



**Makau v I & M Bank Limited (Cause E575 of 2020)
[2023] KEELRC 1986 (KLR) (4 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1986 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E575 OF 2020
NZIOKI WA MAKAU, J
JULY 4, 2023**

BETWEEN

ELIAS MAUNDU MAKAU CLAIMANT

AND

I & M BANK LIMITED RESPONDENT

RULING

1. The respondent/applicant seeks through a notice of motion application dated December 21, 2022 to set aside/or vary the orders issued by this court on September 24, 2020.
2. In response, the claimant filed a notice of preliminary objection to the effect that the application by the respondent is res judicata, the issues therein having been determined in a previous application.
3. In order to appreciate the background to the motion before the court, it would be vital to revisit the ruling delivered by the court. In the ruling of December 20, 2020, the Court held as follows at paragraph 9 of the said decision:-

9. The claimant is under siege from his erstwhile employer who seems to have begun a process in earnest of recalling loans issued to its former employee. While such a prerogative may be the right of any lender it would seem the matter has a connotation of vendetta about it. Be that as it may, the court being mindful of the application of the pre-Dominant Purpose Test in this case shows that the transactions involving the attempt at a forced sale of the Claimant’s residential house, jurisdiction lies at the Environment and Land Court as the ELC is the appropriate forum for the determination of the issues relative to the charge and the attempt at forced sale. In the premises I will decline jurisdiction to determine the matter relating to the sale of the house and transfer of the chattel to the claimant who asserts he has completed



payment for the vehicle by the obduracy of the Respondent has denied him a discharge. Those matters will be determined by the ELC Court which is best placed to deal with charges. Motion is dismissed albeit with no order as to costs.

4. The court was dealing with the respondent's notice of motion application dated November 5, 2020. The motion of November 5, 2020 by the respondent sought for orders that this court sets aside the orders obtained by the claimant on September 24, 2020 pending hearing and determination of the suit. This Court gave a considered ruling on the same issues being canvassed in the present motion by the respondent and as such the same is res judicata and in addition, issue estoppel applies to the said application. The respondent cannot purport to seek a review of that application in 2023 granted the passage of time. The application by the respondent is accordingly dismissed with costs to the claimant as it is not tenable or even merited.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF JULY 2023

NZIOKi wa MAKAU

JUDGE

