

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA
(PC) CIVIL APPEAL NO. 19 OF 2022**

(Arising from Bukoba District Court of Bukoba in Civil Application No. 14 of 2020 and Probate and Administration Cause No. 7 of 2021 at Gera Primary Court)

RAYMOND CHARLES..... APPLICANT

VERSUS

WILFRED CHARLESRESPONDENT

(Administrator of the State of the late Carolina Charles)

JUDGMENT

Date of Judgment: 22.07.2022

A.Y. Mwenda, J

The appellant, before District Court, filed Land Case Appeal No. 31 of 2017. He intended to challenge the decision of PC Probate Case No. 7 of 2017 at Gera Primary Court. Before responding to the grounds of appeal, the respondent filed a preliminary objection in that it was time barred. Having heard submissions from parties, the Hon. Magistrate found merits with the preliminary objection. The said appeal was then struck out.

After that, the appellant was dissatisfied with the said order and filed Civil Application No. 21 of 2018 before this court. This appeal reads as arising from Civil Case No. 31 of 2017, Bukoba District Court Original Probate and Administration

Cause No. 7 of 2011 at Gera Primary Court. The appellant was seeking extension of time to file appeal out of time against the ruling in Civil Appeal No. 31 of 2017 which struck out his appeal.

After determination of submissions of the parties this court found no merits with the appellant's application. His application was thus dismissed for want of sufficient cause and the ruling was delivered on 20/04/2020.

After that the appellant went back at the District Court where he filed Civil Application Case No. 14 of 2014. In the said application, the appellant was seeking extension of time to lodge appeal out of time against the decision in Probate and Administration Cause No. 7 of 2011 of Gera Primary Court. Things did not go well with him as the respondent filed a notice of preliminary objection on a point of law. The said point of objection was that his application was *res judicata* to Application No. 31 of 2017. This preliminary objection was sustained.

Aggrieved, the applicant came before this court with an appeal challenging the decision of District Court in Civil Appeal No. 31 of 2017 which struck out his application on the ground that it was *res judicata*.

When this matter was ripe for hearing, the appellant appeared in person without legal representation and the respondents were represented by Mr. Alli Chamani, learned Counsel. In his submission in chief the appellant stated that after he had filed Application No. 21 of 2018, the Hon. Judge advised him to go back at the District Court to file appeal out of time. He said, following that advise he filed

Application No. 14 of 2020 before the District Court which was met with a notice of preliminary objection in that it was res-judicata to Civil Appeal No. 31 of 2017. According to him the said Application No. 31 of 2017 was struck out. He added that the said Application No. 14 of 2020 was dismissed that is why he decided to go and file the present appeal. He concluded by submitting that Application No. 14 of 2020 was not res-judicata to Civil Appeal No. 31 of 2017 because the said Appeal No. 31 of 2017 was struck out and not dismissed.

In reply to the appellant's submission, Mr. Ali Chamani, learned counsel for the Respondent submitted to the effect that Civil Case Appeal No. 31 of 2017 at Bukoba District Court was struck out. After that, he said, the appellant filed Civil Application No. 21 of 2018 before High Court which shows it arises from Civil Case Appeal No. 31 of 2017 in Bukoba District Court and original Probate and Administration Cause No. 7 of 2021 at Gera Primary Court. He said the appellant was seeking leave for extension of time to lodge appeal out of time. The learned counsel said, this court at page 17 was of the view that he failed to advance good cause to justify extension of time. His appeal was then dismissed.

The learned counsel further submitted that even Civil Application No. 14 of 2020 (at page 3) was dismissed for being res judicata. He said res judicata can be seen in the trail of the cases he has been filling which are Civil Application No. 21 of 2018 (arising from Civil Case No. 31 of 2017), Civil Case Appeal No. 31 of 2017 of District Court of Bukoba and Civil Application No. 14 of 2020 of Bukoba District

Court. He then concluded by stating that the issue of res judicata still stands and he prayed this appeal to be dismissed.

In a brief rejoinder the appellant submitted that the said application was not res judicata and he prayed the present appeal to be allowed.

In determining this appeal it is pertinent to analyze as to whether Civil Application No. 14 of 2020 at Bukoba District Court is res judicata to Civil Appeal No. 31 of 2017.

To do so, it is crucial to look at the definition of res judicata. Section 9 of the Civil Procedure Code [Cap 33 RE 2019] state 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 the parties under whom they or any of the 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."

Clarifying on the above definition the court in the case of GEORGE SHAMBWE VS. TANZANIA ITALIAN PETROLEUM COMPANY Ltd [1995] TLR 21 the court held as follows that;

"For res judicata to apply not only it must be shown that the matter directly and substantially in issue in the contemplated suit is the same parties but also it must be shown that the matter was finally heard and determined by the competent court."

Further to that the court in the case of UMOJA GARAGE VS. NATIONAL BANK OF COMMERCE HOLDING CORPORATION [2003] TLR 339 held;

"The rationale behind the doctrine of res judicata is to ensure finality in litigation and is also meant to protect an individual from multiplicity of litigation."

In the present appeal, it is evident that the appellant after being aggrieved by the decision of Gera Primary Court in Probate and Administration Cause, lodged District Court Civil Appeal No. 31 of 2017. This appeal was however struck out as it was filed out of time. Aggrieved he filed Civil Application No. 21 of 2018 before this court seeking extension of time within which to file an appeal out of time against the order in Civil Appeal No. 31 of 2017. Having heard the parties and after a thorough analysis of the facts of matter versus laws, this court dismissed the application for failure to advance sufficient cause. The Appellant then went back before District Court and filed Civil Application No. 14 of 2020 seeking extension of time within which to lodge an appeal out of time. The District Court's Magistrate was of the view that this application was res judicata.

I have keenly considered submission of both parties and came up with a conclusion that Civil Application No. 14 of 2020 is not res judicata to Civil Appeal No. 31 of 2017.

This is due to reasons that Civil Application No. 31 of 2017 was struck out. Although the appellant's application in Civil Application No. 21 of 2018 in which the appellant sought extension of time to file appeal against the ruling in Civil Appeal No. 31 of 2017 was dismissed, its dismissal had no effect to Civil Appeal No. 31 of 2017 as it was already struck out and for that matter it was non existence. Since Civil Appeal No. 31 of 2017 was struck out and a dismissal of Civil Application No. 21 of 2018 had no effect to Civil Appeal No. 31 of 2017, then the appellant was justified to file Civil Application No. 14 of 2020.

In the upshot this court finds merits in this appeal and it is hereby allowed. The ruling of the District Court in Civil Application No. 14 of 2020 is set aside and it is ordered that the hearing of the same should proceed.

Each party shall bear its own costs.





A.Y. Mwenda

Judge

22.07.2022

Judgment delivered in chamber under the seal of this court in the absence of the Applicant and Respondent.



A.Y. Mwenda
Judge
22.07.2022