

4. That he sued both **Rev. Herbert Kiviri** (1st Respondent/defendant) and **Bonabye Rashid** in **H.C.C.No.57 of 2015** and as the case was on going, **Mr. Bonabye Rashid** again purported to sell the same land to **Mr. Okello Lawrence**, who knew the ongoing wrangles over the land but went ahead to buy the same, and put up a fuel filling station known as **E. Oil Energy Fuel Station**.
5. That in order to avoid a multiplicity of suits and also to accord **Mr. Okello Lawrence** a chance to be heard on a matter that has a direct impact on his rights and interests, leave should be granted to amend the plaint to include **Mr. Okello Lawrence** as a defendant.

[3] None of the Respondents filed any affidavit in reply. Nonetheless, counsel for the Respondents **Ms. Zemei Susan** in her submissions raised 2 objections;

a) That the suit is *res judicata*.

b) That the Application is not tenable in law.

[4] Counsel for the Applicant **Mr. Cranimer Tayebwa** on the other hand, submitted that the amendment sought is a bona fide one geared towards resolving all the matters in controversy over the suit land. That the matters in controversy are intertwined and overlap among the respondents and **Mr. Okello Lawrence** who bought the suit land during the pendency of the suit. That any decision made on the suit property without his input would be unlawful and unconstitutional as he will be subject to civil liabilities without being heard hence the justification for the amendment. Lastly, that the amendment introduces no new cause of action or any new matter and will cause no injustices to any of the parties to the suit.

[5] Counsel for the Applicant never rejoined in submissions as regards the 2 objections that were raised by counsel for the 2nd Respondent. Since

the objections are points of law, I proceed to first resolve the objections.

1. Whether or not the suit is *res judicata*.

[6] While relying on **S.7 CPA and Halsbury's laws of England Vol.12 (2009) 5th edition, Buryahika Stephen & 2 Ors Vs Hoima sugar Ltd & 7 Ors Masindi H.C.C.S. No.20 of 2017, and Semakula Vs Magala & Ors [1979] HCB 90**, counsel for the Respondent submitted that the plaint the Applicant seeks to amend in this application is for the same land that was declared property to the 2nd Respondent. That this matter is *res judicata*. That common law doctrine of *res judicata* bars re-litigation of case between the same parties over the same issues already determined by a competent court. That in this case, the Applicant was trying to bring before the court in another way in the form of a new cause of action, a transaction which had already been presented before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon.

[7] Referring to the facts of this case, counsel for the Respondent submitted that on **2/11/2015**, the 2nd Respondent/defendant filed before the Chief Magistrate's court Masindi **C.S No. 62 of 2015** against the Applicant/plaintiff in the present matter **H.C.C.S. No.57 of 2015** that is before this court. On **17/12/2015**, the Applicant/plaintiff herein filed **H.C.C.S No.57 of 2015** against the Respondents/defendants in relation to the same suit land which he now seeks to amend and add another party. She concluded that this is *res judicata* and invited court to summarily dismiss it with costs to the Respondents.

S.7 CPA provides that;

"No court shall try any suit or issue in which the matter directly and substantially in issue have 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 in which the issue has been subsequently raised, and has been heard and finally decided by that court.”

[8] In the case of **Mansukhlal Ramji Karia & Anor Vs A.G & 20 Ors, S.C.C.A No.20 of 2002** Justice Tsekooko, JSC set down 3 conditions which must exist before the doctrine of *res judicata* can apply:

1. There have to be a former suit or issues decided by a competent court.
2. The matter in dispute in the former suit between the parties must also be directly and substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar.
3. The parties in the former suit should be the same parties or parties under whom they or any of them claim litigating under the same title.

a) Former suit decided by a competent court

[9] It has not been disputed by the Applicant/plaintiff that on **2/11/2015**, the 2nd Respondent/defendant filed before the Chief Magistrate’s court Masindi **C.S No.62 of 2015** against the plaintiff/Applicant herein. Judgment was delivered against the plaintiff/Applicant on **20th/10/2017** with the following inter alia orders:

“1. The plaintiff (present 2nd Respondent/defendant) is declared the owner of the suit land measuring 50ft x 100ft situated at Bulyasojo village, Kijura trading centre, Masindi District.

2. The Defendant (present Applicant/plaintiff) is a trespasser”

The latter suit where the doctrine is pleaded as bar is **H.C.C.S No.57 of 2015**.

b) (i)The matter in dispute in the former suit.

