THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)

HCT-00-CC-CS-0588 OF 2003

ROBERT MWESIGWA AND OTHERS :::::::::::::::: PLAINTIFFS

VERSUS

BANK OF UGANDA :::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

R U L I N G:

It is claimed by the Plaintiffs in this suit that on 18/9/1998 the Defendant in exercise of its statutory powers seized INTERNATIONAL CREDIT BANK LTD thereby assuming the employment contracts of the Plaintiffs. It is further claimed that the Defendant subsequently terminated the Plaintiffs' employment contracts but has refused to pay salary arrears and terminal benefits to the Plaintiffs. Hence the suit.

When the case came up for a scheduling conference, Mr. Masembe – Kanyerezi for the Defendant raised 2 preliminary points of law. These are:

1. That the suit against the Defendant is res judicata, the same having been tried and disposed of by this Court.
2. That the suit is barred by section 6 of the Civil Procedure Act in that there is another pending suit in this Court against International Credit Bank Ltd which raises precisely the same issues as herein.

As regards the issue of res judicata, counsel produced a record of proceedings in respect of HCCS No. 1 of 2000. It is contended that the parties in that suit as well as the claims are the same as herein. I was not able to verify the issue of parties because the list of names of the other Plaintiffs mentioned in annexture 'A' to the ill fated plaint has not been availed to me. I have not been able to tell, therefore, whether all the claimants herein were the same claimants in HCCS No. 1/2000.

Coming now to the ruling in HCCS No. 1/2000, it is contended that an objection was raised that the Plaintiffs did not have any cause of action against Bank Of Uganda. That the Court held on that issue that as a matter of law, Bank Of Uganda is not liable under the employment contracts sued upon.

Counsel argued that in the absence of an appeal against that ruling, any matter relating to the same issue would be res judicata. Counsel did concede that in the present suit the scope has been broadened. However,

he argues that it is still an identical claim. That they may have a claim against ICB but as far as Bank Of Uganda is concerned, any such matter ought to have been brought up in the old suit. It is now deemed to have been decided, he contended. He concluded on this point that it is not open to the Plaintiffs to come before another Judge of the same Court and advance the same argument.

As regards the bar under S.6 of the Civil Procedure Act, counsel argued that HCCS No. 1/2000 is till continuing. The matters in issue are the same as herein. According to counsel, therefore, this suit would have to be stayed so that Court gets to know the outcome of that other pending suit considering that it is the same matters in dispute. In counsel's view, the parties may not be the same since Bank Of Uganda was dropped. However, it is the same persons suing ICB. Counsel prayed in the alternative that in the event of Court finding that the suit is not res judicata, I order that it be stayed pending the outcome of that other matter.

LEARNED counsel for the Plaintiff's, Mr. Rutiba, does not share the above views. He argues that the Defendant herein was struck off the suit in HCCS No. 1/2000 as 2nd Defendant under 0.7 r 11 (a) of the Civil Procedure Rules (CPR) for reasons which the learned Judge stated in the ruling. According to him, it was incumbent upon the Plaintiffs to study the ruling to see whether the plaint could be remedied by filing another suit under 0.7 r 13 CPR.

Further, that the plaint in HCCS No. 1/2000 did not allege bad faith on the part of the 2nd Defendant. Also the letters of termination by the 2nd Defendant had not been attached. There was therefore no clear nexus between the Plaintiffs and the 2nd Defendant, Bank Of Uganda, to the suit, a tacit admission on the part of counsel that in the circumstances of that case, especially considering the plaint and its attachments, the learned Judge was after all justified in ordering the plaint struck in as far as Bank Of Uganda was concerned. That as a result of these defects, the Plaintiffs filed a fresh suit against the 2nd Defendant. He cited Nagokwo –Vs- Sir Charles Rutahaba [1976] HCB 99 to support his argument that a plaint dismissed for disclosing no cause of action under 0.7 r 11 (a) CPR can be represented as a fresh suit under 0.7 r 13 CPR.

