



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 775 OF 2012**

**DAVID MWANGI MBURU.....CLAIMANT**

**VERSUS**

**HOTEL INTERCONTINENTAL NAIROBI LTD.....RESPONDENT**

**RULING**

1. On 23<sup>rd</sup> July 2014, I dismissed the Respondent's application seeking stay of proceedings in this cause pending the hearing and determination of *HCCC No 367 of 2011: David Mburu Mwangi v KPMG Kenya*.

2. When the main claim came up for hearing on 19<sup>th</sup> January 2017, the Court was notified that the Respondent had filed a notice of Preliminary Objection. The notice dated 12<sup>th</sup> January 2017 is based on the ground that the Claimant has filed *HCCC No 367 of 2011 against KPMG Kenya*.

3. In his grounds of opposition filed on 17<sup>th</sup> January 2017 the Claimant states that the issue raised in the Preliminary Objection was the same one raised in the Notice of Motion dismissed on 23<sup>rd</sup> July 2014 and is therefore *res judicata*.

4. In the ruling delivered on 23<sup>rd</sup> July 2014, the Court determined that *HCCC No 367 of 2011* and the current claim are distinct and separate. This is the same issue being raised in the current Preliminary Objection. The only thing I will say is that having conclusively dealt with this issue way back in 2014, the Court cannot now reopen it. The issue is *res judicata* and the Objection is therefore overruled with costs to the Claimant.

5. I now direct the parties to set down the main claim for hearing on priority basis.

6. It is so ordered.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Keyonzo for the Claimant

Mr. Kalungu for the Respondent