Paragraph 4(a) of the plaint in the former suit Chief Magistrate's court **C.S No.62 of 2015** refers to the matter in dispute as follows:

"4 The plaintiff's cause of action against the Defendant arose as follows:

(a) That the plaintiff owns the suit land measuring 50ft x 150ft and situated at Kijura trading centre, central ward, Masindi Municipality, Masindi District which he purchased from Rev. Kiviri Herbert..."

(ii) The matter in dispute in the present suit.

Para.3 of the plaint in **H.C.C.S No.57 of 2015** is as follows:

"3 The plaintiff's claim against the defendants jointly and /or severally is for a declaration that the plaintiff is the lawful owner of an un registered/un surveyed parcel of land and developments thereon, situate at Bulyasojo Kijura on Masindi-Hoima Road, measuring 50ft x 100ft (the suit land), a declaration that the purported sale of the said land by the 1st defendant to the 2nd defendant was void..."

[10] A perusal of both plaints in the former suit and the present suit as seen above, clearly show that the subject matter/suit land was land situated at Kijura, Bulyasojo village, Masindi District and both claimants in both suits claim to derive their interest in the suit land from **(Rev) Kiviri Herbert** as per their respective purchase agreements attached to their respective pleadings. The material facts brought before the prior court in the former suit and the subsequent court in the present suit are the same.

c) The parties in the former suit or the present suit.

- [11] In the former Chief Magistrate's **C.S. No. 62 of 2015**, the plaintiff is **Byonabye Rashid**, the present Respondent/Defendant while the defendant is **Nocholas Kimani**, the present Applicant/plaintiff. In the present suit, the Applicant/plaintiff sued both the vendor of the suit land to the parties, **(Rev.) Kiviri Herbert** and the purchaser **Byonabye Rashid**. It is therefore clear from the above that the parties in the former suit are the same parties in the present suit, **Kiviri Herbert**, litigating under the same title since both the plaintiff and the defendant in the former suit claim to have derived title to the suit land from **Kiviri Herbert**. This is also what is reflected in **paragraph 1-5 of the Applicant's affidavit** in support of the application.
- [12] The present Applicant/plaintiff having been the unsuccessful party in the former suit as the defendant, to file the present suit in the high Court I find that he was trying to bring before the court in another way in the form of a new cause of action, a transaction which had already been presented before a court of competent jurisdiction in the earlier proceedings and had been adjudicated upon. The present suit is clearly *res judicata* for it was between the same parties over the same issues which were determined by a court in the former suit. All litigation about the suit land was concluded forever between the parties and it cannot be resurrected again, **Semakula Vs Magala & Ors [1979] HCB 90**.
- [13] In conclusion, I find that the parties in the **Chief Magistrate's court C.S No. 62 of 2015**, the former suit are same parties in the present suit, the subject matter and issues that were in issue in the former suit are substantially the same as the subject matter and issues in the present case (as also clearly exhibited in the agreements the parties are relying on). Accordingly, the present suit is *res judicata* as it was litigated and concluded upon by a court of competent jurisdiction. The Applicant is therefore, in the circumstances seeking to amend a plaint for the same

land that was decreed to and declared property of the 2nd Respondent. The real questions in controversy between the parties were resolved by court in the former **C.S No.62 of 2015**.

[14] It follows therefore, to entertain the present suit would tantamount to resurrecting the former suit in which the suit land was decreed to the 2nd Respondent/defendant. This would lead to very absurd and definitely have disastrous consequences as 2 courts would likely decree the same suit land to different parties. 2ndly, the 2nd Respondent/defendant would be vexed twice for the same cause (*Nemo debet lis vexari pro eadem causa*) yet the interests of justice require that there must be an end to litigation and judicial decisions must be respected and accepted as correct.

[15] No application to add a party therefore can be made in a suit that is *res judicata*. In the premises, I find this application untenable and liable for dismissal. The main **H.C.C.S No.52 of 2015** cannot also stand, it is dismissed for being *res judicata* with costs to the 2nd Respondent/defendant.

[16] The instant case is a juxtaposition of the grief of the Applicant/plaintiff and the demands of justice which I feel for him and therefore deserve sympathy. He however has options to pursue the remedies available to answer any of his grievances as regards the former suit decree. He also has an option of pursuing the vendor, **(Rev) Herbert Kiviri** (the 1st Respondent/Defendant) for recovery of the purchase price and damages if any.

Dated at Masindi this 8th day of July, 2022.

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Byaruhanga Jesse Ruyema
JUDGE.