



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT MUBENDE
LABOUR DISPUTE REFERENCE NO. 001 OF 2023

KABALINDA JAMES :::CLAIMANT

VERSUS

TOLESHEET ENTERPRISES LTD:::RESPONDENT

Before:

Wabwire Musana J.

Panelists: Hon. Jimmy Musimbi, Hon. Emmanuel Bigirimana & Hon. Michael Matovu.

Representation:

1. Messers Nsubuga, Katosi Associated Advocates for the Claimant.
2. Mr. Livingstone Ojaku of M/S Alaka & Co. Advocates for the Respondent.

Case Summary

Civil Procedure-Admissions-admissions of the existence of prior judgment on identical facts.

Industrial Court procedure- exercise of referral jurisdiction.

Civil Procedure-Res judicata-Principles of Res judicata-The Claimant had already filed a similar case in the High Court at Mubende, where he was awarded a 10% commission on a land sale transaction. The High Court found a valid agency contract between the claimant and the respondent. On a preliminary point before the Industrial Court, it was determined that the current case is res judicata because the High Court had already decided on the same matter involving the parties. The Court emphasized the importance of judicial economy, efficiency, preventing litigation duplication, and optimal use of scarce judicial resources. The case was dismissed with no order as to costs.

RULING

Introduction

[1] This ruling concerns a preliminary point of law raised by Mr. Ojaku for the Respondent, who argues that the present matter is *res judicata*, having been subject to the decision of the Honourable Mr. Justice Moses Kazibwe Kawumi in the matter of *Tolosheet Enterprises Ltd v Kabalinda James*.¹ *Res judicata* is a strict rule. It concerns the judicial economy's optimal use of scarce resources and avoids inconsistency in judicial decisions. After careful

¹ High Court Miscellaneous Application No. 211 of 2023 Kazibwe J(as he then was) 17th October 2023

consideration and by the admission of the Claimant, the Court concurs with Mr. Ojaku's argument that the matters before this Court are *res judicata* for the reasons herein.

Background Facts/Procedural History

- [2] According to the lower record, the Claimant lodged a complaint against the Respondent with Mr. Anthony Mayiga, Labour Officer at Mityana. As part of his duties, the Labour Officer was responsible for handling labour-related disputes. The Claimant alleged that the Respondent had assigned him the duty to sell land. Under the assignment, he would be entitled to a commission of UGX 74,308,000/=. In his referral to this Court dated the 20th January 2023, Mr. Mayiga reported that the Respondent was summoned several times but refused to attend. Copies of documents in support of the complaint and summons were attached to the referral.
- [3] On the 1st of March 2023, the Registrar of this Court issued a notice of claim or reference notices under Rule 5 of the Labour Dispute(Arbitration and Settlement) Industrial Court Procedure Rules, 2012. There is no record that the Claimant was served with or picked this notice from the Court Registry.
- [4] When the matter came before us on the 5th of June 2024, Mr. Ojaku informed us that he had not been served with a memorandum of claim so that he may file a memorandum in reply. He indicated that the Claimant had filed a similar matter at the High Court in Mubende seeking payment of commission on the sale of land where the Claimant awarded UGX 74,308,000/=. It was Mr. Ojaku's view that the Claimant had been satisfied, thus his absence. We directed Counsel to file his pleadings and any arguments in writing. ² On the 2nd of July 2024, Mr. Ojaku prayed for an extension to complete his filings. The extension was granted to ensure that both parties had sufficient time to prepare and submit their arguments and evidence in response to the Claimant's case. We directed Counsel to file skeletal arguments on the preliminary point of *res judicata*. On the 19th of August 2024, Mr. Ojaku told us that he could not find and serve the Claimant. He also notified us of the Claimant's previous Counsel's tragic demise. Noting the strictures of the plea of *res judicata*, we retired to consider our ruling.
- [5] On the 6th of September 2024, the date appointed for delivery of the ruling, the Claimant appeared in Court, pleading that he should be heard before the matter could be determined. In his oral address to the Court, the Claimant admitted to having filed and obtained a judgment in a similar matter at the Mubende High Court. He attributed his filing of a matter before the High Court to the costs of preparing eight copies of his pleadings as advised by the registry staff of the Industrial Court at the Mubende sub-registry. We also granted the Claimant leave to file his written arguments.

² H.C.C.S No. 007 of 2023

Determination

Summary of Respondent's Submissions

- [6] Mr. Ojaku submitted that the labour officer at Mityana Court referred a claim of commission for payment of land to this Court on 20th January 2023. On 9th March 2023, the Claimant filed a summary suit at the High Court in Mubende for recovery of UGX 74,308,000/= and in a ruling delivered on the 17th of October 2023, Kazibwe J.(as he then was)dismissed the Applicant's(the present Respondent's) application for leave to appear and defend and decreed a commission to the Claimant for sale of land. Counsel cited *In the Matter of Mwariki Farmers Company Ltd*³, *Akuku v Munia & Anor*⁴, *Ponsiano Semakula v Susan Magala & Anor*⁵, *Boutique Shazim Ltd V Norattam Bhatia & Anor*⁶ and *Saleh Bin Kombo Bin Faki v. Administrator-General, Zanzibar*⁷ for the principle of *res judicata*, where a litigant attempts to file a subsequent lawsuit on the same matter after having received a judgment in a previous case involving the same parties.

Claimant's reply

- [7] In his written submissions, it was argued that the Claimant filed a complaint before the labour officer on 3rd February 2021 seeking recovery of his 10% commission on selling the Respondent's land. He followed up until December 2022. There being no result, he assumed that the labour officer had abandoned the matter. He thus filed a summary suit at Mubende High Court, for which a judgment was obtained.
- [8] On *res judicata*, Counsel argued that it should be considered last after the questions of propriety of the Respondent's memorandum in reply because the Claimant had not filed a memorandum of claim to constitute a claim before the Court. Counsel cited the Labour Dispute(Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012, in support of the proposition that absent of a memorandum of claim, there was no suit before the Industrial Court, and therefore the Respondent did not have locus to raise the plea of *res judicata*. It was also argued that filing the suit before the High Court in Mubende was a mistake of counsel and ought not to be visited on the Claimant.
- [9] Regarding *res judicata*, it was argued that there was no judgment in the labour matter before the labour officer when the Claimant filed the matter at the High Court.

Decision

³ [2007]2 EA 185
⁴ [2017] UGHCLD 367
⁵ (1990) HCB 90
⁶ [2009] UGCA 45
⁷ [1957] EA 191

- [10] The law relating to preliminary objections is very well settled. Law J.A in *Mukisa Biscuit Manufacturing Co. Ltd Vs. West End Distributors Ltd*⁸ stated thus:

“So far as I am aware, a preliminary objection consists of a point of law which has been pleaded or which arises by implication out of the pleadings and which objection point may dispose of the suit. A preliminary objection raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any facts has to be ascertained or if what is sought is exercise of judicial discretion.”

- [11] What is clear from the submissions of Counsel is that the parties explicitly agree that a labour complaint was filed before the labour officer at Mityana, which was unresolved and referred to this Court. It is also agreed that the Claimant filed Civil Suit No. 007 of 2023 at the High Court in Mubende, for which a judgment was issued. In our view, this agreed fact amounts to an admission. In *Uganda Communications Employees Union and Others v Uganda Telecom Limited and Another*,⁹ this Court restated the law of admissions from Section 16 of the Evidence Act Cap.8, which provides that an admission is an oral or documentary statement that suggests an inference as to any fact in issue or relevant fact and which is made by any person. We also observed that sections 17 to 19 of the Evidence Act define circumstances under which admission may be made. We referred to the Uganda Civil Justice Bench Book¹⁰ which defines an admission as an acknowledgement that particular facts are true. We noted that admissions dispense with the need for proof of a fact and mean that a party has conceded to the truth of an alleged fact.¹¹ The admission must be unambiguous, clear, unequivocal, sufficient, plain and obvious.¹²
- [12] In our view, following the plain and clear admission both in the Claimant’s oral address to the Court and repeated by his Advocates in the written submissions, the fact of the judgement in High Court Civil Suit No. 007 of 2023 is indisputable. It is an admission. Therefore, the only question confronting this Court is whether the matters in that suit are *res judicata* in the matter before us.
- [13] Counsel for the Claimant argued that the matter before us was incompetent. This Court exercises appellate and referral jurisdiction. Under Section 5 of the Labour Disputes(Arbitration and Settlement) Act Cap. 227(**the LADASA**), a labour officer may refer a matter to this Court where it has not been resolved, there is no likelihood of an agreement or that parties seek a referral. In our view, once a labour officer has made a referral, this Court exercises referral jurisdiction and can determine the matter before it. Consequently, we disagree with Counsel for the Claimant that no matter resides before this Court, we think resolving the question of *res judicata* is necessary.

⁸ (1969) E.A 696

⁹ [2024] UGIC 21

¹⁰ Published by the Law Development Centre

¹¹ See *Matovu Luke & ORS vs. Attorney General*, HC Misc. Appl. No. 143 of 2003.

