



REPUBLIC OF KENYA



KENYA LAW
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**Okoti v Kenya Revenue Authority (Judicial Review Application 351 of 2011)
[2025] KEHC 16290 (KLR) (Judicial Review) (11 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16290 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW APPLICATION 351 OF 2011
RE ABURILI, J
NOVEMBER 11, 2025**

BETWEEN

PAUL MAKOKHA OKOITI APPLICANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

RULING

1. This ruling determines the applicant's notice of motion dated 29th August 2025. The applicant prays that the judgment delivered by the late Honourable D.S. Majanja on 10th February, 2012, over 13 years ago, to be set aside. The application is supported by the affidavit sworn by the applicant Paul Makokha Okoiti on 29th August 2025.
2. The grounds upon which the prayer for setting aside is sought are that on 12th July 2022, the applicant wrote a letter to the Director of Criminal Investigations, Cyber Crime Unit Investigation Mazingira House requesting for Criminal Investigations of the late Justice David Majanja and requesting for the opening of criminal investigations.
3. That on 11th July 2023, the Commission on Administrative Justice wrote a letter to the Director of Criminal Investigations, Mazingira House requesting to conduct investigations into alleged cyber-crime forgery.
4. The applicant further asserts in deposition that on 27th April 2022, he received a letter written by Hon. C.A Muchoki, Deputy Registrar judicial Review Division replying to his letter dated 11th April, 2022 requesting the Judiciary to confirm whether email: article22and23@gmail.com is the official email of the Judiciary which was used on the 11th February, 2012 at 11.06am which was a Saturday hence court was not sitting to deliver electronically an unsigned judgment by dated 10th February 2012, by the late Justice Hon. Justice David Majanja.



5. Further, that the respondent obtained the judgment dated 10th February, 2012 fraudulently through the back door.
6. It is Mr. Okoiti's case that the respondent's advocate M/s Lavuna & Co. Advocates are not on record to act for the respondent as they have not filed and served him with a Notice of Appointment of Advocates and that as such, all pleadings filed by Ms. Janet Lavuna ought to be expunged from the record.
7. The applicant also states that it is in the interest of fairness and justice that the court orders and the judgment dated 10th February, 2012 be set aside and the matter be heard de novo.
8. The applicant also filed written submissions dated 29th September 2025 where he essentially reiterates what is already stated in the application and the affidavit supporting the application.

Response

9. In response, the respondent filed a replying affidavit sworn on 23rd September 2025 by Judith N. Kithinji who introduces herself as the advocate having the conduct of the matter on behalf of the respondent. (I note from the record that Counsel (Ms Judith N. Kithinji) filed a Notice of Appointment dated 23rd September 2025 on 24th September 2025).
10. The respondent's case is that judgment was delivered by the late Justice D. S. Majanja on 10th February 2012 marking the matter settled with no orders as to costs. That aggrieved by this decision, the applicant herein filed a Notice of Appeal dated 20th February 2012 against the said judgment.
11. That subsequently, the applicant herein filed an application dated 28th March 2014 seeking to set aside the same judgment of Justice D. S. Majanja and that in response, the respondent filed a preliminary objection in opposition to the application dated 28th March 2014.
12. It is the respondent's case that the honourable court delivered a ruling in respect of the application dated 28th March 2014, for setting aside the judgment of Justice D. S. Majanja and that vide a ruling dated 9th May 2014, at paragraph 5 thereof, the Court is said to have confirmed that the judgment on record is signed and that it was delivered in open court on 10th February 2012 in the presence of parties and, that, a copy was forwarded to the applicant by email by the Deputy Registrar and that the same was for information and in keeping with the judiciary's duty to ensure access to justice.
13. That following the said ruling dismissing the applicant's application for setting aside the judgment of the late Majanja J, the applicant herein filed another Notice of Appeal on 14th May 2014 against the ruling of 9th May 2014.
14. According to the respondent, the assertion made by the applicant in paragraph 5 of the affidavit that the judgment dated 10th February 2012 was obtained fraudulently through the back door has not been supported by any evidence and is therefore baseless. It is contended that the applicant herein has failed to disclose to this Honourable Court that he filed a Notice of Appeal against the said judgment but to date, he has never served the respondent with an appeal challenging the judgment of 10th February 2012.
15. The respondent also asserts that the applicant has failed to disclose to this honourable court that he filed an application to set aside the judgment of 10th February 2012, which application was dismissed on 9th May 2014. That the issue of setting aside the judgment of 10th February 2012 is therefore res judicata and the applicant cannot seek to re-open the same as litigation must come to an end.



16. It is also contended by the respondent that the applicant has further failed to disclose to this court that he filed a notice of appeal against the ruling of 9th May 2014 which dismissed his application to set aside the judgment of 10th February 2012. The applicant, it is stated, has not served the appeal upon the respondent.
17. The respondent further contends that the applicant is guilty of laches as this application is coming more than 13 years after the delivery of the judgment that he seeks to set aside, which inordinate delay has not been explained.
18. According to the respondent, it is prejudicial to allow the application due to passage of time as witnesses and documents may not be traceable after a delay of over 13 years. Further, that there is no new evidence or any basis for re-opening this matter and that the applicant is seeking a second bite at the cherry without any basis.
19. The respondent also filed written submissions dated 21st October 2025. The respondent submits that the law on res judicata is settled and reliance is placed on the case of Kenya Pharmaceutical Distributors Association & another v Anti-Counterfeit Authority; Nairobi Constitutional Petition No. E536 of 2022 where the court is said to have stated the grounds upon which res judicata may be invoked- there must be a prior final judgment on the merits by a competent court involving the same parties, subject matter, and cause of action in the subsequent suit.
20. According to the respondent, the 4 elements of res judicata are present in the instant proceedings as the applicant previously filed an application on 28th March 2014 seeking to set aside the judgment of 10th February 2012, which application was dismissed by the same court on 9th May 2014. That the present application involves the same court, same parties, same subject matter, and the same cause of action as the earlier one.
21. It is submitted that the applicant has not explained the inordinate delay in bringing the application. Further, that the application improperly seeks to reopen a concluded matter without valid grounds, amounting to an abuse of process. It is the respondent's submission that allowing the application would undermine finality in litigation, prejudice the respondent and waste judicial resources.
22. The respondent relies on the case of Mutuku v M'Kiama & 2 others (Civil Suit 735 of 2007) [2023] KEELC 19816 (KLR) where the court is said to have observed that the application was filed after unreasonable delay and emphasized that equitable discretion can only be exercised where the applicant provides a cogent and credible explanation for such delay.

