



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURT
JUDICIAL REVIEW DIVISION
JR NO.117 OF 2015

REPUBLIC.....APPLICANT

-VERSUS-

KENYA REVENUE AUTHORITY.....RESPONDENT

EX PARTE: PAUL MAKOKHA OKOITI

RULING

1. On 1st day of July, 2015 this Court dismissed the Chamber Summons dated 14th April, 2015 in which the ex parte applicant, **Paul Makokha Okoiti** sought the following orders:

a. **The Applicant be granted leave to apply for an order of prohibition to restrain the KRA counsels, Ms. Janet Lavuna, from representing the Kenya Revenue Authority in cases of alleged dismissal of the Applicant from Kenya Revenue Authority.**

b. **Costs be in the cause.**

2. In arriving at the said decision this Court expressed itself as hereunder:

“To grant leave to the applicant to institute legal proceedings barring the Respondent from defending suits which the Applicant himself has instituted against the Respondent would be to permit the Applicant to institute legal proceedings whose aim is to deny the Respondent the opportunity to be heard in matters which are likely to adversely affect it. That in my view would be a violation of Article 50 of the Constitution. This Court has no jurisdiction to grant orders which contravene the provisions of the Constitution since under Article 2(2) of the Constitution, this Court is enjoined to exercise its authority in accordance with the Constitution...I have also considered the nature of the orders sought. It is clear that the Applicant’s basis for seeking the orders sought herein is to compel the Respondent to furnish him with the charges against him. That relief cannot be obtained by prohibiting the Respondent from defending suits filed against it by the Applicant. If properly advised the Applicant can obtain what he seeks without necessarily applying for the orders he intends to seek herein. In fact in Miscellaneous Application No. 351 of 2011 between the same parties, Majanja, J offered the Applicant a gratuitous opinion on the manner in which he could obtain the relief he seeks herein but the Applicant did not heed the same. Instead in these proceedings the Applicant is contending that *“attempt to get the charges have been avoided by*

both judges and the counsel in Misc. JR 351 of 2011”. In my view the commencement of these proceedings is a gross abuse of the Court process. Leave to commence judicial review application, however cannot be granted where to do so would amount to the Court abetting abuse of its own process since the decision whether or not to grant leave is an exercise of judicial discretion.”

3. The applicant is back before this Court with an application dated 4th April, 2017 seeking an order that the said ruling be set aside to allow the applicant decide whether to withdraw the case before further proceedings.

4. The said application was based on the following grounds:

a) The document required by the applicant to enable the prosecution of the case has now been partly fulfilled, and was voluntarily given the Respondent – which means that the counsel was not representing the Respondent.

b) The cases have to be reviewed, since the impeding documents are now partly given and the others are also expected to be given on request.

c) The law must be followed to the later (sic) and a public document, that was used to sack the applicant, cannot be denied to the Applicant.

5. In the supporting affidavit, the applicant contends that his previous cases were mishandled because the judge failed to see the implication of missing documents which were fundamental to the issues in dispute. In his view the reason for seeking restoration of this matter is to enable him prosecute the case now that he has the necessary documents.

6. In response to the application, the Respondent relied on the following grounds:

1. The orders sought in the application are untenable because it seeks orders to have a ruling by the honourable Justice Odunga delivered on 1/7/2015 be set aside, on grounds that it would allow for him to decide whether to withdraw the case, which is already determined.

2. Mr. Okoiti has filed the following seven (7) suits on the same issue before at least ten (10) different judges.

a. HC Misc. APP. No. 351 of 2011; Paul Makokha Okoiti vs KRA

b. Industrial Cause No. 25 of 2013; Paul Makokha Okoiti Vs KRA

c. JR No. 340 of 2013; Paul Makokha Okoiti Vs KRA & 5 Others

d. JR No. 117 of 2017; Paul Makokha Okoiti Vs KRA

e. JR No. 300 of 2016; Paul Makokha Okoiti Vs KRA

f. JR No. 13 of 2016; Paul Makokha Okoiti Vs KRA

g. CMC No. \$”01 of 2017; Paul Makokha Okoiti Vs Janet Lavuna

3. The Applicant has grossly abused the court process as demonstrated in the latest judgment in Employment & Labour Court No. 13 of 2016, where the court Justice Mbaru ordered that:

“The Applicant is also hereby directed to cease writing, communicating and or addressing the respondent and its officers directly on matters relating to his former employment that ceased on 3/2/2009.”

4. The abuse is also evidence in the findings of another judgment by Justice Lenaola delivered on 20/1/2017 in JR 351 of 2011 where the Judge held that;

“the applicant risks being declared a vexatious litigant if his obsession with the issues above keep being raised before different judges.”

5. The applicant despite alleging that he desires to withdraw his suits, which have in any event been all determined save for the substantive one, has filed a suit against the undersigned counsel in CMC No. 4201 of 2017; Paul Makokha Okoiti Vs Janet Lavuna, for reasons that she has proceeded to extract orders in the suits.

The courts have overindulged the Applicant at the expense of the respondents and their counsel in person. He ought to be declared a vexatious litigant

6. The Applicant is a vexatious litigant and is abusing the court process to the prejudice of the Respondent. The present application is a frivolous one.

7. I have considered the issues raised herein.

8. As can be seen from the application which was dismissed the applicant's sole prayer was an order prohibition to restrain the KRA counsel, **Ms. Janet Lavuna**, from representing the Kenya Revenue Authority in cases of alleged dismissal of the Applicant from Kenya Revenue Authority.

9. The instant application is premised on the fact that he now has documents which would enable him prosecute the matter. However the said application was not dismissed due to lack of documents. To the contrary it was dismissed because the Court was of the view that the commencement of the said proceedings was a gross abuse of the Court process and that leave to commence judicial review application cannot be granted where to do so would amount to the Court abetting abuse of its own process since the decision whether or not to grant leave is an exercise of judicial discretion.

10. That was not the first time a superior court was reprimanding the applicant for abusing its process. In Republic vs. Kenya Revenue Authority Judicial Review No. 13 of 2016, the Employment and Labour Relations Court (**Mbaru, J**) expressed similar sentiments. In **Paul Makokha Okoiti vs. Kenya Revenue Authority Judicial Review No. 351 of 2011**, **Lenaola, J** (as he then was) warned the applicant that he risked being declared a vexatious litigant if his obsession with the issues he raises keeps being filed before different judges.

11. The applicant does not seem to have taken the Court's sentiments seriously. In this same matter I referred to the decision of the Court of Appeal in **J M Mwakio vs. Kenya Commercial Bank Ltd. Civil Appeal No. 156 of 1997** in which case the Court warned the appellant that:

“The appellant must be told in no uncertain terms that no matter how many applications and suits he may institute in the courts seeking to recover the suit property, such attempts by him would be futile and a waste of resources since the dispute relating to the suit property has been heard and finally determined by competent courts. This appeal is indeed vexatious and amounts to an abuse of the process of the court and it is dismissed with costs....”

12. Those words aptly apply to this application which is clearly vexatious and amounts to a further abuse of the process of the Court.

13. The same is dismissed with costs.

Dated at Nairobi this 28th September, 2017

G V ODUNGA

JUDGE

Delivered in the presence of:

Miss Muruka for Miss Lavuna for the Respondent

CA Ooko