



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 824 OF 2017

SALIM TWAIRI.....CLAIMANT

VS

KWALE INTERNATIONAL SUGAR COMPANY LTD.....RESPONDENT

RULING

1. The subject of this ruling is the Respondent's Preliminary Objection raised by notice dated 16th February 2018 and filed in court on 22nd February 2018.

2. The objection is premised on the following grounds:

- a) That the Claimant has filed another suit being ***Mombasa Cause No 650 of 2017*** between the same parties, seeking the same relief and based on the same subject matter;
- b) That this suit is *sub-judice* and should be permanently stayed and/or dismissed with costs to the Respondent in view of the mandatory provisions of Section 6 of the Civil Procedure Act;
- c) That this suit is therefore an abuse of the court process, frivolous and vexatious and ought to be struck out.

3. In spite of due notification, the Claimant did not respond to the Respondent's Preliminary Objection. The Objection is premised on Section 6 of the Civil Procedure Act, which provides as follows:

6. No court shall proceed with the trial of any suit or proceeding in which the subject matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

4. I have looked at the court file in ***Cause No 650 of 2017: Salim Twairi v Kwale International Sugar Company Limited*** and find that on 4th August 2017, the Claimant, through the law firm of Omondi Waweru & Company Advocates filed a claim against the Respondent, seeking similar prayers to those sought in the current claim.

5. On 30th November 2017, the Respondent filed a Response to the Claimant's claim in ***Cause No 650 of 2017*** and on 29th August 2018, the law firm of Otieno B.N. & Associates filed a Notice of Change of Advocates for the Claimant. Since then, the Claimant has not taken any further action on the earlier claim, which remains pending in the court system.

6. The Claimant's action amounts to abuse of the court process. The only thing to do therefore is to strike out the latter claim. ***Cause No 824 of 2017: Salim Twairi v Kwale International Sugar Company Limited*** is therefore struck out.

7. I make no order for costs.

8. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 27TH DAY FEBRUARY 2020

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JUDGE

Appearance:

No appearance for the Claimant

Mr. Kulecho for the Respondent