



**Banking Insurance & Finance Union v Agricultural Finance Corporation (AFC)  
(Cause E067 of 2025) [2025] KEELRC 1889 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1889 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E067 OF 2025  
SC RUTTO, J  
JUNE 27, 2025**

**BETWEEN  
BANKING INSURANCE & FINANCE UNION ..... CLAIMANT  
AND  
AGRICULTURAL FINANCE CORPORATION (AFC) ..... RESPONDENT**

**RULING**

1. What is before this Court for determination is the Respondent's Notice of Preliminary Objection dated 20<sup>th</sup> March 2025, through which the Respondent seeks to have the main suit struck out with costs on the following grounds:
  1. The claim herein is in breach of the provisions of Section 7 of the *Civil Procedure Act*, therefore amounts to Res-Judicata the cause of action herein having been fully determined in Nairobi ELRC Cause No. E140 of 2024 Banking, Insurance, Finance Union (Kenya) Vs Agricultural Finance Corporation (AFC).
  2. The matter in dispute herein was directly and substantially in issue in a previously determined case, involving the same parties and arising from the same facts, issues, and cause of action.
  3. The proceedings herein have been commenced contrary to the law.
  4. The Court, therefore, lacks jurisdiction to entertain the claim, and the suit should be dismissed with costs to the Respondent.
2. On 26<sup>th</sup> March 2025, the Court directed that the Preliminary Objection be canvassed by way of written submissions.

**Submissions**

3. Both parties filed written submissions, which the Court has duly considered.



## Analysis and Determination

4. From the issues brought forth in the Preliminary Objection and the rival submissions, it is evident that the singular issue that arises for determination by this Court is whether the Claim is res judicata.
5. The crux of the Respondent's Preliminary Objection is that the Claim is in breach of the provision of Section 7 of the *Civil Procedure Act*, hence amounts to res judicata as the cause of action herein was fully determined in Nairobi ELRC Cause No. E140 of 2024 Banking, Insurance, Finance Union (Kenya) Vs Agricultural Finance Corporation (AFC).
6. The main objective of the doctrine of res judicata is to bar multiplicity of suits and guarantee finality to litigation. The substantive law on res judicata is found in Section 7 of the *Civil Procedure Act*, which provides as follows:

“[7]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.”

7. In this respect, the Court of Appeal held in the Independent Electoral and Boundaries Commission vs Maina Kiai & 5 others, [2017] eKLR, as follows:

[F] or the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

- a) The suit or issue was directly and substantially in issue in the former suit.
  - b) That former suit was between the same parties or parties under whom they or any of them claim.
  - c) Those parties were litigating under the same title.
  - d) The issue was heard and finally determined in the former suit.
  - e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.
8. Flowing from the above, it is evident that in order to rely on the defence of res judicata, the following elements must exist: -
    - i. a previous suit in which the matter was in issue;
    - ii. the parties were the same or litigating under the same title;
    - iii. a competent court heard the matter in issue; and
    - iv. the issue has been raised once again in a fresh suit.
  9. In support of the Objection, the Respondent has submitted that the matter herein is substantially the same as Nairobi ELRC Cause No. E140 of 2024 Banking, Insurance, Finance Union (Kenya) v Agricultural Finance Corporation (AFC), which has been determined.



10. In opposing the Objection, the Claimant has admitted that whereas the instant Claim and Nairobi ELRC Cause No. E140 of 2024 Banking, Insurance, Finance Union (Kenya) v Agricultural Finance Corporation (AFC) share similar parties, it contends that the cause of action and subject matter in dispute differ.
11. According to the Claimant, the instant Claim seeks to enforce a validly signed and registered CBA for the period 1<sup>st</sup> July 2013 to 30<sup>th</sup> June 2017. That the issues arising from enforceability were not the subject matter of litigation, contestation, and did not arise in Nairobi ELRC Cause No. E140 of 2024 Banking, Insurance, Finance Union (Kenya) v Agricultural Finance Corporation (AFC).
12. The Claimant has further submitted that the Court's declaration of the unregistered CBA signed on 15<sup>th</sup> December 2021 and enforceable in Nairobi ELRC Cause No. E140 of 2024 Banking, Insurance, Finance Union (Kenya) v Agricultural Finance Corporation (AFC) is not a bar to the institution of a claim for the enforcement of the CBA signed on 19<sup>th</sup> November 2013, as sought herein. Consequently, the Claimant holds that the claim herein is not res judicata.
13. As can be discerned from the face of the Claim herein, the Claimant has identified the issue in dispute as being "failure/refusal to pay a 5% annual increment in line with clause no. 12(1) of the parties CBA registered under C/A No. 59 of 2014 on 2<sup>nd</sup> April 2014". Further, the Claimant has pleaded that the said CBA remains in force and is binding on the parties.
14. From the record, the matter in dispute in Nairobi ELRC Cause No. E140 of 2024; Banking, Insurance, Finance Union (Kenya) v Agricultural Finance Corporation was with respect to the enforceability of the 2017/2021 CBA executed by the parties on 15<sup>th</sup> December 2021.
15. Therefore, it is evident that the Claim herein and Nairobi ELRC Cause No. E140 of 2024 are quite distinct as they relate to different subject matters. Differently expressed, the issues in dispute are not similar.
16. In the circumstances, I find that the Claim herein is not res judicata.
17. The upshot of the foregoing is that the Preliminary Objection dated 20<sup>th</sup> March 2025 is overruled with an order that costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JUNE 2025.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:

Mr. Odero for the Claimant

Ms. Okello instructed by Mr. Ouma for the Respondent

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments



and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

