



**Otieno v Multimedia University of Kenya & 2 others (Cause E049 of 2023) [2023] KEELRC 678 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 678 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE E049 OF 2023**  
**L NDOLO, J**  
**MARCH 16, 2023**

**BETWEEN**

**ROBERT KENNEDY OTIENO ..... CLAIMANT**

**AND**

**MULTIMEDIA UNIVERSITY OF KENYA ..... 1<sup>ST</sup> RESPONDENT**

**COUNCIL OF MULTIMEDIA UNIVERSITY OF KENYA ..... 2<sup>ND</sup> RESPONDENT**

**DEPUTY VICE CHANCELLOR ADMINISTRATION, FINANCE AND  
PLANNING ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. On January 27, 2023, the Claimant filed a claim and a Notice of Motion seeking declaratory, prohibitory and mandatory orders against the Respondents.
2. Subsequently, the Respondents filed a notice of Preliminary Objection dated February 8, 2023 on the ground that:

The claim is *res judicata* as the issues raised were the same issues raised and determined in Nairobi ELRC Cause No 243 of 2020: *Robert Kennedy Otieno v Multimedia University of Kenya & Council of Multimedia University of Kenya* in which judgment was delivered by Mbaru J on December 8, 2022.

3. Section 7 of the *Civil Procedure Act* states 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.

4. This provision codifies the rule on *res judicata* whose rationale was restated by the Court of Appeal in its decision in *John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others* [2015] eKLR in the following terms:

“The rationale behind *res judicata* is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. *Res judicata* ensures the economic use of court’s limited resources and timely determination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without *res judicata*, the very essence of the rule of law would be in danger of unravelling uncontrollably.”

5. The Claimant’s claim in the present cause has to do with his leave entitlement vis a vis the Respondent’s leave forfeiture policy. In addition, the Claimant seeks accrued emoluments.
6. I have had occasion to look at the judgment delivered by my sister Mbaru J in Cause No 243 of 2020 and find that the issue of leave entitlement was exhaustively determined. The issue of accrued employments was also before the Court by virtue of the Claimant’s pleadings in the previous cause and the fact that the Claimant did not get his plea in that regard does not give him a right to resuscitate it.
7. On the whole, I find and hold that the matters raised in this cause are *res judicata* on account of Cause No 243 of 2020. Consequently, the only thing to do is to strike out the present cause, which I hereby do.
8. Each party will bear their own costs.
9. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 16<sup>TH</sup> DAY OF MARCH 2023**

**LINNET NDOLO**

**JUDGE**

Appearance:

Robert Kennedy Otieno (the Claimant in person)

Mr. Wena for the Respondents

