF: THE CONTEMPT OF COURT ACT, 2016

AND

**IN THE MATTER OF: AN UNSATISFIED JUDGMENT DEBT AGAINST THE
COMMISSIONER FOR CO-OPERATIVES AND G.K.KARUKU, LIQUIDATOR OF
TETU COFFEE FARMERS CO-OPERATIVE SOCIETY LIMITED, IN THE SUM
OF KSHS.27,718,055.45 TOGETHER WITH INTEREST ON THE DECRETAL
SUM AT COURT RATES FROM THE DATE OF FILING (08.08.2009) PLUS COSTS
ARISING FROM THE JUDGMENT OF THE EMPLOYMENT & LABOUR RELATIONS
COURT CASE NO.102 OF 2015 (FORMELY HCCC NO.59 OF 2009 AT NYERI)
DELIVERED ON 24TH NOVEMBER 2017 AND THE SUBSEQUENT FINAL DECREE
AND CERTIFICATE OF COSTS DATED 13TH FEBRUARY 2019 AGAINST THE
COMMISSONER FOR CO-OPERATIVES AND G.K.KARUKU, LIQUIDATOR.**



BETWEEN

REPUBLIC APPLICANT

AND

THE COMMISSIONER FOR CO-OPERATIVES 1ST RESPONDENT

**GK KARUKU, LIQUIDATOR OF TETU COFFEE FARMERS CO-OPERATIVE
SOCIETY LTD 2ND RESPONDENT**

AND

JOHN GITHAIGA GACHUNGWA EXPARTE

WINFRED WANGECHI THEURI EXPARTE

SAMUEL NDUNG’U GICHURE EXPARTE

MARTIN KANYEKI WAIHIGA EXPARTE

**SUING ON BEHALF OF THEMSELVES AND OVER THREE HUNDRED AND
NINETY-FIVE FORMER WORKERS OF THE DEFUNCT TETU COFFEE
FARMERS’ CO-OPERATIVE SOCIETY LIMITED**

RULING

1. This ruling relates to the Notice of Preliminary Objection dated 27th November 2024 vide which the respondents object to the suit on the following grounds: -
 - a. The application is res judicata with respect to the ruling of this court delivered on 25th February 2020 in Nyeri ELRC JR No.6 of 2019.
 - b. The suit disregards the doctrine of res judicata and is an abuse of the due process of the court.
2. A brief background of the suit is that the applicants were employed by the defunct Tetu Co-operative Society Limited before it was liquidated. Subsequently, the applicants sued the respondents in High Court case No.59 of 2009 at Nyeri which was later transferred to this court as Number ELRC Cause No.102 of 2015.
3. The case was heard by Ongaya J who delivered Judgment in favour of the applicant against the 1st and 2nd respondents herein in the sum of Kshs.27,718,055.45. The respondents never settled the whole decretal sum and the applicants filed Judicial Review Application No.6 of 2019 seeking an order of mandamus to compel the respondents to pay them the decretal sum of Kshs.27,718,055.45 plus interest at the rate of 12 percent per annum, and in default they be summoned to the court to show cause why contempt proceedings should not be commenced against them.
4. The Judicial Review Motion was heard by Nzioki Makau J who delivered his Judgment on 25th February 2020 whereby he considered the merits of the suit and dismissed it with no order as to costs. The said decision was never challenged by way of appeal or, at all.
5. Once again, the applicants have sought and obtained leave to apply for order of mandamus compelling the respondents to pay the 399 applicants the sum decreed by this court on 24th November 2017 in



Nyeri ELRC No.102 of 2015. The respondents have responded by the instant Notice of Preliminary Objection.

6. The objection was canvassed by written submissions. After considering the rival submissions in the light of the brief background highlighted above, the only issue for determination is whether the suit herein is res judicata.

7. In *John Florence Maritime Services Limited & Another v Cabinet Secretary, Transport and Infrastructure & 3 others* (2021) eKLR the Supreme Court held that: -

“The doctrine of res judicata in effect allows a litigant only one bite of the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.”

8. The doctrine of res judicata is codified in section 7 of the *Civil Procedure Act* as follows: -

“No court shall try any suit or issue in which the matter directly and substantially in issue, has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

9. There is no denial that a similar suit between the same parties seeking the same orders was heard and determined on merits by Wa Makau J vide a judgment delivered on 25th February 2020. The court was competent to determine the said suit and therefore the matter was fully decided.

10. In view of the foregoing, this court became functus officio with respect to the application for the orders sought and denied in the former suit which are repeated herein. Any party aggrieved by the said decision ought to have moved to the Court of Appeal to challenge the same. Instead, the applicants went to slumber and woke up after four years to litigate over the same matter before the same court. They are estopped by the doctrine of res judicata from having a second bite at the cherry. Therefore, I allow the preliminary objection and strike out the entire suit but with no costs considering the unfortunate loss of both the employment and the employer.

DATED, SIGNED AND DELIVERED AT NYERI THIS 15TH DAY OF MAY, 2025.

ONESMUS N MAKAU

JUDGE

ORDER

This ruling has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

3| Page *Nyeri ELRC JR No.E008 of 2024*

