

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SONGEA SUB-REGISTRY)

AT SONGEA

DC - CIVIL APPEAL NO. 8 OF 2023

(Arising from the decision of the District Court of Songea at Songea in Civil Case No. 5 of 2022)

MUSTAFA ABDALLAH SWALEHEAPPELLANT

VERSUS

ZHAO LII.....1ST RESPONDENT

SIETCO CO. LTD.....2ND RESPONDENT

JUDGEMENT

Dated: 24th April & 12th June, 2023

KARAYEMAHA, J.

This is an appeal arising from the decision of the District Court of Songea at Songea, (hereinafter the trial court), in respect of **Civil Case No. 5 of 2022**, which was dismissed on the reason that it was *res judicata* to **Civil Case No. 6 of 2020** filed and determined by the Resident Magistrates' Court of Songea at Songea.

For a better appreciation of the matter, it is apposite that a brief background be stated. It rolls back to the evening of 1st January, 2020. On that day the appellant, operator of the 2nd defendant's grader, run off fuel when he was returning from the work site. Having parked at the roadside, he phoned the 1st respondent and informed him of the event. Immediately, the 1st respondent in a company of a site engineer of the



2nd respondent, rushed to where the appellant parked the grader. No sooner had they arrived thereat than they started accusing him of stealing fuel and started savagely attacking him with fits and kicks in Kungfu style repeatedly.

It is pleaded that the brutal attack caused the appellant to suffer injuries and pains on his head, chest, genitalia, legs and three teeth got knocked off and running unconscious. The incident was eventually reported to police by Samaritans. The police officers ushered in at the scene of crime, issued a PF3 and took the appellant to Mjimwema health centre. At the health centre he regained consciousness and was attended by Juma Hamza, the clinical officer who featured as PW3 at the trial. He was later referred to Songea Regional Hospital for further treatment and for ex-ray services.

Apart from the fact that the 1st respondent was criminally charged with the offence of assault causing bodily harm and eventually convicted, the appellant further pursued suit before the trial Court against the 1st and 2nd respondents of battery.

The suit encountered a formidable challenge from the respondents who through their Written Statement of defence (hereinafter the WSD) disputed all the assertions and put the appellant to strict proof.



At the commencement of the proceedings, four (4) issues were drawn to guide the proceedings. Of those, was the issue whether the instant suit was *res judicata* to Civil Case No. 6 of 2022 which was decided by the Resident Magistrate Court. The learned trial Magistrate found it apt to resolve this issue as it was disposing of the suit.

After hearing both parties, the learned trial Magistrate found and held that the suit before her was *res judicata* to Civil Case No. 6 of 2020. She pinned her findings on grounds that the appellant in substantiating his allegations relied on pains and injuries caused by the respondents in both cases, parties were the same and under the same title as in the case before her and that the former case was determined by a Court with competent jurisdiction. In all these she was guided by the holding in **Peniel Lotta v Gabriel Tanaki and others** [2003] T.L.R. 312.

The trial Court's decision aggrieved the appellant. He lodged his appeal on one ground complaining that the trial court misdirected itself in law and fact in not holding the cause of action in Civil Case No. 5 of 2022 and in Civil Case No. 6 of 2020 was not the same hence the suit before the trial court was not *res-judicata*.

Disposal of the appeal was ordered to proceed by way of written submissions consistent with a schedule which was drawn. By close of



business on 19th April, 2024, both parties had conformed to the schedule for filing the submissions.

Setting the ball rolling was Mr. Mbogoro who began by stating the provisions under which the doctrine of *res judicata* is founded. The learned counsel submitted that a matter to graduate the doctrine under section 9 of the Civil Procedure Code, [Cap. 33 R.E. 2019] (herein after the CPC) must satisfy five conditions. These are, **firstly**, the matter directly and substantially in issue in the subsequent suit must have been directly substantially in issue in the former suit. **Secondly**, the former suit must have been between the same parties or privies claiming under them. **Thirdly**, the parties must have litigated under the same title in the former suit. **Fourthly**, the court which decided the former suit must have been competent to try the subsequent suit. **Fifthly**, the matter in issue must have been heard and finally decided in the former suit.