As regards the alleged bar under S.6 CPA, counsel contends that it is not true that the two suits are against the same parties. HCCS No. 1/2000 is against ICB whereas this one is against Bank Of Uganda. He concedes that it is undesirable to have 2 suits which are similar before Court but argues that the circumstances obtaining at the time warranted so. Counsel invited me to reject the 2 points of law.

I have given my most anxious consideration to the arguments of both counsel.

Res judicata is defined in Black's Law Dictionary [7th Edn, P.1312] as:

A matter adjudged ..... Rule that a final Judgment tendered by a Court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action (para phrasing mine).

Simply put, the Latin maxim res judicata pro veritate accipitur means that a thing adjudicated is received as the truth. In other words, a judicial decision is conclusive until reversed, and its verity cannot be contradicted. Res judicata presupposes 4 main things:

1. that there are 2 opposing parties.
2. that there is a definite issue between them.
3. that there is a tribunal competent to decide the issue; and
4. that within its competence, the tribunal has done so.

Once such matter or issue between the parties has been litigated and decided, it cannot be raised again between the same parties, but other parties are not so bound. In the instant case, a dispute arose between the Plaintiffs and the Defendant. The dispute culminated into HCCS No. 1/2000. The Defendants were ICB and Bank Of Uganda. The same Mr. Kanyerezi for Bank Of Uganda raised the issue of his client's liability by way of a preliminary point of law.

From the records, before this point of law was raised, Mr. Rutiba for the Plaintiffs intimated to Court that his clients were of the view that they would not get justice from the Trial Judge. After listening to the parties, my brother E.S. Lugayizi J. refused to step down. He was legitimately entitled to take the course he did. Mr. Kanyerezi then raised the issue of liability. Mr. Rutiba was unable to respond. He had sought an adjournment to seek fresh instructions on the matter but the Court disallowed it. The Judge proceeded to make a ruling on the matter. Again it is not my duty herein to question the procedure he adopted. However, he did find that the Plaintiffs enjoyed a right, and that the same had been violated. As to whether the 2nd Defendant (the only Defendant herein) was liable for that violation, he considered the fact that Bank Of Uganda was not a party to the contracts of employment, which gave rise to the obligation the 1st Defendant had, to pay the Plaintiffs their respective salaries and benefits during employment and on termination thereof. He said:

> *"For that reason it is difficult to hold the 2nd Defendant liable for any default in payment of those dues."*

It should be remembered that according to counsel for the Plaintiffs, his clients had not attached to their pleadings copies of termination letters purportedly issued by officials of Bank Of Uganda. The omission is said to

have been cured herein to thereby establish the nexus between Bank Of Uganda and the terminations. The Judge went further:

> *"Secondly, S. 49 of the Financial Institutions Statute also protects the 2nd Defendant against all suits arising from the discharge of its statutory obligations under sections 30 and 31 of the Financial Institutions Statute unless the Plaintiffs show bad faith on the part of the Defendant" (emphasis mine).*
>
> *"The rationale behind that protection is obvious. It is in the public interest that the 2nd Defendant, which is the watchdog of financial institutions in Uganda charged with the responsibility of ensuring that such institutions are properly managed, must not be unnecessarily opened up to all sorts of legal actions as it carries out its statutory duties. Be that as it may, in the instant case, the plaint does not allege bad faith on the part of the 2nd Defendant. That means that S. 49 of the Financial Institutions Statute fully protects the 2nd Defendant against the Plaintiffs' suit" (again emphasis mine).*

For the reason above, the Court found that the plaint (and I would add its attachments") did not reveal a cause of action against the 2nd Defendant and ordered it struck out. The issue now is whether this is an entirely new cause of action that warrants a hearing by this Court. I believe it is. I will give the basis for that belief. The Plaintiffs emphasize that they don't dispute the

findings on the factual and legal issues they faced in HCCS No. 1/2000. Rather, they raise what they say is now a completely fresh issue after remedying the faults in the ill-fated plaint.

