

5 THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)  
MISCELLANEOUS APPLICATION NO. 309 OF 2022  
(ARISING FROM CIVIL SUIT NO. 440 OF 2018)

10 MTN UGANDA LIMITED .....APPLICANT/DEFENDANT  
VERSUS  
RICHARD MWAMI .....RESPONDENT/PLAINTIFF

BEFORE: HON. JUSTICE ESTA NAMBAYO

RULING

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The Plaintiff, MTN Uganda Limited, filed this application under 5.7 and 98 of the Civil Procedure Act, Order 6 Rule 30 and Order 7 Rule 11 of the CPR, against Richard Mwami, the Respondent, seeking for orders of this court that;

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1. The Respondent's plaint be struck out and HCCS No. 440 of 2018 be dismissed for being *res judicata*.
2. The Respondent's plaint be struck out for failure to disclose a cause of action against the Applicant.
3. The Applicant be awarded costs of this application.

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The grounds of this application are set out in the affidavit in support of the application sworn by Mr. Isaac Rusiimwa but briefly are that: -

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1. The Respondent/Plaintiff filed a suit vide; HCCS No. 177 of 2012 against the Applicant/Defendant wherein he sought the following orders/remedies: -
  - a) An order for a declaration that his dismissal by the Defendant was unfair and unlawful;
  - b) Special damages; c) General damages; d) Aggravated damages; e) A certificate of service; f) Costs of the suit; and g) Interest on the above at court rate from the date of action till settlement in full.
2. The Respondent then filed HCCS No. 440 of 2018 against the Applicant, which seeks the following remedies that are similar to the ones in Paragraph 1 above:

- 35 a) Special damages to a sum of 2,878,500,000/= (Uganda Shillings Two Billion Eight Hundred Seventy-Eight Million Five Hundred Thousand) arising from the Respondent's wrongful dismissal; b) General damages; c) Exemplary damages; d) Interest at a rate of 25% per annum on i), ii), iii) above, from the date of judgment until payment in full realization; and e) Costs of the suit.
- 40 3. HCCS No. 177 of 2012 was duly heard and judgment was delivered by Honourable Justice Nyanzi Yasin on the 22<sup>nd</sup> of April 2016.
4. The matters in issue in HCCS No. 177 of 2012 and the parties are directly and substantially similar to those in HCCS No. 440 of 2018.
- 45 5. The prosecution of the Respondent was carried out by the Directorate of Public Prosecutions on its own assessment and decision after the Uganda Police had carried out independent investigations. The Respondent has no cause of action against the Applicant.
6. It is in the interest of justice that this application is granted and the Respondent's suit is dismissed for being res judicata and for failing to disclose a cause of action against the Applicant.

The Respondent filed an affidavit in reply opposing this application.

50 **Back ground to the application.**

The brief background to this case is that the Respondent who was an employee of the Applicant was dismissed from his job on the 23<sup>rd</sup>/4/ 2012. He filed a suit against the Applicant; vide HCCS No. 177 of 2012 and secured another job with Mobile Money Africa Ltd on the 25<sup>th</sup>/4/2012. On the 23<sup>rd</sup> April, 2013, the Respondent was arrested and arraigned before the Anti -corruption Court charged with embezzlement, corruption by neglect of duty and conspiracy to defraud the Applicant. On the 1<sup>st</sup> August 2013, while the Respondent was still on trial before the Anti – corruption court, the Executive Director – supervision at the Bank of Uganda, wrote to Centenary Rural Development Bank advising the Bank to desist from dealing with the Respondent until he is cleared by the court. Following the communication, the Respondent's employment with Mobile Money Africa Ltd was terminated on the 9<sup>th</sup> August, 2013.

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On the other hand, the Respondent won the case of wrongful dismissal vide; HCCS No. 177 of 2012 against the Applicant. He was also later acquitted of the criminal charges against him in the Anti-corruption court.

65 On the 31<sup>st</sup> October, 2018, the Respondent filed Civil Suit No. 440 of 2018 against the Applicant jointly and severally with the Attorney General for unlawful and malicious prosecution, hence this application.

### **Legal representation**

70 Learned Counsel Barbara Musimenta represented the Applicant, while the Respondent was represented by Counsel Mercy Odu from AF Mpanga Advocates. Written submissions have been filed by Counsel for the parties as directed by this court.

**Issues raised for trial are: -**

1. **Whether the Respondent's plaint discloses a cause of action against the Applicant.**
2. **Whether the Respondent's plaint is barred in law for being res judicata.**
3. **Whether the Applicant is entitled to any remedies**

### 75 **Resolution of issues**

I will first address the 2<sup>nd</sup> issue which of;

**Whether the Respondent's plaint is barred in law for being res judicata.**

I have looked at the submissions of Counsel for the parties and extensively read the court record.