Analysis and Determination

23. I have considered the application by the applicant, grounds and supporting affidavit and the response by the respondent as well as the respective parties' written submissions. In my humble view, the main issue for determination, which is a pure point of law raised by the respondent is whether the instant application is res judicata.
24. The doctrine of res judicata, is provided for under Section 7 of the *Civil Procedure Act*, Cap 21 Laws of Kenya. It is intended to prevent the filing of multiple suits and to ensure finality in litigation. It renders a final judgment conclusive between the same parties or their successors on the same issues previously determined by a court of competent jurisdiction.



25. Section 7 of the *Civil Procedure Act*, 2010 provides:

“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.”

26. The Court of Appeal in *Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others* [2017] eKLR, held inter alia that:

“The doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being hounded by issues and suits that have already been determined by a competent court...”

27. In *Christopher Kenyariri v Salama Beach* [2017] eKLR, the court stated the ingredients to be satisfied when determining res judicata thus:

“...the following elements must be satisfied...in conjunctive terms;

- a. The suit or issue was directly and substantially in issue in the former suit;
- b. Former suit between same parties or parties under whom they or any of them claim
- c. Those parties are litigating under the same title
- d. The issue was heard and finally determined.
- e. The court was competent to try the subsequent suit in which the suit is raised.”

28. The above are the legal principles guiding applicability of the doctrine of res judicata. Additionally, it is trite that the doctrine of res judicata similarly applies to applications.

29. As was observed in *Njangu v Wambugu* (Nairobi HCCC No. 2340 of 1991, unreported), if parties are allowed to endlessly litigate the same issue, it would defeat the purpose of the doctrine res judicata.

30. Applying the above principles to the instant case, the Court record shows that judgment in this matter was delivered by Majanja J. (as he then was) on 10th February 2012. The applicant, being dissatisfied with that judgment, filed a Notice of Appeal dated 20th February 2012. He later filed an application dated 28th March 2014 seeking to set aside the same judgment, which application was heard on merit and dismissed by the same court vide a ruling dated 9th May 2014. In that ruling, the court expressly found that the judgment on record was signed, properly delivered in open court and duly transmitted to the applicant by the Deputy Registrar. The applicant again filed a Notice of Appeal dated 14th May 2014 challenging that ruling.

31. The current application, brought more than thirteen years after delivery of the court’s judgment and over eleven years after the court dismissed the application for setting aside the same judgment, seeks, once again to set aside the same judgment of 10th February 2012, on grounds substantially similar to those raised in the application dated 28th March 2014. The parties, subject matter and relief sought are identical.



32. Applying Section 7 of the *Civil Procedure Act* and the judicial pronouncements cited above, I find and hold that the matter squarely meets all the elements of res judicata as there exists a former final judgment on the merits and a ruling on merits by a competent court involving the same parties, subject matter, and cause of action. The earlier ruling of 9th May 2014 finally determined the issue of setting aside the judgment, and this court cannot be invited to revisit the same question under a different guise.
33. This court also notes that the applicant's claims of fraud and alleged irregularities in the delivery of the judgment of 10th February 2012 have not been supported by any credible evidence. They do not constitute new or distinct issues capable of reopening a matter conclusively determined. As was stated in *Njangu v Wambugu* (HCCC No. 2340 of 1991, unreported), litigation must come to an end, and the doctrine of res judicata is intended to bar parties from endlessly relitigating concluded matters.
34. Similarly, the Court of Appeal in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* (supra), held that:
- “The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”
35. The action of the applicant in filing the application dated 29th August, 2025 was in my view an abuse of the court process. If at all the applicant was dissatisfied by the trial court's ruling rendered on the 25th March 2021, then he had the option of seeking leave to pursue an appeal. Litigation must come to an end and the rule of res judicata is meant to counter the all too human propensity to keep trying until something gives in.
36. Besides, the present application by the applicant suffers from inordinate and unexplained delay. The judgment sought to be impugned was delivered over thirteen years ago, and the applicant has offered no plausible explanation for the delay, even assuming that the doctrine of res judicata was inapplicable.
37. In view of all the foregoing analysis, I find that the application dated 29th August 2025 is res judicata, having previously been heard and determined by a court of competent jurisdiction in the ruling delivered on 9th May 2014 by the late Majanja J. The application is further vitiated by inordinate delay and therefore it amounts to an abuse of the court process.
38. Accordingly, the application dated 29th August, 2025 is found to be devoid of merit and the same is hereby dismissed with no orders as to costs.
39. As there are no other proceedings pending for consideration, this file is accordingly closed.
40. It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF NOVEMBER, 2025

R.E. ABURILI

JUDGE

