

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

**CIVIL CASE NO. 163 OF 2019**

**MFI DOCUMENT SOLUTIONS LIMITED.....PLAINTIFF**

**VERSUS**

**SHAMSHUDDIN HIRAN.....1<sup>ST</sup> DEFENDANT**

**BINU BHARATHAN LEELAMMA.....2<sup>ND</sup> DEFENDANT**

**RULING**

**J. L. MASABO, J.:**

This a ruling in respect of a preliminary objection raised by the 2<sup>nd</sup> Defendant. The objection has two limbs, that (i) this court has no jurisdiction to entertain the suit and (ii) the suit is res judicata to Labour Revision No. 980 of 2018 and execution No. 208 of 2018 of the Labour Division of this court.

The facts behind the suit as deciphered from the pleadings is that it emanates from an employment relationship between the Plaintiff and the 2<sup>nd</sup> Defendant. In October 2017, the 2<sup>nd</sup> Defendant who was at the material time working for the plaintiff as General Manager Operations, was terminated. Aggrieved, he referred the matter to the Commission for Mediation and Arbitration where a deed of settlement was signed between the 2<sup>nd</sup> Defendant on the one party and on the other party, by the 1<sup>st</sup> Defendant who executed the deed in the capacity of Managing Director for the plaintiff, a position which he allegedly did not possess at the material time. In the

said deed, which was executed by the 1<sup>st</sup> Defendant on behalf of the plaintiff company, it was agreed that the 2<sup>nd</sup> Respondent will be paid a total of USD 247,543 as compensation for wrongful termination. The Plaintiff has moved this court to grant a declaratory order nullifying the deed of settlement on account of being executed fraudulently by a person who was not a director and without the knowledge of directors and shareholders of the respondent company.

Hearing of the preliminary objection proceeded in writing. Both parties were represented. The Plaintiff was represented by Messrs Shalom Msakyi and Patrick Toyi Kayeshi, learned counsel and the 2<sup>nd</sup> Defendant was represented by Mr. Thomas Massawe, learned counsel.

In support of the preliminary objection it was argued that this matter is a labour matters having arisen from an employment relationship between the plaintiff and the second defendant hence this court has no jurisdiction to entertain it as it is a reserve of labour dispute mechanisms established under the Employment and Labour Relations Act, [Cap 366 RE 2019] (see sections 50(1) and (94) of the Act. He added that the deed of settlement challenged is a lawful order of the Commission for Mediation and Arbitration (CMA) having been voluntarily executed by the parties and endorsed by the CMA. In respect of the 2<sup>nd</sup> limb of the preliminary objection, it was argued that the matter before this court is *res judicata* to Labour Revision No. 830 of 2018 and Labour Execution No. 208 of 2018 of the Labour Division of this Court

hence it can-not be re-litigated in this court as it was finally determined and settled by the court of competent jurisdiction.

In opposition it was submitted that the suit is not a labour matter as it doesnot challenge the fairness or otherwise of the termination. What is being challenged is a legality of the deed of settlement having been fraudulently executed by the 1<sup>st</sup> Respondent for the Plaintiff while he did not have mandate to execute the deed. It was argued further that this is a company matter in which the plaintiff is suing the defendants for breach of duty. Therefore, this court has jurisdiction under section 481 (1) of the Companies Act, Cap 212 RE 2002. On the second limb of the Preliminary objection, it was argued that the conditions for the application of the principle of *res judicata* has not been established hence it cannot apply in this case, because the issue in question in the instant case is entirely different with the issue canvased in Labour Revision No. 830 of 2018 and Labour Execution No. 208 of 2018 contrary to the requirement under section 9 of the Civil Procedure Code [Cap. 33 RE 2019] which is also articulated in the case of **Village Chairman K.C.U Mateka v Athony Hyera** [1988] TLR 188 and **Gerard Chuchuba v Rector Itanga Seminary** [2002] TLR 213.

In joinder it was argued that, the matter cannot be said to be confined to the welfare of the company whereas the second respondent is joined in his capacity as a former employee of the plaintiff and the beneficiary of the settlement deed obtained out of a labour dispute.

I have carefully considered the submission from both parties. The issues for determination are two, namely, **First:** Whether this court has jurisdiction to entertain the suit and **Second,** whether the suit is *res judicata* to Labour Revision No. 830 of 2018 and Labour Execution No. 208 of 2018 of the Labour Division of this Court.

To resolve the first issue, it is paramount to first determine what constitutes a labour matter/dispute. Section 4 of the Employment and Labour Relations Act define the term 'Labour matter" to mean any matter relating to employment or labour relations. A more nuanced definition is found under Section 88 (1) of the Employment and labour Relations Act which defines a labour dispute to encompass:

88.-(1).....

- (a) a dispute of interest if the parties to the dispute are engaged in an essential service;
- (b) a complaint over
  - (i) the fairness or lawfulness of an employee's termination of employment;
  - (ii) any other contravention of this Act or any other labour law or breach of contract or any employment or labour matter falling under common law, tortious liability and vicarious liability in which the amount claimed is below the pecuniary jurisdictions of the High Court;

(iii) any dispute referred to arbitration by the Labour Court under section 94(3)(a)(ii).

Resolution of these disputes fall under the exclusive jurisdiction of labour dispute resolution forums constituted of the Commission for Mediation and Arbitration (CMA), the High Court and the Court of Appeal. (see section 94 of the Employment and Labour Relations Act).

When the provision of section 88 and 94 of the Employment and Labour Relations Act are paired with the facts above, it is plainly clear that the instant matter is not a labour dispute because what is sought to be litigated is neither a dispute of right nor a dispute of interest between the employee and the employer. It is rather about the legality or otherwise of the deed of settlement. On this account, I overrule the first objection.

