



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 24 OF 2019

JOSEPH MURIITHI NJERU.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF KIRINYAGA.....RESPONDENT

RULING

1. The Respondent objects to the suit asserting that it is fatally defective and a non-starter as it violates the provisions of Sections 6 and 7 of the Civil Procedure Act as the matter was directly and substantially in issue with a previously instituted suit ELRC No. 192 of 2018 between the same parties litigating under the same title. The Respondent asserts that the suit should be struck out with costs. The Claimant is opposed and filed submissions in which he asserts that the preliminary objection raised is devoid of merit on the grounds that the present suit was upon redeployment/redesignation as a sub county administrator to the office of the county secretary whereas suit No. 192 of 2018 is in respect of the redeployment/redesignation from the post of subcounty administrator to the Ministry of Agriculture, Livestock, Veterinary and Fisheries.

2. The parties filed submissions in support and opposition of the objection. The Respondent submitted that the suit is *res judicata* as the parties are litigating under the same name and title and the issue in dispute is the same as the issue in dispute in cause No. 192 of 2018 which is still pending before this court. The Respondent cited the case of **Munawar Shuttle v County Government of Kilifi & 2 Others [2018] eKLR** and submitted that the cases were over the same subject matter and between the same parties. The Respondent submitted that the Claimant sought the exact same relief in the second suit as the previous one and that the suit is therefore fit for striking out *ab initio*. The Respondent cited the cases of **Kiama Wangai v John N. Mugambi & Another [2012] eKLR** **Mwangi Stephen Muriithi v Daniel T. Arap Moi & Another [2017] eKLR** and submitted that the court ought to strike out the suit as the issue is the same. The Respondent submitted that the issue of *sub judice* qualifies as a preliminary objection and relied on the case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd [1969] EA 696** and **Independent Electoral and Boundaries Commission v Jane Chepenger & 2 Others [2015] eKLR** to argue that a preliminary objection serves the purpose of stopping profligate deployment of time and other resources and serves to spare the misuse of judicial time.

3. The Claimant submitted that the objection was misplaced as there were 2 different causes and actions before court. The Claimant argued that the present suit was upon redeployment/redesignation as a sub county administrator to the office of the county secretary whereas suit No. 192 of 2018 is in respect of the redeployment/redesignation from the post of subcounty administrator to the Ministry of Agriculture, Livestock, Veterinary and Fisheries.

4. The preliminary objection is well taken and this was not seriously contested. The Respondent raised the issue of a previous suit pending between the same parties litigating under the same title over the same matter. The previous suit filed as ELRC No. 192 of 2018 is between the Claimant Joseph Muriithi Njeru who is suing the Respondent the County Government of Kirinyaga over his transfer. A Ruling has been issued on the matter and hearing is on the way. In the case, the transfer was in respect of the redeployment/redesignation from the post of subcounty administrator to the Ministry of Agriculture, Livestock, Veterinary and Fisheries. This is the issue before the court in that suit. In the second suit he sues the Respondent for his redeployment/redesignation as a sub county administrator to the office of the County Secretary. Whereas he is not seeking the exact same relief in that the two transfers are different, the issue is the same. A determination has not issued in respect of the first transfer and granted the parties are litigating under the same head over the same issue I am in agreement with the Respondent that the suit that is currently before me is misplaced and ought to be struck off *in limine*. Since the action of the Respondent in transferring the Claimant while the other suit was pending precipitated this suit I will order each party to bear their costs for this motion and the suit.

It is so ordered.

Dated and delivered at Nyeri this 12<sup>th</sup> day of February 2020

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar