



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**JUDICIAL REVIEW NO.351 OF 2011**

**BETWEEN**

**PAUL MAKOKHA OKOITI..... APPLICANT**

**AND**

**KENYA REVENUE AUTHORITY.....RESPONDENT**

**RULING**

1. The Applicant, Mr. Paul Makokha Okoiti was an employee of the Respondent, Kenya Revenue Authority (KRA) where he had been employed as a clerk on 1<sup>st</sup> July 2006 and promoted to the rank of Assistant Revenue Officer before dismissal on 12<sup>th</sup> July 2008.
2. In his application dated 9<sup>th</sup> July 2015, he seeks an order to compel the Respondent to give him a list of the charges that led to his dismissal from employment allegedly because he requires the charges to enable him prosecute his case before this Court.
3. In response to the application, the Respondent filed an affidavit sworn on 2<sup>nd</sup> September 2015 by Lorraine Malinda, the head of the Respondent's Human Resource Department. She states that the Applicant was served with a suspension letter dated 21<sup>st</sup> July 2008 in which the charges against him were specified and in the same letter, he was required to show cause why disciplinary action should not be taken against him. Thereafter, the Applicant appeared before the Respondent's disciplinary committee meeting of 12<sup>th</sup> January 2009 where his representations were heard. He was later found guilty of fraud, collusion with taxpayers and falsifying documents with intention to defraud KRA and was dismissed from service.
4. She further depones that the issues raised in this application are *res-judicata* as there are three judgments and two rulings on the same issue and that the present application does not raise any new issues at all. That in all those matters, (details will be given below), the Applicant was made aware of the charges against him citing specific charges in which he was found to be guilty of fraud and misconduct under the Kenya Revenue Authority (KRA) Code of Conduct and that the Disciplinary Committee hearing was undertaken after the Applicant had been given all the documents that he required.
5. In the above context and as I understand it, the Applicant requires details of the charges that led to his dismissal from the Respondent's employment but there is now before me the plea of *res judicata* by the Respondent as the said matter has allegedly been the subject of several other proceedings which have all settled it.

6. What is the law on *res judicata* in our realm? In civil law, it is provided for under **Section 7** of the **Civil Procedure Act, Cap 21** of the **Laws of Kenya** in the following words:

***“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”***

7. Further, in the case of ***Edwin Thuo v Attorney General Petition No.212 of 2012***, Majanja J observed as follows with regard to the said doctrine:

***“The courts must always be vigilant to guard against litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff is, in the second suit, trying to bring before the court in another way and form, a new cause of action which has been resolved by a court of competent jurisdiction. In the case of Omondi v National Bank of Kenya Limited and Others [2001] EA 177 the court held that, ‘parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.’ In that case the court quoted Kuloba J., in the case of Njangu v Wambugu and Another Nairobi HCCC No. 2340 of 1991 (Unreported) where he stated, ‘If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata’.”***

8. Majanja J also had the opportunity to invoke the same principle in a prior application filed by the Applicant herein in this same matter. He stated thus:

***“When this matter came up for directions on 15<sup>th</sup> December 2011, it became apparent that the Petitioner wanted the court’s assistance to obtain documents to enable him prosecute a suit for wrongful dismissal. Counsel for KRA requested for one month to trace the documents requested by the applicant which request I readily granted. On 27<sup>th</sup> January 2012, I directed KRA to file an affidavit of documents in their possession and power in order to bring this matter to a conclusion.***

***In compliance with my order, the affidavit of Sally Kadake sworn on 2<sup>nd</sup> February 2012, was duly filed on the Respondent’s behalf. Annexed to the affidavit were several documents, documentary customs entries and input reports. It appears from the affidavit that some of the documents requested by the Petitioner did not exist or had wrong numbers. Given the lapse of time between these proceedings and the time Petitioner was dismissed, she also deponed that KRA was retrieving more documents from its archives which it would give the Petitioner...”***

The learned Judge then concluded thus;

***“While the Petitioner is not seeking information to enforce specific fundamental rights and freedoms, I am satisfied that the Respondent has sufficiently complied for purposes of this suit with the provisions of Article 35 by furnishing the Petitioner with information to launch his intended action. I also find that there has been no breach by the Petitioner’s right to information.”***

9. The Applicant, after the above decision, then filed ***Judicial Review No.340 of 2013 Republic v Kenya Revenue Authority*** where he applied for an order of mandamus directed at the KRA to give the applicant all the information he required concerning his disciplinary proceedings. Korir J in his decision on the issue found as follows;

***“Although the applicant issued a fresh demand notice before filing this matter, it is clear that the documents he wants this Court to compel the Respondent to produce are the same documents he***

***was pursuing in the matter that was heard and determined by Justice Majanja. The applicant is taking the Court and the Respondent in circles.”***

10. With that background in mind, in the application before me, the Applicant demands for the same documents as those that were the subject of his application before Majanja J as well as Korir J and by dint of **Order 7** of the **Civil Procedure Rules**, the issue in this application and between the same parties has been determined and in my view, the Applicant is re-litigating the same issue that has already been determined and that renders the application before me *res judicata* and I so find. In saying so, the applicant risks being declared a vexatious litigant if his obsession with the issues above keep being raised before different Judges.

11. There is nothing more to say and so the application dated 9<sup>th</sup> July 2015 is struck off with no order as to costs.

12. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY, 2017**

**ISAAC LENAOLA**

**JUDGE**

**DELIVERED AND SIGNED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JANUARY, 2017**

**E. CHACHA MWITA**

**JUDGE**