Regarding the second limb of the preliminary objection, the principle of *res judicata*, as provided for under section 9 of the Civil Procedure Code [Cap 33 RE 2019], states that:

"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."

In essence, *res judicata* bars any court to entertain a suit to which the matter in issue was directly in issue between the same parties - which was finally decided by a competent court. The provision has been extensively interpreted. The case of **Gerard Chuchuba v Rector Itanga Seminary** (supra) and **Lotta V Gabriel Tanaki and Others** [2003] TLR 312 suffices to explain the parameters of this principle as it applies in our jurisdiction. The Scheme of this principle as articulated in **Peniel Lotta vs Gabriel Tanaki and others** is predicated in the existence of five conditions namely:

“ (i) The matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit. (ii) The former suit must have been between the same parties or privies claiming under them. (iii) The parties must have litigated under same the title in the former suit. (iv) The court which decided the former suit must have been competent to try the subsequent suit and, (v) The matter in issue must have been heard and finally decided in the former suit.

The rationale of this principle is well articulated in **John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others** [2015] eKLR, where it was stated that:

“The rationale behind *res judicata* is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. *Res judicata* ensures the economic use of court’s limited resources

and timely termination of cases. Courts are already clogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgments by reducing the possibility of inconsistency in judgments of concurrent courts. It promotes confidence in the courts and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law. Without res judicata, the very essence of the rule of law would be in danger of unraveling uncontrollably.”

Reverting back to the elements of the res judicata, it is not in dispute that plaintiff and the 2<sup>nd</sup> Defendant has litigated over settlement deed. Records indicate clearly that, the parties in Labour Revision No. 830 of 2018 and Labour Execution No. 208 of 2018 were **MFI Document Solutions Limited** (the applicant herein) who litigated as the Applicant and **Binu Bharathan Leelamma** (the 2<sup>nd</sup> Defendant herein) who litigated as Respondent. Although the first Respondent was not personally a party, he was acting for the plaintiff’s behalf and executed the settlement deed in its behalf hence, he cannot be said to have been a total stranger to the applications.

As to whether the matter in this case is directly and substantially in issue with that in Labour Revision No. 980 of 2018 and Execution No. 208 of 2018; Fardunji Mulla in **Mulla: The Code of Civil Procedure (18th Edition, 2011)** defines the “direct and substantially in issue” in the following terms (page 168):

“The words 'directly and substantially in issue' are used in contra-distinction to the words 'incidentally and collaterally in

issue', That means that ..... there is identity of the matter in issue in both the suits meaning thereby, that the whole of the subject matter in both the proceedings is identical and not merely one of the many issues arising for determination  
[Emphasis added]

Records from the rulings in respect of the two matters appended indicate that, in both matters, the Plaintiff who were dully represented, forcefully challenged the legality of settlement deed with no fruition. The court found that the settlement deed being challenged was a lawful award and blessed its execution. It would appear to me that what has changed is only the bottle but the wine has remained the same all along. In the first two cases, the Plaintiff's card was that the settlement deed did not qualify as an award, therefore it was incapable of being executed. In the instant suit, they have adopted a new cause, namely the deed was fraudulently executed by an incompetent person. This is astounding because in neither of the two applications above the plaintiff raised the issue of fraud in the execution of the settlement deed. In both applications, they had no problem with the authority of the person who executed it. Their only problem was that, the settlement was not an award hence should not be enforced.

With respect, the plaintiff's counsels' submission is not in consonant with the facts of the matter. The argument that a matter falls in company law and breach of duty is expeditious and devoid of any merit because, the 2<sup>nd</sup> Defendant, is sued not in his capacity as shareholder or director of the company but the former employee who successfully obtained an award against the plaintiff company. It is crystal clear to me that, the plaintiff is



trying to impeach the decision of the Labour Division through a back door, which is seriously incorrect because having rendered its decisions in Labour Revision No. 830 of 2018 this court became *functus officio*. The two main prayers fronted by the plaintiff as reproduced below speak loudly of the plaintiff's intention bring back the matter through back door: In these prayers, the plaintiff is beseeching this court to grant:

- (a) A declaration that the settlement deed entered on the 7<sup>th</sup> November 2017 for the settlement of Labour Dispute No. CMA/ILA/R.1173/17 is null and void been procured fraudulently;
- (b) a declaration that the subsequent award arise thereon to be null and void.

Undoubtedly, if the preliminary objection is overruled and suit is left to proceed, in the final result of this suit, this court will find confined to overrule its previous decision contrary to the well-established principles of law. Under the premise, I have found merit in the 2<sup>nd</sup> Defendants argument that, the suit against him is *res judicata* because as it was previously litigated in Labour Revision No. 830 of 2018 and Labour Execution No. 208 of 2018 which were between the plaintiff herein as applicant and the 2<sup>nd</sup> Defendant as respondent. In all the two matters, the parties litigated over the deed of settlement, which is now sought to be challenged. Both the plaintiff and the 2<sup>nd</sup> Defendant litigated under the same title with the 2<sup>nd</sup> Respondent being the Decree holder and the Plaintiff herein being the judgment debtor; the matter was heard and finally determined by Labour Division of this court which is a competent court.

Entertaining the matter will certainly go against the very rationale of the doctrine of *res judicata* as articulated in ***John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others*** (supra) and would entail entertaining the matter *functus officio*.

In the end result, I uphold the second limb of the 2<sup>nd</sup> preliminary objection and I hereby strike out the suit.

DATED at DAR ES SALAAM this 14<sup>th</sup> day of August 2020.



A handwritten signature in black ink, appearing to be "J.L. MASABO".

**J.L. MASABO**  
**JUDGE**