

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

CIVIL SUIT NO. 0023-2011

**PALLISA HOTEL LTD
T/A COUNTRY INN.....PLAINTIFF
VERSUS
KADAPAO DANIEL MILTON.....DEFENDANT**

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The brief facts.

The Plaintiff sued defendants under Civil Suit 55 of 2007. Parties had entered a consent judgment and plaintiff sought a declaration that the addendum of 15th March 2008 was illegal, null and void. Before trial of civil suit 0023/2011, the execution court, made a ruling on the status of the addendum under Civil suit 55 of 2007 during the taxation hearing where the Registrar found that the addendum was not executable and was a foreign document. As a result of the ruling the plaintiff formerly withdrew Civil Suit 0023/2011 having been overtaken by events. However the defendant had filed a counterclaim, which he waited to pursue inspite of the withdraw.

The plaintiff has now raised the following preliminary objection regarding this matter.

1. The counterclaim is barred by law for contravening Section 7 and 34 of CPA and is Res Judicata.

The plaintiff argued in principle that the issue of whether the addendum varied the consent. Judgment dated 18th December 2008 was adjudicated upon and determined by the honourable court during the execution proceedings in High Court Civil Suit 055 of 2007. He referred court to the said ruling dated 3rd July 2014- (which I have noted as annexed.)

He referred to Section 7 of the CPA and Section 34(1) of the CPA, and cases of *Kaferro Sentongo v. Shell Uganda Ltd & Another CA 50 of 2003*, *Kiiza Walusimbi Brazio & 2 Others v. Senyimba Charles & 3 Others Civil Suit 24 of 2011*, and *Jimmy Mukasa v. Tropical Investments Ltd and 3 Ors Civil Suit 232 of 2007*, as authorities for his contention that Section 7 of the CPA, and Section 34 (1) of the CPA have finality of bearing on the matters before court, on the doctrine of *Res-judicata*. He argued that the issue was substantially heard and decided in the execution proceedings in the HCCS. 055/07 and a Ruling delivered by the Assistant Registrar. The defendant has never appealed against the said decision, and hence it operates as a final decision and operates as *Res-judicata* in a subsequent suit as this one.

In response the defendant differed and maintains that the suit was filed in 2011 long before the taxation ruling and hence the counter claim would not fall under section 7 of the CPA. He argued that the counter claim raised another issue not covered by the Registrar as to whether the addendum was enforceable either as a variation or as a contractual obligation under paragraph 11.4-11.4. He argued that the Ruling did not cover the pleadings of the defendants/defence counter claim. He argued that plaintiff is stopped from denying that it disputed the existence of the addendum. He opposed the prayer of *Res judicata* based on the above facts on the record.

The facts of this case have been correctly summaries by applicants in the submissions. The law on *Res-judicarta* has been well articulated as it stands under section 7 of the CPA thus:

“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 a subsequent suit or the suit in which the issue has been subsequent suit or the suit in which the issue has been subsequently raised and has been heard and finally been decided by court.”

Also under Section 34 (1) CPA it is provided;

“All questions arising between the parties to the suit in which the decree was passed on their representatives and relating to the execution,

discharge or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”

The above provisions are the law on the principle of law espoused by counsel for plaintiff. If the plaintiff had raised the issue of the addendum under his plaint of (Civil Suit 0023/11) as the point of controversy, and the same was arising from a consent judgment entered under Civil Suit 55 of 2007, whose execution proceedings were pending before the Registrar, but the same issue came up during the taxation hearing. The Registrar in his Ruling then determines and disposes off the same, which rendered Civil Suit 23/11 unnecessary where upon the plaintiff withdraws it as settled, can the counterclaim, based on the same facts, survive for trial before this court?

From the facts and the law I do not agree with the Respondents that the counterclaim can survive to be tried by this court. From whatever angle one approaches it, the matter is Res judicata.

The issue which the counterclaim raises is the addendum, whose legality the high Court has through the Ruling of the Registrar of 3rd July 2014, pronounced itself on. The defendant argues that the Registrar’s Ruling did not consider the issue whether the addendum is enforceable either as a variation or as a contractual obligation. He referred to paragraph 11.4-11.4.