I have had occasion to read both plaints. Material alterations were made to the original plaint to come up with the instant one. The instant one is, so say, an improvement on the one in HCCS No. 1/2000. Areas improved upon were mentioned by Mr. Rutiba. It is not necessary to enumerate all of them here but they include an allegation of bad faith on the part of the Defendant in terminating their services. In my view, after purportedly bringing the matter out of the protection afforded to the 2nd Defendant by S.49 of the Financial Institutions Statute (as it then was) what is before me now is something which still has to be tested as a matter of law. It is significant to note that the Court in HCCS No. 1/2000 did not dismiss the Plaintiffs' cause of action. It rejected the plaint in respect of Bank Of Uganda. With this rejection, the Plaintiffs were at liberty to present a fresh plaint in respect of the same cause of action under 0.7 r 13 CPR. This Rule provides:

> *"The rejection of the plaint on any of the grounds herein above mentioned shall not of its own preclude the Plaintiff from presenting a fresh plaint in respect of the same cause of action."*

Clearly, the law under which the plaint was rejected allows the sort of thing the Plaintiffs have done herein. The position would have been different if no

surgery had been done on the ill-fated plaint to cure the defect pointed out by the Judge as denying them a possible cause of action against Bank Of Uganda or if the Court had dismissed the suit and not merely struck it out. It would appear to me that inspite of that surgery, the issue of cause of action against Bank Of Uganda is something yet to be tested as a matter of law, the same way it was tested in HCCS No. 1/2000, if the Defendant herein so desires.

Once again, I consider it settled law that for res judicata to apply, the matter ought to have been heard and determined on merits. Where the merits of the matter were not heard and determined, the doctrine does not apply. See: **Nakiride –Vs- Hotel International Ltd** [1987] HCB 85. See also **Busulwa –Vs- Kakinda** [1979] HCB 179 where this Court observed that where a suit has been dismissed on a preliminary point, the Plaintiff has not had an opportunity of being heard on the merits and the matter is not res judicata.

Relating the above law to the facts of the instant case, it is clear to me that when the point of law came up for determination, it was not decided finally. The plaint was merely struck out. In these circumstances, I would agree with Mr. Rutiba that the doctrine of res judicata strongly argued by Mr. Kanyerezi does not apply to the Plaintiffs' suit. The Rules of procedure under which the plaint was struck out do not preclude the Plaintiffs from instituting a further

suit in respect of the same cause of action. If anything 0.7 r 13 CPR allows it. Given that it is not arguable that new issues have been raised in the present suit and the uncertainty of the question as to whether the plaint herein raises a cause of action against the Defendant, I'm unable to find that the current suit is barred on the basis of res judicata. I would disallow the first point of law and I do so.

As regards the existence of two suits on the same point of law, I notice that HCCS No. 1/2000 is against ICB. This suit is against Bank Of Uganda. The two are independent institutions, each with its own corporate image. ICB is in the process of liquidation.

The circumstances under which the 2 suits came into existence have been satisfactorily explained to Court. The two Defendants had been sued together. Fate separated them. The precipitating factors for the separation have now purportedly been taken care of. In my view, a consolidation under 0.10 r 1 CPR, after the issue of whether the plaint raises a cause of action against the Defendant has been determined, if any is raised, would remedy any unsatisfactory state of affairs. It is not the sort of matter that would necessitate a stay of one of them. This point also lacks merit. I disallow it.

In the result, both points of law are rejected. The Court shall entertain the issue of whether or not the plaint herein raises a cause of action against the Defendant or else proceed with the scheduling conference.

The Plaintiffs shall have the attendant costs herein in any event. I so order.

Yorokamu Bamwine

J U D G E

06/04/2005