¹² See *Consolidated Bank of Kenya Ltd v Mombasa Development Ltd and Another* [1997]eKLR

[14] Under Section 7 of the Civil Procedure Act Cap. 282, **(the CPA)** it is provided that no court shall try any suit or issue in which the matter directly or 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 the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court. This is what constitutes *res judicata*. In simpler terms, *res judicata* means that once a court has decided a case, it cannot be re-litigated in another court. The key components of *res judicata* include the competence of the court that tried the matter, the presence of an allegation of a matter and an express or implied denial or admission by the other party, the existence of any ground of defence or attack in the former suit, and the relief claimed not granted or deemed to have been refused and the litigation in private or public interest by some persons for themselves or in the interest of others.¹³ There is also judicial unanimity on what amounts to *res judicata*. The cases cited by Mr. Ojaku are consistent with the Supreme Court's dicta in *Okumu and 7 Others v Uganda Electricity Transmission Company Limited and 6 Others*,¹⁴ where the Court observed;

In summary, in order to successfully rely on the defence of *res judicata*, it has to be proved that:

- a) there exists a previous suit in which the matter was in issue;
- b) a competent court heard the matter in issue;
- c) the matter in issue was heard and finally decided in the former suit.
- d) the issue has been raised once again in a fresh suit
- e) the parties were the same or litigating under the same title.

[15] The threshold for a determination on whether a suit is *res judicata* is therefore settled. In our view, it is an exercise of subjecting the current suit to a comparison with the pre-current suit against the parameters in *Okumu* above. That is the exercise we shall now perform.

[16] First, a copy of the pleadings in Civil Suit No. 007 of 2023 was attached to the memorandum in reply. It named Kabalinda James as Plaintiff and Tolosheet Enterprises Ltd as Defendant. To this extent, a suit exists or existed before the High Court of Uganda. The High Court is established under Article 139 of the 1995 Constitution with unlimited original jurisdiction in all matters. The High Court's competence in the previous matter is unassailable. As to the parties, there can be no doubt that they are the same as in the present matter. This caters for tests a), b) and d) in paragraph [14] above. In our view, these thresholds have been met.

[17] It was submitted that the High Court¹⁵ finally heard and determined the matter. A copy of His Lordship's ruling was attached to the memorandum in reply for these purposes. We have reviewed that ruling. First, it concerns an application for leave to appear and defend

¹³ Section 7 CPA

¹⁴ [2023] UGSC 32

¹⁵ Per Kazibwe J.

HCCS No. 007 of 2023. In the Court's summary of the facts, it was indicated that the Plaintiff(*now Claimant*) had filed the suit for recovery of UGX 74,308,000/= being 10% commission due for sale of land comprised in Block 44 Plots 1 and 2 land at Muinaina, Buwekula, Mubende District. The Court found an express agency contract between the Claimant and the Respondent or that an agency relationship existed between the parties. Dismissing the application for leave to appear and defend, the Court found no triable issue. In terms of remedies, it was established that the Claimant was entitled to UGX 74,308,000/= being 10% commission of the consideration paid by the Uganda Land Commission for the land. The Court issued a decree in favour of the Claimant for UGX 15,100,000/=, which was 10 per cent of the sum ULC had paid until the balance of the consideration was paid to the Respondent by ULC. Based on the appointment letter, the Court concluded that the Claimant was the Respondent's agent.

- [18] Returning to the claim before us, we must ask what commonalities exist between the ruling before the High Court(*HCMA 211 of 2023*) and the present claim(*LDR 001 of 2023*). The Court has not seen the memorandum of claim, but the labour officer's referral letter is most compelling. The Claimant did not file any other documents, but we think the reference letter is sufficient for the doctrinal importance of *res judicata*. According to M. Ssekaana J. and SN Ssekaana *Civil Procedure and Practice In Uganda*,¹⁶ several reasons why *res judicata* is essential are observed. The Learned Authors argue that it ensures that people cannot be taken to Court repeatedly, reduces the risk of conflicting decisions or endless litigation, and keeps the system leaner and more efficient. Secondly, the judicial economy would demand that the Court determines the question. According to the First Instance Division of the East African Court of Justice in *Frank Kanyambo Rugasara & Another v Attorney General of the Republic of Rwanda*,¹⁷ the notion of judicial economy denotes efficiency in the operation of courts and the judicial system, especially the efficient management of litigation to minimise duplication of effort and avoid wasting the judiciary's time and resources.
- [19] Confronted with the preliminary objection on *res judicata* in the matter before us, this Court would be within its remit to examine the ruling of Kazibwe J in the matter before the High Court at Mubende as against the record of the matter now before us. It is our persuasion that the statutory imperative of expediting the delivery of labour justice, as provided under Section 8(2) LADASA supports our adopted approach.¹⁸ This Court does not enjoy unlimited jurisdiction in labour matters. It is a referral and appellate Court.¹⁹ Therefore, in the exercise of referral jurisdiction, the Court would be enjoined to consider the labour officer's reference. The question that comes into sharp focus is whether this Court's consideration of whether the matter is *res judicata* would occasion injustice or prejudice the Claimant. In our view, the labour officer's letter laid out the substance of the reference or the claim. The strictures of Section 7 CPA impose a bar on any court from trying a matter that is *res judicata*. It is, therefore, incumbent on the Court to determine if a matter is indeed *res*