Mr. Mbogoro pointed out further citing Mulla D.A, Code of Civil Procedure (Western Publishing House) that the phrase "matter directly and substantially in issue" is not enough to constitute a matter *res-judicata* that it was in issue in the former suit but rather must be alleged by one party and denied or admitted, either expressly or by necessary implication by the other. He argued further that the cause of actions in



Civil Case No. 6 of 2020 and in Civil Case No. 5 of 2022 are totally different. Regarding a cause of action in the former case, the learned counsel submitted that it was claims against the defendants jointly and severally of TZs. 100,000,000/= being general damages and specific damages for defamation, assault and wrongful termination of employment contract. On the latter case, it was submitted that the plaintiff's cause of action against jointly and severally is battery for which the plaintiff is claiming general damages.

Differentiating the reliefs sections, Mr. Mbogoro said reliefs sought in Civil Case No. 6 of 2020 were, **firstly**, that defendants be ordered to pay compensation of TZS. 100,000,000/= and **secondly**, that any other relief(s) this Honourable Court deemed fit and just to grant.

Guided by his conception of the facts, Mr. Mbogoro concluded that the two cases have different causes of action. Finally, the learned counsel prayed this appeal to be allowed with costs.

In his rely, Mr. Optatus began his onslaught by stressing that the matter in Civil Case No. 5 of 2022 is *res judicata* in essence because it was determined in Civil Case No. 6 of 2020 by the District Court of Songea by Hon. Rwehumbiza, SRM through a judgment delivered on 24/11/2021. The learned advocate went further to make reference to

the raised issue in the latter case, to wit, whether the act of the 1st defendant amounted to assault, which resulted to bodily harm to the plaintiff. He held the view that this issue was discussed and determined. Making reference to pages 1, 2, 3, 4 and 5 of the judgment in Civil Case No. 6 of 2020, the learned advocate contended that allegations are similar in both cases.

Of significance, the learned advocate argued that in all cases assault or battery is committed when a person physically strikes or attempts to physically strike another person. After going through the definitions of the two words and assault causing bodily harm, the learned advocate remarked that injuries and pains sustained by the appellant were caused/inflicted by the 1st respondent through a beating. He relied on the pleadings in two cases. Citing paragraphs 3, 8, 13 and 15 of the plaint in Civil Case No. 6 of 2020, the advocate stated that the appellant alleged assault which resulted into headache, chest ache, humbergo, pains at genital area, pains on both upper limbs and traumatic pains which are substantially identical to Civil Case No. 5 of 2022 averred under paragraphs 8, 10 and 12.

Having submitted as such, Mr. Optatus urged this Court to uphold the long-standing principle that there should be an end to law suits and

that no man should be vexed twice over the same cause. He then prayed the appeal to be dismissed with costs.

To start with, the doctrine of *res judicata* states that once a court or judicial tribunal of competent jurisdiction to determine the matter in issue in any suit or proceedings between the parties thereto has finally decided those matters, such decision, unless reversed on appeal or revision, is conclusive, so that the parties thereto or their privies are precluded from disputing or questioning in any later litigation the correctness of such earlier decision, in law or in facts, as against any other party or privy thereto. The doctrine also acts as an estoppel to such parties to relitigate those same matters in any subsequent suit because the doctrine apart from binding the parties as to the matter decided, also puts to an end the particular cause of action on which the former litigation between the parties was founded. In the words of Sir Udo Udoma, C.J., in the case of **Karshe vs Uganda Transport Co.**, (1967) E.A 774 at page 777:

"... once a decision has been given by a court of competent jurisdiction between two persons over the same subject matter, neither of the parties would be allowed to relitigate the issue again or deny that the decision had in fact been given, subject to certain conditions."



In Tanzania, the principle of *res judicata* is embodied in section 9 of the CPC, which provides that:

"9. Where the subject matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by a title number under the Land Registration Act, the decree shall specify such title number."