I have checked out the above paragraph 11.4-11.4 of the counterclaim.

The paragraph reads:

“11:3: That by addendum dated 18th March 2008 prepared by the plaintiff, the plaintiff sought to vary terms of consent order reached on 18th December 2007 particularly clause 2 thereof to provide for more time to settle the consent judgment dated 18th December 2007. Further that the addendum introduced an interest of 5% per month as penalty for default in satisfying the consent order dated 18th December 2007.

11.4: the interest remains outstanding to date.”

From the pleadings above there is no mention anywhere of the said addendum being enforceable as a variation or as a contractual obligation. It was not pleaded. In the reply to written statement of defence, all above is denied.

The scheduling notes filed on the court record by the defendants on 20.8.2013 list two issues for determination and paragraph 10 of their filed memorandum thus;

- (i) Whether the plaint discloses a cause of action.
- (ii) What remedies are available to the parties?

From all the findings above, I do not agree with the defendants that there was an issue which the Ruling of Registrar did not consider which would require determination by this court.

In any case it has been held by the courts under different authorities that Registrars and Deputy Registrars are assistant officers of the High Court and therefore their decisions are decisions of the high Court. See: ***Ddegeya Trading Stores (U) Ltd vs. Uganda Revenue Authority CACA 49*** (unreported).

The ***Supreme Court in AG v. James Kamoga SCCA 8 of 2004*** (unreported), held that:

“the powers of a Registrar of the High Court are circumscribed. A Registrar is an official of the High Court and not of a subordinate court.”

I therefore agree with plaintiff if a Registrar determines a matter as a taxing master, the provisions of section 34 (1) CPA, became applicable to that matter; and therefore the Registrar had authority to finally decide the issue of the consent order and addendum which were pending before him. By his Ruling of 3rd July 2014, he finally determined the same. The matter cannot be resurrected again in 2016, as a counterclaim. Truly as argued it was overtaken by the event of the 3rd July 2014 Ruling. The same is moot, for being *Res judicata*. I agree that the decided and quoted cases of ***Kafeero Sentengo v. Shell Uganda Ltd, Kiiza Walusimbi & Barzio & 2 Others v. Senyimba Charles Civil suit 248/2011***, are instructive on this matter.

This ground is upheld.

Regarding objection No.2, the arguments are covered by the arguments under objection No.1. The arguments as raised were the same arguments before the Registrar which formed the basis of his finding that the addendum was a foreign document. I do not wish to make finding on this objection because having found that the Registrar has already pronounced himself on the same, it is *res judicata*. To emphasize this point, I refer to **Kamunye & Others v. Pioneer General Assurance Society Ltd (1971) EA 263 Law**, Ag V.P. held:

“The test whether or not a suit is barred by res judicata seems to me to be- is the plaintiff in the second suit trying to bring before court in another way and in the form new cause of action a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. It so the plan of res judicata applies not only to points upon which the first court was actually required to adjudicate but to every point which property belonged to the subject of litigation and which the parties exercising reasonable diligence might have brought forward at the time (Greenhalgh v. Mallord (1947) 2 ALLER 255). The subject matter in the subsequent suit must be covered by the previous suit, for res judicata to apply.”

The above discourse shows that this counterclaim, attempts to resurrect what has already been determined, including questions of the alleged illegality of the addendum.

In his Ruling the DR states thus:

“The problem lies with the addendum which I observe that it was not joined to the foreign document as it has not carried the authority of the court as not bearing a court seal and signature of the Registrar endorsing it to form part of the record. I do so have it that there is no pending order that should be executed by the court because the total sum in the consent order has been paid and litigation should be brought to an end.”

This matter has therefore been substantially covered by the Registrar’s Ruling above and is not available for this court to indulge into determination.

This application therefore succeeds on account of the preliminary objection as raised.
I find that the matter is *Res judicata*. The plaintiff/counter defendant's objections are upheld.
For those reasons, the counterclaim is dismissed with costs.
I so order.

Henry I. Kawesa
JUDGE
23.03.2017