¹⁶ 2nd Edn. LawAfrica

¹⁷ Consolidated Petition No. 5 & 22 of 2020

¹⁸ Further, a reading of the provisions of Section 5CPA, together with Section 33 of the Judicature Act Cap. 16, which requires the Court to avoid multiplicities of proceedings, support the approach that resolution of a question of *res judicata* when raised before a Court, would benefit judicial economy.

¹⁹ See Section 4 of the Labour Disputes(Arbitration and Settlement) Act Cap. 227 and Section 93 of the Employment Act Cap. 226

judicata before the Court proceeds. The wording of Section 7 CPA is couched in mandatory terms: “No court shall proceed with the trial”, and therefore, a *suo moto* determination of whether a matter is *res judicata* as per the threshold in Okumu is a matter that, for purposes of judicial economy, this Court can consider. In that regard, we will examine the reference letter and its attachments.

[20] According to the labour officer’s reference, what was referred to this Court is a complaint that the Claimant was assigned to sell land belonging to the Respondent, and in return, he would be paid a commission of UGX 74,308,000/=. The lower record contained several documents, amongst which was a letter dated 5th March 2020 addressed to the permanent secretary of the Ministry of Lands Housing and Urban Development(**the MOLHUD**) seeking compensation for land comprised in Muinaina-Block 44 Plot 1 and 2, a claim for payment addressed to the Secretary of the Uganda Land Commission from the Permanent Secretary MOLHUD naming the Claimant as the Respondent’s agent as following up the payment, a letter from the Principal Private Secretary to HE the President dated 26th February 2019 listing a complaint by the Claimant to HE in respect of compensation for the suit land and a letter by the Respondent appointing the Claimant as agent for the sale of the suit land for a commission of 10% of the value.

[21] From an examination of the reference letter, the commonalities are that in the previous suit, the High Court was determining payment under a common agency agreement for a common fee of UGX 74,308,000/=: which the Claimant sought in his complaint to the labour officer and which complaint was referred to this Court. The Court was also considering an appointment letter as an agent over land common to both disputes viz Muinaina-Block 44 Plot 1 and 2. It is, therefore, quite clear that the Claimant seeks to enforce rights as an agent in this Court, which rights were under dispute in the matter before the High Court. As discerned from Justice Kazibwe’s ruling, the issues in dispute were adjudicated upon and definitively settled by judicial decision. The Court entered a decree for payment of UGX 15,100,000/=: which is the commission payable until the balance of consideration is settled by the ULC. Therefore, there is a final earlier judgment on the merits of the Claimant’s case before the High Court from which the Claimant should seek his remedies. We uphold the preliminary objection that the issues in Labour Dispute Reference No. 001 of 2023 are *res judicata*. The stricture of Section 7 CPA is that no Court can try a matter that is *res judicata*. Therefore, LDR No. 001 of 2023 stands dismissed with no order as to costs.

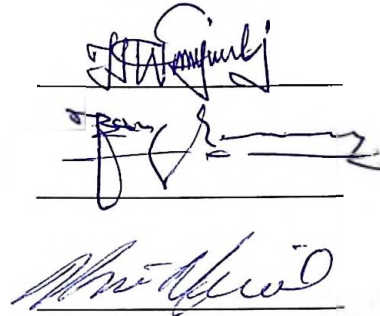
It is so ordered.

Dated, delivered and signed at Kampala this 17th day of September 2024


Anthony Wabwire Musana,
Judge, Industrial Court

THE PANELISTS AGREE:

1. Hon. Jimmy Musimbi,
2. Hon. Emmanuel Bigirimana &
3. Hon. Michael Matovu



17th September 2024

9:45 a.m.

Appearances

- | | |
|-------------------------------|-----------------------------|
| 1. For the Respondent: | Mr. Livingstone Ojaku |
| 2. For the Claimant: | Mr. Emmanuel Kayemba Ddungu |

Claimant in Court

Court Clerk: Mr. Amos Karugaba.

Mr. Ojaku: Matter is for ruling, and we are ready to receive it.

Court: Ruling delivered in open Court.

10:03 a.m.
Anthony Wabwire Musana,
Judge, Industrial Court