



**Njoroge v Equity Bank Kenya Limited (Employment and Labour Relations
Petition E141 of 2024) [2025] KEELRC 2140 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2140 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E141 OF 2024**

**MN NDUMA, J
JULY 17, 2025**

BETWEEN

MORRISON KANIU NJOROGE PETITIONER

AND

EQUITY BANK KENYA LIMITED RESPONDENT

RULING

1. The petition dated 16/9/2024 was filed on 19/9/2024 against the Respondent.
2. The petition is opposed vide a notice of preliminary objection dated 2/10/2024 as follows: -
 - a. The petition is statutory barred by dint of section 90 of the *Employment Act* No. 11 of 2007 as it is filed more than 3 years from the date the cause of action arose.
 - b. The petition is *res judicata* the issues canvassed herein having been decided by Hon. Lady Stella Ruto in her ruling delivered on 23/2/2024 in ELRC 408 of 2023, which was dismissed.
 - c. The petition is filed contrary to section 7 of *Civil Procedure Act* 2010 and so the court lacks jurisdiction to hear and determine it.
3. The parties filed submissions which the court has carefully considered.
4. In the petition it is pleaded by the Petitioner as follows: -

“The Petitioner previously sued the Respondent in Nairobi ELRCC No. 408 of 2025; *Morrison Kaniu Njoroge v Equity Bank Kenya* Limited for unfair termination. That claim was dismissed on 23rd February 2024 for being time barred. However, the said claim did not seek reprieve for violation of the Petitioner’s constitutional rights addressed herein and hence the suit herein is not *res judicata*.”



5. In the present suit, the cause of action is set out at paragraphs 13, 14 and 15 as follows: -
- a. The Respondent discriminated against the Petitioner during the term of his employment by failing to pay him equal remuneration for work of equal value paid to his colleagues of a similar job description and cadre contrary to the provisions of Article 27(5) and 41(1) and (2) as of the *Constitution of Kenya* 2010.
 - b. The Respondent's actions of accessing the Petitioner's location data using his private mobile phone device is not only a violation of the Petitioner's right to data protection, but is also in breach of the Petitioner's right to privacy which is recognized under Article 31(c) of the *Constitution of Kenya* 2010.
 - c. The Respondent debited Kshs. 170,000.00 from the Petitioner's bank account in breach of Petitioner's consumer right under Article 46(1) of the *Constitution* and was also an arbitrary deprivation of personal property contrary to the Provision of Article 40 of the *Constitution of Kenya*, 2010.

Determination

6. It is clear that the various complaints set out in the petition arose between the Petitioner and the Respondent in the course of employment of the Petitioner by the Respondent which was terminated and became the subject matter of Cause Nairobi ELRCC No. E408 of 2023 between the same parties.
7. It is not in dispute that the Claimant therein now the Petitioner was dismissed from employment by the Respondent on 23rd February 2024, and the suit filed by the Claimant was dismissed by this court sitting differently, for being time barred.
8. The matters canvassed have clearly arose from the contract of employment whose termination was the subject of determination in ELRCC No. E408 of 2023.
9. The key elements of the doctrine of *res judicata* are: -
 - a. Whether the matter in the subsequent suit was directly and substantially in issue in the former suit.
 - b. Whether the former suit was between the same parties or parties under whom they are only or any of them claim.
 - c. Whether the parties were litigating under the same title.
 - d. Whether the matter was heard and subsequently decided with finality by a competent court.
10. The petition ticks all the principles of *res judicata* set out in (a) and (d) above. The only difference is that the Petitioner has brought issues arising from the same contract of employment which was the subject of determination in the previous claim, by way of a constitutional petition in an attempt to beat the ruling of the court in ELRC E408 of 2023 which dismissed the suit for being time barred having been filed more than three years from the date the said contract between the same parties was terminated, by the Respondent dismissing the Petitioner from employment on 23rd February, 2024.
11. Nothing prevented the Petitioner from raising all the issues raised in this petition in the concluded claim. This is clearly an attempt by the Petitioner to litigate in piece meal.
12. The matters raised here are fully covered by the provisions of the *Employment Act*, 2007 under which the Claimant anchored the suit in ELRCC No. E408 of 2023 and has now elevated the same issues to



a constitutional level. This attempt violates the doctrine of avoidance and leaks of deliberate ingenuity to defeat the definitive ruling of the court in ELRCC No. E408 of 2018.

13. Section 7(4) of the *Civil Procedure Act* provides

“ Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.”

14. The court finds that all the issues raised in the previous claim and which are now raised in this petition including those issues that ought to have been raised in the previous suit but were not, but are now the subject of this petition fall foul of the doctrine of *res judicata*.

15. Accordingly, the pleading of *res judicata* is upheld by the court and the suit is dismissed accordingly in its entirety.

Each of the parties to bear their own costs of the suit.

DATED AT NAIROBI THIS 17TH DAY OF JULY 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Muga for the Petitioner

Mr. Onyango for the Respondent/Objector

Mr. Kemboi – Court Assistant

