



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NUMBER 1662 OF 2013

PATRICK MBAU KARANJA.....CLAIMANT

VERSUS

KENYATTA UNIVERSITY.....RESPONDENT

RULING

1. The respondent raised objection the essence of which was that the factual basis and circumstances of the claim are similar to those raised in petition no. 181 of 2012 which was heard and determined by the High Court (Lenaola J). The claim herein is therefore incompetent by reason of res judicata.
2. The Court has considered the objection and submissions by counsel in support thereof and is not persuaded that the present suit is res judicata.
3. It is correct that the facts on which this claim is based are similar to those in petition no 181 of 2012 however the issue in that petition as I see it was a challenge to the respondent's accusation against the claimant that he had misused his office to enroll for studies without having settled his fees. The proceedings before the High Court therefore concerned the claimant as a student and had nothing to do with his employment relationship with the respondent which is the issue he intends to litigate before this Court.
4. To argue that the matter is res judicata would be akin to saying that a party cannot on similar facts for which he was prosecuted in a criminal trial be sued in a civil claim for recovery of damages. That is not the correct position.
5. The Court therefore finds no merit in the objection and hereby dismissed the same with the result that the matter shall proceed to trial on merit.
6. It is so ordered.

Dated at Nairobi this 13th day of May 2016

Abuodha Jorum Nelson

Judge

Delivered this 13th day of May 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge