



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 641 OF 2018

BETWEEN

1. GEOFFREY ORUKO ANDANDE

2. ELPHAS APELU SHIKAMI

3. MARK ABUNG'ANA LITIEMA

4. MORRIS OKONYO MUGANDA.....CLAIMANTS

VERSUS

LALJI BHIMJI SANGHANI.....RESPONDENT

RULING

1. The Claimants, were Claimants, in this Court's Cause Number 975 of 2015, where the Respondent was named as L.B. Sanghani Flats/ Estate.
2. They had sued for compensation for unfair termination and for payment of terminal dues against the Respondent.
3. Their Claim was heard in full, and dismissed by the Court, in a Judgment dated 28th February 2018. It was found that the Respondent was not a legal entity, capable of being sued. The Claimants were found to have failed to correct their Pleadings to bring in an entity capable of being sued.
4. The Claimants then filed the current Claim against the proprietor of the L.B. Sanghani Flats/ Estate, Lalji Bhimji Sanghani.
5. The facts are similar, and the remedies sought are similar to the previous Claim. The only thing that has been replaced is the name of the Respondent.
6. The Respondent filed a Notice of Preliminary Objection under Section 7 of the Civil Procedure Act, alleging that the Claim is *res judicata*.
7. The Claimants state that there is no similarity of the Parties, and that the E&LRC is not bound by Section 7 of the Civil Procedure Act.
8. Parties agreed on 3rd November 2021, to have the Objection considered and determined on the strength of their Submissions.

The Court Finds: -

9. The current Claim is a replica of the Claim which was dismissed by the Court, on 28th February 2018.
10. The Claimants have only replaced the name of the Respondent.
11. They failed to name the correct Respondent in the previous Claim, opting instead to name his Flats/ Estate, as the Respondent.
12. They were represented by Counsel in the previous Claim.

13. The Respondent was a Witness in the previous Claim, and successfully pleaded and testified, that the wrong entity had been sued.

14. The Court observed that the Claimants had failed to correct their Pleadings and bring in the current Respondent at the time.

15. Contrary to the assertion by the Claimants, *res judicata* is a sacrosanct principle of the law which is of universal application to Claims in Civil and Specialized Jurisdictions. It bars Parties from initiating similar or same Claims, against similar or the same Parties. It protects Parties, as well as the process of the Court, from falling into abuse. It is not limited to proceedings in Civil, rather than Specialized proceedings.

16. The principle has been applied by this Court in *Paul Seki Nzau & 27 Others V. Laico Regency Hotel [2014] e-KLR*, where it was held that the principle is founded on 3 elements: -

- There must have been prior litigation, in which identical claims, as raised in the second litigation were raised.
- Parties in the second litigation must be identical in some manner to the Parties in the original litigation or be in privity with the Parties in the original litigation.
- There must be in place a final decision made on merits in the original litigation.

17. The principle bars re-litigation of Claims, as well as litigation of Claims which could have been litigated in the first Claim.

18. The Claimants had the opportunity of correcting their Pleadings in the first instance, and sue the person rather than his property. The Claim was heard on merit, and dismissed.

19. The law does not allow them to initiate fresh Claims until they get it right. They were aware about their mistake in bringing to Court the Respondent's property, rather than the Respondent himself, in the original litigation. The Respondent merits protection of the law, from being vexed with the same litigation twice.

20. The Court does not frequently issue orders of costs against Employees. The Claimants were saved from paying the Respondent's costs in the previous Claim. They should meet the costs of re-litigation.

IT IS ORDERED: -

a. The preliminary objection is sustained, and Claim dismissed.

b. Costs of the Claim to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 8TH DAY OF FEBRUARY, 2022

JAMES RIKA

JUDGE