REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1673 OF 2016

BANKING, INSURANCE & FINANCE UNION (KENYA)….CLAIMANT

VERSUS

STANDARD CHARTERED BANK OF KENYA…..…….RESPONDENT

RULING

1. The Respondent's application brought by Notice of Motion dated 24th October 2016 and filed in Court on 2nd November 2016, seeks orders to strike out the Claimant's claim as contained in the Statement of Claim dated 18th August 2016 and filed in Court on 22nd August 2016.

2. The application which is supported by the affidavit of the Respondent's Head of Employee Relations, East Africa, Harrison Okeche, is premised on the following grounds:

a. The Claimant had filed a previous suit in Cause No 106 of 2015 between the same parties and over the same issues and subject matter**.**

b. By a judgment delivered on 1st April 2016, the Claimant's suit in Cause No 106 of 2015 was dismissed with no order for costs;

c. The current claim is therefore *res judicata* and is an abuse of the court process;

d. The Respondent will be greatly prejudiced by the continued prosecution of this suit as the issues raised have already been determined;

e. The Claimant will not suffer any prejudice as the Grievants herein have since been declared redundant and have been paid in accordance with the obtaining Collective Bargaining Agreement.

3. The Claimant's response is contained in a replying affidavit sworn by its General Secretary, Isaiah Kubai, on 16th January 2017. He depones that in Cause No 106 of 2015, the Court erred in allowing the parties to proceed with the main suit by way of written submissions before completion of the conciliation process

4. Kubai further depones that the current suit was filed after issuance of a certificate of unresolved dispute, by the Conciliator. He adds that Cause No 106 of 2015, which was dismissed for want of any suitable reliefs was decided on a technicality and not on merit.

5. The Claimant accuses the Court in Cause No 106 of 2015 of failing to consider all the pleadings in the claim.

6. Section 7 of the Civil Procedure Act titled *'Res Judicata'* states as follows:

> ***"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. The doctrine of *'res judicata'*, which has weathered many years of litigation is based on the principle that a party should not be vexed twice. On the larger platform, it is in the public interest that there should be an end to litigation.

8. As early as the 1940s in the case of ***Greenhalgh v Mallard [1947] All ER*** it was held that a party cannot be allowed to bring the same action twice by merely doing some cosmetic adjustment to the pleadings. Closer home, in ***Pop-In (Kenya) Ltd & 3 Others v Habib Bank AG Zurich [1990] KLR*** the Court of Appeal held that the plea of *res judicata* does not only apply to points specifically pleaded by the parties and upon which the court is actually required to form an opinion and pronounce judgment, but to every point which properly belongs to the subject of the litigation.

9. This remains good law and in ***Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another [2016***] the Supreme Court rendered itself as follows:

> ***"Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights.***
>
> ***The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to Court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process."***

10. I do not need to mine this point any further. By its own admission, the Claimant had previously brought a similar action in Cause No 106 of 2015 but forgot to ask for damages, which it now seeks to introduce in the current cause. It is barred from doing so by the doctrine of *res judicata*.

11. The result is that and the Respondent's application dated 24th October 2016 succeeds and the Claimant's claim is struck out with no order for costs.

12. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF JULY 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Odero (Union Representative) for the Claimant

Mr. Obura for the Respondent