



Ngunju & 16 others v Kenya Forest Service & another (Petition E003 of 2024) [2024] KEELRC 2430 (KLR) (4 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2430 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
PETITION E003 OF 2024
ON MAKAU, J
OCTOBER 4, 2024**

BETWEEN

JOHN WARURU NGUNJU & 16 OTHERS & 16 OTHERS & 16 OTHERS & 16 OTHERS & 16 OTHERS PETITIONER

AND

**KENYA FOREST SERVICE 1ST RESPONDENT
THE HON ATTORNEY GENERAL 2ND RESPONDENT**

RULING

1. This ruling relates to the respondents Notice of Preliminary Objection dated 9th February, 2024 which basically states that the petition herein is res judicate as the court delivered judgment on 20th December 2020 on the same subject matter in Petition No.E007 of 2023 filed by the same petitioners.
2. The respondent filed a replying Affidavit to the petition but failed to annex, as exhibit, the pleadings and judgment for Petition No.E007 of 2023. However, the respondents used the said judgment as one of the precedents in support of their submissions.
3. Both sides filed written submissions which I have carefully considered in this ruling. The only issue for determination is whether the petition is res judicata with respect to Petition No.E007 of 2023.
4. Section 7 of the Civil Procedure Act provides as follows: -

“No court shall try any suit or issue in which the matter directly and substantively 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.”



5. Black's Law Dictionary defines “*res judicata*” as:-

“An issue that has been definitely settled by judicial decision... the three essentials are (1) an earlier decision on the issue (2) a final judgment on the merits and (3) the involvement of the same parties, or parties in privity with the original parties...”

6. I have considered the pleadings herein and the summary of pleadings in the judgment rendered in Petition No.E007 of 2023. It is a fact that the same subject matter and the same parties are involved in both Petition No.E007 of 2023 and the instant petition. It is also a fact that the judgment in Petition No.E007 of 2023 did not determine the dispute on merits but merely struck out the petition for failure to meet the legal threshold of a Constitutional Petition as was established in the celebrated case of Anarita Karimi Njeru v Republic (1979) eKLR.

7. In view of the fact that the subject matter was not determined on merits, the instant petition is not *res judicata*. I gather support from the case of John Florence Maritime Services Limited & another v Cabinet Secretary, Transport and Infrastructure & 3 others (2021) eKLR where the Supreme Court held that: -

“The doctrine of *res judicata* was provided for under section 7 of the Civil Procedure Act. It was a doctrine to the effect that once the rights of parties had been determined judicially, such edict stood as a conclusive statement as to those rights. It was apparent that once the doctrine was applicable to matters of all categories including issues of constitutional rights.

The doctrine of *res judicata* allowed a litigant only one bite at the cherry. It prevented a litigant or person claiming under the same title, from returning to court to claim further relief not claimed in the earlier action. It served the cause of order and efficacy in the adjudication process. It ensured that litigation came to an end and prevented a multiplicity of suits.”

8. Having satisfied myself that the Petition is not *res judicata*, I dismiss the objection by the respondent with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 4TH DAY OF OCTOBER, 2024.

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.

