

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION NO. 430 OF 2019

(Originating from Misc. Civil Application No. 53 for 2016 in the District Court of Ilala)

TANZANIA INTERNATIONAL CONTAINER

TERMINAL SERVICES LTD.....APPLICANT

VERSUS

- 1. JOHN LEMOMO.....1ST RESPONDENT**
- 2. GODWIN STEVEN.....2ND RESPONDENT**
- 3. CHARLES CYPRIAN.....3RD RESPONDENT**
- 4. SALUM KUNU.....4TH RESPONDENT**
- 5. ROGERS KESSY.....5TH RESPONDENT**
- 6. CHARLES MASAGA.....6TH RESPONDENT**
- 7. CLETI MARO.....7TH RESPONDENT**
- 8. DENIS SIMBA.....8TH RESPONDENT**
- 9. JANET MFURUKI.....9TH RESPONDENT**

RULING

Date of last order:13/05/2020

Date of ruling:21/07/2020

MLYAMBINA, J.

Under the provisions of *Section 14 (1) (a) of the Law of Limitation Act, Cap 89 R.E. 2002, Order XLIII Rule 2 and Section 3B (1) (a) and 95 of the Civil Procedure Code Cap 33 now (R.E 2019)*, the Applicant is seeking for the orders:

1. That, this honorable court be pleased to make a finding that there exist reasonable and sufficient causes and extend time within which to allow the Applicant to bring the application for revision and setting aside proceedings ruling and orders dated 28th December, 2016 by the honorable resident magistrate.
2. Costs to follow the event
3. Any other relief (s) this honorable court deems fit and just to grant.

It is not in dispute that: **One**, the parties this application were involved in an execution application at the Ilala District Court of Ilala which was *Misc. Civil Application No. 53 of 2016* in which this application originate from. **Two**, in *Misc. Civil Application No. 53 of 2016* the court issued a ruling together with a garnishee Order (Page3) to conclude the matter as finalized and executed on 28th December, 2016. **Three**, in *Misc. Civil Application No. 53 of 2016* it was ordered the Respondents in this application be re-instated back to their employment duties and be paid their unpaid salaries. **Four**, the Applicant being aggrieved filed a similar application registered as *Misc. Civil Application No. 312 of 2018* seeking for extension of time to stop the execution.

In this application, the Respondent raised a *plea in limine litis* to the effect that: *This application is resjudicata since the same matter has already been entertained by another court of competent jurisdiction and determined to its entirety.*

It was argued by the Respondent that the execution had already been completed by the court in Misc. Civil Application No. 53 of 2016 and the result of that application was that it was dismissed on the reason that execution had already been determined and finalized by the court.

The Applicant on its part denied for this matter to follow into the web of *resjudicata*. It was of the view that there has never been a similar application like the application determined by any court of competent jurisdiction.

According to the Applicant, Misc. Civil Application No. 312 of 2018 was an application instituted by the Applicant at the Ilala District Court at Samora Avenue for stay of execution in *Misc. Civil Application No. 53 of 2016*. Therefore, it does not leap one's eyes that the application is not a repetition of any other application already heard and finalized.

The Applicant maintained that for *resjudicata* to apply, the former suit must have been between the same litigating parties,

substantial subject matter in the subsequent suit must be the same in issue in the former suit, the parties in the former suit must have litigated under the same title, the matter must have been heard and finally decided, and the former suit must have been decided by a court of competent jurisdiction. The Applicant cited the case of **The Registrar Trustees of Chama cha Mapinduzi v. Mohamed Ibrahim and Sons and Another**, *Civil Appeal No 16 of 2018*, (unreported) at page 7, 8, 9 and 13. Also the same has been discussed in the case of **Esther Ignus Luambano v. Adriano Geda M. Kipalile**, *Civil Appeal No 91 of 2014* (unreported) at page 6, 7 and 8.

I have deliberately gone through the party's submission's and the records before the court. It is not contested that *Section 9 of the Civil Procedure Code, Cap (33 R.E 2019)* prohibits the court to try: **First**, any suit or issue in which the matter has been direct directly and substantially in issue in a former suit. **Second**, such suit is between the same parties. **Third**, the parties under whom they or any of them claim litigating under the same title. **Four**, the suit is in a court competent to try such subsequent suit or: **five**, the suit in which issue has been subsequently raised and has been heard and finally decided by such court. Such position is supported by Sarkar, in his book

Sarkar's **the Law of Civil Procedure, 8th edition Vol. 1** at **page 53** states:

The doctrine of res judicata was recognized much earlier...rests on the principle that one should not be vexed twice for the same cause and there should be finality of litigation.

It is the court's finding that the principle embodied in *Section 9 of Civil Procedure Code* and in the Sarkar's book prohibit the Applicant as well and particularly in the circumstances to relinquish and re-institute another case in which the subject matter was directly and substantially in issue in the subsequent suit and have been heard and finally decided in the former suit.

In this case, the Respondent has correctly explained how the former and the instant application are directly and substantially the same. In case of **Lotta v. Tanaki and Others** [2003] 2 EA 556 at page 557 the Court of Appeal while expounding the test of *resjudicata* in connection to Section 9 of **the Civil Procedure Code** (*supra*) states that:

The object of the principle of resjudicata is to bar multiplicity of suits and guarantee finality to litigation. It

makes conclusive a final judgment between the same parties.

Further, I must observe that what the Applicant has done is not only coming to seek equitable justice while knowing that the execution of the garnishee order has been brought to the end but also knowing clearly that the court lacks jurisdiction to entertain a matter which has been determined to its finality. Worse, the same application was refused by the Ilala court. If the Applicant was aggrieved with the dismissal of its application in *Misc. Civil Application No. 312 of 2018*, the remedy was to appeal and not to file revision proceedings.

In the premises, the objection is sustained on its merits. The application stands dismissed with costs for being *resjudicata* with *Misc. Civil Application No. 312 of 2018*. It is so ordered



Y. J. MLYAMBINA

JUDGE

21/7/2020

Ruling delivered and dated 21st July, 2020 in the presence of Counsel Oscar Machaguli holding brief for Jeremiah Tarimo for the Applicants and Aviti Bakuza for the Respondents. Right of Appeal explained.



Y. J. MLYAMBINA
JUDGE

21/7/2020

A handwritten signature in blue ink, consisting of stylized initials and a surname, written over the printed name and date.