



**IN THE EAST AFRICAN COURT OF JUSTICE AT ARUSHA
FIRST INSTANCE DIVISION**



*(Coram: Yohane B. Masara, PJ; Charles O. Nyawello; Charles A. Nyachae;
Richard Muhumuza & Richard W. Wejuli, JJ)*

**APPLICATION NO.6 OF 2020
(Arising from Reference No. 2 of 2019)**

**THE ATTORNEY GENERAL OF
THE REPUBLIC OF RWANDA..... APPLICANT**

VERSUS

KALALI STEVEN..... RESPONDENT

23RD JUNE, 2022

REASONED RULING OF THE COURT

A. INTRODUCTION

1. The instant Application was filed by the Applicant on 27th March, 2020. The Application was made under Rules 4, 5, 23(3) of the East African Court of Justice Rules of Procedure, 2019. The Application arises from **Reference No. 2 of 2019**, where the Respondent herein filed a Reference against the Applicant herein.
2. The instant Application sought Orders for the Court to extend time to enable the Applicant to file and serve additional Affidavits in response to the additional Affidavit filed by the Respondent.
3. On 7th March 2022, this Court, after hearing the Parties, orally dismissed the Application for being *res judicata*. We undertook to provide reasons for our decision. This ruling is therefore meant to expound on the reasons that informed our decision to dismiss the Respondent's Application.

B. REPRESENTATION

4. At the hearing of this Application, the Applicant was represented by Mr Emile Ntwali, Principal State Attorney and Mr. Nicolas Ntarugera, Senior State Attorney. The Respondent was represented by Mr Hamza Ssekidde and Mr Januario Mujuni, Learned Advocates.

C. BACKGROUND

5. At the Scheduling Conference in **Reference No.2 of 2019**, the Court, *inter alia*, made the following orders:

- a) **The Applicant to file additional Affidavit by 25th November, 2019;**

- b) The Respondent to file additional Affidavit by 9th December, 2019;
- c) The Applicant to file Affidavit in rejoinder by 23rd December 2019;
- d) The Applicant to file written submission by 23rd January, 2020;
- e) The Respondent to file the written submission by 23rd February, 2020; and
- f) The Applicant to file submission in rejoinder by 9th March, 2020.

- 6. The Applicant, in violation of the said order, filed and served their additional Affidavit outside the time ordered by the Court.
- 7. Subsequently, the Applicant filed Application No.1 of 2020, seeking orders for extension of time to file the said additional Affidavit, and that the Affidavit filed late, be deemed to be properly on the record.
- 8. The said Application No. 1 of 2020 was heard and dismissed by the Court.
- 9. The Applicant now brings the instant Application, seeking the Orders set out in paragraph 2 of this Ruling.

D. COURT'S DETERMINATION

- 10. At the hearing of this Application, the Respondent initially indicated willingness to concede to the Application, ostensibly to save time and to facilitate the expeditious determination of the main Reference.

11. Despite the position of Counsel to the Respondent, the Court, looking at its earlier decision in **Application No. 1 of 2020**, *suo motu* raised the question of whether the instant Application (**No. 6 of 2020**) was not identical in all respects with **Application No. 1 of 2020**, which would render it *res judicata*.
12. In response, the Applicant submitted that the matter was not *res judicata* as **Application No. 1 of 2020** had not been heard and dismissed on its merits but on what the Applicant described as technicalities.
13. The Applicant further submitted that the interest of justice would be best served by the Court granting the Orders sought, and that the Respondent herein would not in any way be prejudiced.
14. On his part, the Respondent submitted that indeed the matter was *res judicata* and the Applicant could not make the same Application a second time, after it had been dismissed. The Respondent, thus, withdrew his initial concession to the instant Application.
15. As already stated, upon hearing the respective submissions of the Parties, the Court made a ruling where it dismissed the Application as the matter was *res judicata*.
16. The issue for determination is whether the Application is *res judicata* following this Court's decision in **Application No. 1 of 2020** decided on 10th March 2020.
17. In **Reference No. 3 of 2015, Steven Denis vs The Attorney General of the Republic of Burundi and Others**, this Court quoted with approval the respective definitions of *res judicata*, in Black's Law Dictionary, and in the Oxford Dictionary of Law.