The rationale of the doctrine of *res judicata* finds expression in two Latin Maxims. One, *interest rei publicae ut sit finis litum* (meaning that the interest of the general public requires that there must be an end to litigation); and two, *nemo debet bis vecali, si constat curie quod sit pro una et eadem cause* (meaning that no man should be twice sued or twice prosecuted upon one and the same set of facts, if there has been a final decision of a competent court).

Emphasising on the importance of *res judicata*, the Court of Appeal in the unreported Civil Appeal No 91 of 2014-**Esther Ignas Luambano vs. Adriano Gedam Kipaile** had this to say:

"Res judicata is a fundamental legal doctrine that there must be an end to litigation. The objective is to bar multiplicity of suits and guarantees finality of litigation."

In its instructive decision, the Court of Appeal in **Esther Ignas Luambano** (supra) on close examination of section 9 of the CPC and



recalling its decisions in the case of **Paniel Lota v. Gabriel Tanaki & two others**, Civil Appeal No. 6 and **The Registered Trustees of Chama cha Mapinduzi v. Mohamed Ibrahim Versi and San and Ali Mohamed Versi**, Civil Appeal No. 16 of 2008 (both unreported) laid down five (5) essential elements. They are:

"1. The matter directly and substantially in issue in the subsequent suit must have been directly substantially in issue in the former suit.

2. The former suit must have been between the same parties or privies claiming under them.

3. The parties must have litigated under the same title in the former suit.

4. The court which decided the former suit must have been competent to try the subsequent suit.

5. The matter in issue must have been heard and finally decided in the former suit."

Looking at the facts in civil case No. 5 of 2022, it is crystal clear that the incident underlying that case was battery as result of the respondents attacking the appellant all over his body with fists and kicks in a Kungfu style. Likewise, the appellant allegations in Civil Case No. 6 of 2020 was that the respondents assaulted the appellant and claimed TZS. 100,000,000/= . As hinted, suits involved the same parties, the same incident of the appellant driving grader running off fuel when



returning from the site work and calling the 1st respondent, are the same in both cases. The case was conclusively determined by the Resident Magistrates Court of Songea at Songea which has concurrent jurisdiction with the District Court in 2021. None of the parties appealed against the court's decision in that case.

Mr. Mbogoro argued that a cause of action in the former case, the claims against the defendants jointly and severally are TZS. 100,000,000/= being general damages and specific damages for defamation, assault and wrongful termination of employment contract. I agree with him. However, with due respect, facts are clear that the claim traces origin in assault as is directly related to the present case. I fully agree with Mr. Optatus that both cases dealt with the issue of assault or battery which is committed when a person physically strikes or attempts to physically strike another person. The appellant herein was physically struck by the 1st respondent.

I have as well gone through the complaints of both cases, particularly paragraphs 3, 8, 13 and 15 in Civil Case No. 6 of 2020, and paragraphs 8, 10 and 12 in Civil Case No. 5 of 2022 cited by Mr. Optatus. Obviously, they convey similar message that the appellant alleged assault which resulted into headache, chest ache, humbergo, pains at genital area,



pains on both upper limbs and traumatic pains. Therefore, there can be no difference in the facts and reliefs sections as argued by Mr. Mbogoro.

Generally speaking, this case graduated the conditions pertaining *res judicata* as stipulated in section 9 of the CPC and as ably highlighted by Mr. Mbogoro. In my considered view, the appellant had no automatic right to institute a fresh case by changing words and suing the same parties under the same subject matter. This equates itself in prosecuting the respondents twice upon one and the same set of facts. It also contravenes the interest of the general public which requires that there must be an end to litigation.

In the upshot, I find and hold that the trial court did not misdirect itself in law and fact because the matter is *res judicata*. On the strength of the foregoing discussion, I find the appeal unmerited. Accordingly, it is dismissed on its entirety with costs.

It is so ordered.

DATED at **SONGEA** this 12th day of June, 2024



J. M. KARAYEMAHA
JUDGE



