

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

PC CIVIL APPEAL NO 14 OF 2022

(Arising from Civil Appeal No 59 of 2020 in the District Court of Musoma at Musoma,
originated from Civil Case No 256 of 2020 of Musoma Urban Primary Court.)

MOSHI MAKURU APPELLANT

VERSUS

SUNGURA NYANGARYA RESPONDENT

JUDGMENT

22nd August & 22nd August, 2022

F. H. MAHIMBALI, J :

In this case, the appellant is challenging Civil Case no 256 of 2020 filed at the primary court of Musoma District (Musoma Urban) is res-judicata with Civil Case No 11 of 2016 and Civil Case No 19 of 2016 of Musoma District Court. According to the facts of the case, the respondent seems to have sued the appellant firstly via Civil Case No 11 of 2016 at Musoma District Court but later withdrew his claims. He later filed the proper claims at the primary court of Musoma District (Civil Case No 256 of 2020). With this latter case, the appellant raised

preliminary objection on point of law i.e. the suit is res-judicata. The trial court overruled the preliminary objection. The appellant unsuccessfully appealed to the district Court. This is the second appeal, maintaining the similar ground that Civil Case no 256 of 2020 at the primary court of Musoma District is res-judicata.

I have heard the parties during appeal hearing. There is no proof if the said Civil Case no 11 of 2016 or 19 of 2016 had court decisions or that the said suits were dismissed.

For re-judicata plea to stand, as rightly ruled by the District Court, that there must be four elements. There must be same parties litigating under the same title, for the same subject matter, cause of action and that the suit was finally decided by the court of competent jurisdiction. The principle of resjudicata encompasses 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. This position has been judicially stressed in a chain of decisions for instance

in **Peniel Lotta v. Gabriel Tanaki**, Civil Appeal No.61 of 1999, **Ester Ignas Luyambano vs. Adriano Gedam**, Civil Appeal No.91 of 2014, **Gerorge Shambwe v. Tanzania Italian Petroleum Co.Ltd** (1995) TLR 20, **Umoja Garage vs NBC Holding Corporation** (2003) TLR 339 just to mention few.

From the submission of the appellant in this appeal and at the subordinate court, I don't see any evidence of the former filed suits having elements of res-judicata to the current case. That could only be established by production of copies of claims, proceedings and judgment of the former proceedings. As per this fact, the plea of res-judicata has not been established as per law.

That said, the appeal fails and is hereby dismissed with costs.

DATED at MUSOMA this 22nd day of August, 2022.



F. H. Mahimbali

JUDGE

Court: Judgment delivered this 22nd day of August, 2022 in the presence of the both parties and Mr. Gidion Mugo, RMA.

F. H. Mahimbali

JUDGE