18. Black's Law Dictionary defines *res judicata* thus:

“An affirmative defence barring the same Parties from highlighting a second law suit on the same claim or any other claim arising from the same transactions or series of transactions and that could have been – but was not raised in the earlier first suit. The three essential ingredients are; (i) an earlier decision on the issue, (ii) a final Judgment on the merits, and (iii) the involvement of the same Parties, or Parties in privity with the original Parties.”

19. The Oxford Dictionary of Law definition is as follows:

“The principle that when a matter has been finally adjudicated upon by a court of competent jurisdiction it may not be re-opened or challenged by the original Parties or other successions in interest. It is also known as *carious estoppel*. It does not prejudice an appeal or challenge to the jurisdiction of the Court. Its jurisdiction if the view for finality in litigation.”

20. This Court in the Steven Denis Case (supra) emphatically concluded and stated that “*res judicata*” is recognised as a binding rule, which prescribes the re-litigation of a settled dispute.

21. In James Katabazi and 21 Others vs The Secretary General of The East African Community and the Attorney General of the Republic of Uganda, Reference No.1 of 2007, this Court, on the principle of *res judicata*, succinctly stated:

“Three situations appear to us to be essential for the doctrine to apply: one, the matter must be “directly or

indirectly” in issue --. Two, Parties must be in the same or Parties under whom any of them claim litigating under the same matter. Lastly, the matter was finally decided in the previous suit. All three situations must be available for the doctrine of *res judicata* to operate.”

22. Further, in Application No. 4 of 2017 arising from Union Trade Center Limited (UTC) vs The Attorney General of the Republic of Rwanda, Reference No.10 of 2013, the Court restated the doctrine of *res judicata* and its application in the following terms:

“We are also aware that as a general principle of law, no Court shall try any suit or issue in which the matter directly or substantially in issue has been directly and substantially in issue in a former suit between the same Parties or between Parties under whom they any of their claim or are 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.”

23. In applying the rule and definitions of the principle of *res judicata* as restated in the above cites cases; firstly, clearly the Parties are the same in Application No. 1 of 2020 and in the instant Application.

24. Secondly, it is the view of this Court that the matter in issue in the instant Application, is directly and substantially the same as that in Application No.1 of 2020; to wit, the same Applicant in each of the Applications, seeking an order for extension of time to file the same additional Affidavit.

25. Thirdly, to the extent that this Court heard and determined, by way of dismissal, **Application No.1 of 2020**, the final requirement for the rule of *res judicata* to apply is met.

26. We observe that in the course of proceedings in **Application No. 6 of 2020**, the Applicant therein and herein, had the opportunity, upon realizing the fatal character of the Affidavit supporting that application, to withdraw the same and seek a different remedy. It, however, chose not to do so and allowed the Application to be determined by the Court, culminating in its dismissal.

27. The Court is not persuaded by the Applicant's submission that **Application No.1 of 2020** was not determined on its merits. It is clear that the Applicant therein, chose to fully neglect its case and the dismissal by the Court followed the hearing of both Parties in the Applications.

28. In its concluding paragraph, in **Application No.1 of 2020**, the Court is left with no option but to dismiss this Application.

CONCLUSION

29. Having heard the respective Parties submissions, and in particular having given the said Parties the opportunity to submit on the question of *res judicata*, this Court is left in no doubt that the instant Application is one where the principle of *res judicata* does apply.

30. Accordingly, we dismiss the instant Application on basis of it being *res judicata* following our similar decision in **Application No. 1 of 2020** dated 10th March 2020.

31. We further order that each party will bear its own costs.

32. It is so ordered.

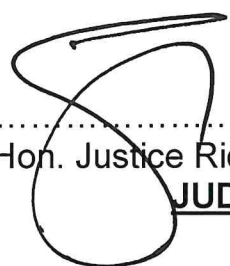
Dated, signed and delivered in Arusha this 23rd Day of June, 2022


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Hon. Justice Yohane B. Masara
PRINCIPAL JUDGE


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Hon. Justice Dr Charles O. Nyawello
DEPUTY PRINCIPAL JUDGE


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Hon. Justice Charles A. Nyachae
JUDGE


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Hon. Justice Richard Muhumuza
JUDGE


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Hon. Justice Richard W. Wejuli
JUDGE