80 **Black's Law Dictionary, 10<sup>th</sup> Edition at page 1504 defines res judicata as an issue that has been definitively settled by judicial decision.**

**Section 7 of the Civil Procedure Act provides that;**

85 *"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 the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court."*

My understanding of the above provision of the law is that for the doctrine of res judicata to apply, the trial court must be satisfied that: -

- i. There is existence of a former suit that has been finally decided by a competent court.
- 90 ii. The parties in the former suit should have been the same as those in the latter suit, or parties from whom the parties in the latter suit, or any of them, claim or derive interest.
- iii. The parties in the latter suit should be litigating under the same title as those in the former suit.
- 95 iv. The matter in dispute in the former suit should also be directly and substantially in dispute in the latter suit where res judicata has been raised as a bar.

In the case of *Akuku Ebifania ((as Administrator of the estate of the late VURAA KAJOLE) -v- Victoria Munia & Registered Trustees of Arua Diocese HCCA No.027 of 2016*, court held that;

100 *“The basis of the rule of res judicata is that an individual should not be vexed twice for the same cause. A person should not be twice vexed in respect of the same contest as to his or her rights and on the other hand, the time of the Courts should not be wasted by trying the same matter several times.”*

In this case, in the former suit, HCCS No. 177 of 2012 only the Applicant and the Respondent were parties. The Attorney General was not a party to the former suit. Secondly, in the former suit, the Respondent’s cause of action against the Applicant was wrongful dismissal. In the later  
105 suit; HCCS No. 440 of 2018 from which this application arose, the cause of action is unlawful and malicious prosecution which is totally different from the cause of action in the previous case. Therefore, it is my finding that HCCS No. 440 of 2018 is not res judicata.

**The other issue is whether the Respondent’s plaint discloses a cause of action against the Applicant.**

110 **Order 7 r 11 of the Civil Procedure Rules provides that;**  
*The plaint shall be rejected in the following cases-*

*(a) where it does not disclose a cause of action;*

115 In the case of *Kapeka Coffee Works Ltd –v- NPART, CA No. 3/2000*, Court held that in determining whether a plaint discloses a cause of action, the court must look at the plaint and its annexures, if any, and nowhere else.

120 In *Auto Garage and Others –v- Motokov (No 3), [1971] 1 EA 514 (CAD)*, Court held, among others, that what is important in considering whether a cause of action is revealed by the pleadings is the question as to what right has been violated.

In the case of *Tororo Cement Co. Ltd –v- Frokina International Ltd, Civil Appeal No. 2/2001*, it was held that in order to prove that there is a cause of action, the plaint must show that;

- 125 (a) the plaintiff enjoyed a right;  
(b) that the right has been violated; and  
(c) that the defendant is liable.

If the three elements are present, a cause of action is disclosed.

130 In this case, the Respondent worked with the Applicant. The Respondent states that when an internal audit of the Applicant was carried out, it was confirmed that there was fraud in the Applicant company. That the Applicant then reported the matter to police and an investigation was carried out culminating into the arrest and prosecution of the Respondent at the Anti-corruption court where he was acquitted at a no case to answer. It is the Respondent’s claim  
135 under paragraph 5(xxvii) of his plaint that the trial judge noted in his ruling while acquitting him that he (the Respondent) was;

140 *“a sacrificial lamb in a situation where he was taking the flock for not detecting the fraud in time yet as soon as he discovered it he took positive steps to report to the CEO and to the police...the reason he was charged one-year after investigations had closed and the case was already in court was suspect.... He was not negligent but diligent.... I have found no evidence to support the allegations in count 7, (Neglect)...the charges were brought in bad faith...he is in my view a potential prosecution witness who should have bolstered the prosecution case where senior management were clearly negligent and that the charges against him were brought in bad faith”*

145 In the case of *Bosco Wabendo & 4 others –v- Issa Namara CA No. 21 of 1999*, Court noted that;

- “In a claim of malicious prosecution, it must be proved that;
- 150 i. the proceedings were instituted or continued by the Defendant  
ii. the Defendant acted without reasonable cause  
iii. the Defendant acted maliciously  
iv. the proceedings terminated in favour of the Plaintiff

In this case it is not in dispute that the criminal proceedings against the Respondent/Plaintiff were instituted and continued by the Police and that they were terminated in favor of the Respondent/Plaintiff.

155 Under paragraph 8 of the plaint, the Respondent/Plaintiff pleads absence of reasonable cause and probable cause of bad faith by both the Applicant and the Police. In paragraph 9 of the plaint, he lays out alleged particulars of malice by the Defendants.

160 What this court has to determine is whether the Defendants acted out of malice and without reasonable cause. To do that, it is necessary that this court hears and evaluates the evidence from both the plaintiff and the Defendants. I find that the Respondent/Plaintiff's pleadings establish a cause of action against the Applicant and the 1<sup>st</sup> Defendant in HCCS No. 440 of 2018. I would therefore find no merit in this application and do hereby dismiss it with costs.

I so order

**Dated, signed and delivered by mail at Kampala this 6<sup>th</sup> day of October, 2023.**

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**Esta Nambayo  
JUDGE  
6<sup>th</sup>/10/2023.**