

**IN THE HIGH COURT OF TANZANIA**  
**AT SUMBAWANGA**

**DC CIVIL APPEAL NO. 10 OF 2020**

(Arising from Civil Case No. 13 of 2016 in the District Court of Sumbawanga at Sumbawanga)

**FELICIAN CREDO SIMWELA ..... APPELLANT**

VERSUS

**QUAMARA MASSOD BATTEZY ..... 1<sup>ST</sup> RESPONDENT**

**ABDILLAH AHAMED YUSUPH ..... 2<sup>ND</sup> RESPONDENT**

Date of Last Order : 10/05/2021

Date of Judgment : 18/08/2021

**JUDGMENT**

**C.P. MKEHA, J;**

This is an appeal against the decision of the District Court of Sumbawanga (the trial court) dated 14<sup>th</sup> July, 2017 in Civil Case No. 13 of 2016. Before the trial court, the appellant sued the respondents for compensation for the loss he had suffered. The trial court dismissed the appellant's suit for being *res judicata*.

I find it apt to recount, though briefly, the background material fact leading the present matter. The parties in the present appeal are familiar to each other in terms of litigation and agreement. They had an agreement but things went astray. As a result, the respondents successfully sued the appellant before the trial court vide Civil Case No. 6 of 2015. The appellant, while the

said civil case was decided as between them, instituted to the very same trial court a Civil Case No. 13 of 2016. In the later civil case, the parties were the same as those in the previous civil case. The appellant was suing for compensation for loss he had suffered in execution of court order that stems from Civil Case No. 6 of 2015. The appellant, apart from a claim for costs and any other relief that would be deemed fit and just by the trial court, also claimed for general damages to the tune of Tshs. 10,000,000/=.

The competency of the said Civil Case was at stake mainly on a point of law that it was *res judicata*. The trial court sustained the objection in its finding that the doctrine of *res judicata* applied squarely on the facts of that case. It was therefore barred by that principle and thus the matter was dismissed. Displeased with the trial court finding and decision, the applicant lodged, to this Court, a two-ground memorandum of appeal. The grounds are as reproduced herein below, that: -

1. The trial court erred in law by holding that the matter before it was *res judicata*.
2. The trial court erred in law by deciding the matter contrary to the law.

The respondents, through their legal representative, contested the appeal by filing their reply. Thus, the present appeal is contentious as between the parties herein.

At the hearing of the present appeal, the appellant appeared in his personal capacity, unrepresented whereas Ms. Tumaini Amenye, learned counsel appeared for the respondents.

In his brief submission, the appellant told the Court that the principle of *res judicata* was improperly applied in his suit because although he was a party in that previous suit but he never took part in that case. He was only made aware of the existence of a copy of its judgment. He was not summoned to appear.

The respondents, on the other hand supported the trial court's findings. They emphasized that, the parties and the subject matter were the same. Case of **Umoja Garage v. NBC Holding Company** (2003) TLR 339 was referred in their submission.

In his rejoinder submission, the appellant told the Court that, the respondents took the motor vehicle on 08<sup>th</sup> August, 2016 and sold it on 10<sup>th</sup> September, 2016. He, on 27<sup>th</sup> September, 2016, filed his case. That is the reason of his persistent submission that the matter is not *res judicata*.

I have heard and considered the submissions of the parties. It is not in dispute that, the appellate courts are enjoined to apply and interpret the law of the land and ensuring proper application of the laws by the court(s) below. See the case of **Marwa Mahende v. Republic** [1998] TLR 249 which was

referred in the case of **Hassani Ally Sandali v. Asha Ally**, Civil Appeal No. 246 of 2019, Court of Appeal of Tanzania at Mtwara (unreported).

Undoubtedly, the central issue here is on whether the suit before the trial court was barred by the doctrine of *res judicata*. The law is very settled and clear on the applicability of the principle of *res judicata*. For the doctrine to apply the following conditions must be proved, these are; (i) the former suit must have been between the same litigating parties or between parties under whom they or any of them claim; (ii) the subject matter **directly and substantially in issue** in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit either **actually or constructively**; (iii) the party in the subsequent suit must have litigated under the same title in the former suit; (iv) the matter must have been heard and finally decided; (v) that, the former suit must have been decided by a court of competent jurisdiction. Its applicability makes conclusive a final judgment between the same parties or their privies on the same issue by a court of competent jurisdiction in the subject matter of the suit. The object and public policy behind the doctrine of *res judicata* is to guarantee finality of litigation and therefore to protect an individual from a multiplicity of litigation. Insistently, the applicability of the doctrine is for the sake of promoting the fair administration of justice and honesty and to prevent the law from abuse. In many jurisdictions, the principle applies, not only to the specific claims made in the first case but also to claims that could have been made during the same case. See rule 11 of the Primary Courts Civil Procedure Rules, section 9 of the

Civil Procedure Code, Cap. 33 R.E. 2019 (the Code) and the following cases; **The Registered Trustees of Chama cha Mapinduzi v. Mohamed Ibrahim Versi and Sons and Another**, Civil Appeal No. 16 of 2008, Court of Appeal of Tanzania at Zanzibar (unreported), and that of **Peniel Lotta v. Gabriel Tanaki and Others** (2003) TLR 312.

From the brief background of this matter, one will witness that, the plaintiff's main concern in Civil Case No.13 of 2016 is on the compensation for the loss that emanated from a cause of action that was at issue in a previous decided case between the same parties. The losses were associated with the execution of the trial court's decision. It appears that the appellant was aggrieved by the attachment order that was issued during the execution. The order had the effect of attaching the motor vehicle that was a subject matter in Civil Case No. 6 of 2015 that was decided by the trial court. The trial court had already reached its decision that the appellant was in fault and ordered to face the consequences of his breach. It cannot be possible to allow him to institute a separate suit that would contradict the trial court's decision on the issue. This is due to the fact that, once the trial court reached its decision that the appellant was at default then the respondents were entitled to those remedies. They cannot be sued thereafter if they have succeeded proving that the appellant defaulted in their agreement.

If it is the appellant's concern that the matter proceeded *ex parte* against him then he could have applied before the same trial court to set aside such a decision.

Thus, the above said elements of *res judicata* applies squarely in the present matter where the appellant was originally sued in Civil Case No. 6 of 2015. The appellant's views on his suit (Civil Case No. 13 of 2016) are both faulty, regrettably in accurate and seriously wanting in legal terms. The appeal is thus dismissed in its entirety with costs.

Dated at Sumbawanga this 18<sup>th</sup> day of August, 2021.



  
C.P. Mkeha

JUDGE

18/08/2021

Coram - Hon. M. Mutaki – DR

Applicant - Felician Simwela

1<sup>st</sup> Respondent - Absent

2<sup>nd</sup> Respondent - Absent

B/C - Namtamwa

**Court:** Judgment delivered in presence of the Applicant in person on the absence of the both Respondent.

Right of appeal explained.



**W.M. MUTAKI**

**DEPUTY REGISTRAR**

**18/08/2021**

