IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

JUDICIAL REVIEW DIVISION

MISC. CIVIL APPL. NO. 351 OF 2011

BETWEEN

PAUL MAKOKHA OKOITI …….. APPLICANT

AND

KENYA REVENUE AUTHORITY …....…… RESPONDENT

RULING

1. The applicant/petitioner has moved the court by way of Chamber Summons dated 28th March 2014 in which he seeks the following orders;

a. *That the judgment made by Justice David Majanja be set aside, or be considered incompetent.*
b. *The intended appeal be scrapped and be ignored.*
c. *The case be terminated.*

2. Mr Okoiti argued the grounds upon which he sought the judgment to be set aside. He submitted that the judgment he received was not signed and he received it on a Saturday. That he was not given an opportunity to respond to an affidavit which was served on him on 5th February 2012 yet judgment was entered on 10th February 2012. He also states that he was denied the opportunity to cross examine the deponent of the affidavit who was not privy to the case.

3. Ms Lavuna, counsel for the respondent, opposed the application on the ground that the judgment on record was signed and the petitioner did not suffer any prejudice by receiving the decision via email which was not signed. She noted that the petitioner has already preferred an appeal in the matter. She drew attention to two cases, ***Industrial Cause No. 25 of 2013, Paul Makokha Okoiti v KRA and JR No. 340 of 2013,*** which deal with similar issues as the application hence this matter is *res-subjudice*. Counsel submitted that the application is an abuse of the court process.

4. Mr Okoiti responded that the Industrial Court case was stayed awaiting the judgment in the Judicial Review matter and as such this application is not *res-subjudice*.

5. On the first ground, it is clear that the judgment on record is signed and it was delivered in open court on 10th February 2012 in presence of the parties. The judgment forwarded to the petitioner by email by the Deputy Registrar was for information and in keeping with the judiciary's duty to

ensure access to justice.

6. The issue in the judgment was whether the petitioner was entitled to information under **Article 35(1)** of the Constitution. The Court addressed the issue and was satisfied that the respondent by filing an affidavit as to documents had satisfied its obligations. The Court noted that indeed there existed an opportunity for discovery in the event the applicant filed suit to enforce his rights. The said decision was reached after affording the parties an opportunity to address it. The record does not show that the petitioner requested for an opportunity to cross examine the deponent.

7. The judgment herein was delivered on 10th February 2012. Over two years have elapsed since that date and such delay, in law and in fact, is inordinate and if the proceedings are re-opened, the respondent will suffer substantial prejudice as two subsequent suits on the same matter have been filed against it.

8. I find and hold that the judgment is regular, there is no error on its face and no grounds have been advanced to warrant setting it aside. The applicant has the right to withdraw his appeal or abandon it without the necessity of setting aside the judgment.

9. The Chamber Summons dated 28th March 2014 is therefore dismissed with costs.

DATED and DELIVERED at NAIROBI this 9th day of May 2014.

D.S. MAJANJA

JUDGE

Mr Okoiti, the applicant in person.

Ms Lavuna, Advocate, instructed by the Kenya Revenue Authority.