



**Njeru v Teachers Service Commission (Environment & Land Petition
E011 of 2021) [2022] KEELRC 3906 (KLR) (16 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3906 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
ENVIRONMENT & LAND PETITION E011 OF 2021
DKN MARETE, J
SEPTEMBER 16, 2022**

BETWEEN

JOHN P.GITONGA NJERU PETITIONER

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. This is an application by way of a preliminary objection dated November 8, 2021. It comes out thus;
 1. The petition is res judicata.
 2. The petition and attendant documents have been filed contrary to section 7 of the [Civil Procedure Act](#) 2010 and therefore this honourable court lacks jurisdiction to grant the orders prayed for.
 3. That the petition dated September 15, 2021 is res judicata pursuant to section 7.
2. The respondent in support of the preliminary objection submits on an infringement of section 7 of the [Civil Procedure Act](#) which comes out as follows;

'No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially 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.'
3. This stipulates the doctrine and principle of *res judicata* which debars a party from instituting a suit or proceedings on issues that have been litigated (canvased) or ought to have been litigated under a previous suit.



She comes out thus;

3. Pursuant to the stated provisions, it is the respondent's submission that the petition herein is *res judicata* as the facts and issues raised in the petition, brought now as a constitutional matter under article 50 of the [Constitution](#), were directly and substantially in issue in Meru Chief Magistrate's Court ELR Cause No 5 of 202: John Gitonga Njeru vs Teachers Service Commission & TSC County Director, Tharaka Nithi.
 4. The parties canvassed the matter in Meru CMCC 5 of 2020 as well as Nairobi ELRC Misc Application 65 of 2020 and they were both dismissed vide rulings dated August 20, 2020. (Pages 26 to 32 of list of the documents). Consequently, the petition herein is a waste of court's time and an abuse of the due process of law as the petitioner is trying to re-litigate his case.
 5. In the instant petition, the petitioner is challenging the disciplinary process meted against him by the respondent on the ground that his right to fair hearing under article 50 of the [Constitution](#) was violated.
 6. The respondent submits that the issue of the validity of the disciplinary process against the petitioner was the issue in contention in Meru CMCC 5 of 2020. We invite the court's attention to para 7 (page 5 of the list of documents) of the memorandum of claim Meru CMCC 5 of 2020 where the petitioner raises the issue of infringement of his right to fair hearing.
 7. Further, it is common ground that the parties in Meru CMCC 5 of 2020, Nairobi ELRC Misc Application 65 of 2020 and the parties in the instant petition are the same. Similarly, the title under which the two parties are litigating is equally the same. As described in the petition, the respondent is the petitioner's former employer. The respondent's title has not changed.
 9. In [Nairobi Civil Appeal 107 of 2010 Kenya Commercial Bank Limited v Benjob Amalgamated Ltd \(2017\) eKLR](#) the Court of Appeal addressed the issue of *res judicata* and affirming its decision in [Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others \(2017\) eKLR](#) stated that courts called upon to decide issues previously canvassed have not shied away from invoking the doctrine of *res judicata* as a bar to further suits.
 15. In view of the mandatory provisions of the law and case law, the petition dated September 15, 2021 is *res judicata* and an abuse of the court process, thus devoid of merit and should be dismissed with costs.
4. The petitioner opposes the case and submission of *res judicata* as set out by the respondent/objector. It is his case that this petition and the hereto referenced matters are different and that this petition brings out separate and pertinent issues touching on his dismissal. These issues were not litigated in the previous matters and therefore the viability and sustainability of this petition.
 5. The petitioner gets out to elaborately elicit a case for the petition and against the plea of *res judicata*. However, his case is overwhelmed by that of the objector.



6. The objector has ably demonstrated that the issues on the face of the petition have been previously litigated. This is not effectively controverted by the petitioner/respondent. The objection takes sway and carries the day.
7. I am therefore inclined to allow the preliminary objection with orders that parties bears their costs of the same.

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF SEPTEMBER 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Ms Manyasa instructed by the Teachers Service Commission
2. Mr Mulinge holding brief for Njeri Ngunjiri instructed by Njeri Ngunjiri Advocates for the Petitioner/ Respondent

