



THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT HOIMA  
MISCELLANEOUS APPLICATION NO. 0003 OF 2020  
(Arising from Civil Suit No. 0048 of 2018)

PAN AFRIC IMPEX (U) LTD ::: APPLICANT  
VERSUS  
OKORI ALEX ::: RESPONDENT

*Before: Hon. Justice Byaruhanga Jesse Ruyyema*

RULING

- 1] This is an application under S. 7 CPA and O. 52 rr 1 & 2 for orders that:-
  - i) Civil suit No. 48/2018 be struck out, rejected and/or dismissed for being **Res Judicata**.
  - ii) Cost be provided for.
  
- 2] The application is supported by the affidavit of **Mohammed M.E.F. Hamid**, the Managing Director of the Applicant Company where in the grounds of the application, briefly are:-
  - a) That in **HCCS No. 48/2018** filed by the Respondents as the Plaintiff, he avers that he was a Passenger on bus belonging to **Good Luck Services (U) Ltd**, Registration No. **UAQ 155Z** on which on the night of 20/9/2017, he suffered an accident of which he seeks compensation.
  - b) That in **HCCS No. 36/2017**, Good Luck Services (U) Ltd as the Plaintiff sued Pan Afric Impex (U) Ltd (as the 1<sup>st</sup> Defendant) and

another where it sought compensation for interlia, the passengers who scored injuries while aboard the bus belonging to the Plaintiff.

- c) That all claims in **HCCS No. 036/2017** were adjudicated upon and settled in a consent judgment executed between the parties in **full and final settlement of all claims** under the seal of court on 26/9/2018.
- d) That in the premises, for as long as claims by persons who were passengers on **bus Registration No. UAQ 155Z** belonging to **Good Luck Services Ltd** were made subject of HCCS No. 036/2017 and their claims were settled, the same claims cannot be raised before this court.
- e) That the claims in **HCCS No. 048/2018, Okori Alex versus Pan Afric Impex (U) Ltd & another** were already litigated and adjudicated upon by this very court, and ought not to be resurrected.

3] In his affidavit in reply, the Respondent deponed briefly thus:-.

- a) The Respondent was not a party to the proceedings in **HCCS No. 36/2017** and that the suit was never filed on his behalf by the said **Good Luck Services (U) Ltd** who was the Plaintiff.
- b) The Respondent was not a party to the consent judgment executed in **HCCS No. 036/2017** and that it was not executed on his behalf.
- c) The Respondent has never instructed **M/S Okae, Basalirwa, Kakerewe & Co. Advocates** who filed **HCCS No. 036/2017** to represent him in any suit and **Good Luck Services Ltd**, the Plaintiff in that suit did not bring a representative suit on behalf

of the injured passengers on board but rather, instituted a suit in its own name for which a settlement was reached between the parties therein.

- 4] The Applicant was represented by **Mr. Mark Kalyango** of **M/S Kalyango & Partners Advocates, Kampala** while the Respondent was represented by **Mr. Emmanuel Egaru** of **M/S Egaru & Co. Advocates, Lira**. Both Counsel filed their respective submissions for consideration by this court in the determination of this application.

**BACKGROUND:**

- 5] The background of this application as can be gathered from the pleadings in **HCCS No. 48/2018** and **HCCS No. 36/2017** referred to by both parties in the application and submissions of both Counsel in that on the 20/9/2017, there was an accident at Wakisanyi Village along Kampala-Gulu High Way, Kiryandongo District in which the Applicant's **Motor vehicle Registration No. UAU 670G** was involved in an accident with the **Bus Registration No. UAG 155Z** belonging to **M/S Good Luck Services (U) Ltd**.
- 6] Liability for the accident was attributed on the Applicant and her driver upon which **M/S Good Luck Services (U) Ltd** filed a suit vide **HCCS No. 36 of 2017**, on claims listed in the plaint including **compensation to the injured passengers, "cost of lost items" and "medical expenses to the injured"**, among others.

- 7] The suit was concluded vide a **consent judgment** before the Registrar of this Court on 26/4/2018 as full and final settlement of **all claims contained in the suit** against both defendants
- 8] The present Respondent who was one of the passengers on the bus owned by **M/S Good Luck Services (U) Limited** filed a fresh matter namely **HCCS No. 048 of 2018** against the same defendants claiming compensation for interalia, permanent incapacity as a result of the accident as well as “lost items” and “medical expenses”.
- 9] The Applicant challenges that suit as being **Res Judicata** and prays for the same to be struck out with costs because, according to the Applicant, the subject matter of the Respondent’s claims were already adjudicated and resolved in an earlier suit, **HCCS No. 36 of 2017**.

- Issues:
- 1) **Whether Masindi HCCS No. 48/2018 is res judicata in light of Masindi HCCS No. 36/2017.**
  - 2) **What remedies are available to the parties.**

**ISSUES NO. 1: WHETHER MASINDI HCCS NO. 048/2018 IS RES JUDICATA.**

- 10] According to **S.7 CPA**, *res judicata* refers to:

*“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 the former suit between the **same parties** or between **parties under whom they or any of them claim**, litigating under the same title in court competent to try the subsequent*

*suit or the suit in which the issue has been subsequently raised and had been **heard and decided** by the Court”.*

11] In the case of **James Katabazi & 21 Others Versus Secretary General of the E. African Community & Another**, E.A. C.J Ref No. 1 of 2007, the doctrine of *Res Judicata* was summarized as follows:-

- i) *The matter must be directly and substantially in issue in the two suits.*
- ii) *The parties must be the same or the same parties under whom any of them claim, litigating under the same title.*
- iii) *The matter must have been finally decided in the previous suit.*

12] In the case of **Kamunye & Others Versus The Pioneer General Assurance Society Ltd (1971) EA 263**, the test to be applied by Court to determine the question of *Res judicata* was held thus:-

*“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 the Court in another way and in the form of a 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. If so, the plea of res judicata applies not only to points upon which the first Court was actually required to adjudicate but to every point which properly belonged to the subject matter of litigation and which parties or their privies exercising reasonable diligence, might have brought forward at the time. The subject matter in this subsequent suit must be covered by the previous suit, for res judicata to apply.”*

13] Applying the above principles to the facts of this application, it is apparently clear from the face of the pleadings in **HCCS No. 036/2017** which was between **Good Luck Services (U) Ltd versus Pan Afric Impex (U) Ltd & Another**, wherein the impugned consent was obtained, that the current Respondent, **Okori Alex** was not a party to the suit. The suit is not even referring to the current Respondent as a beneficiary of the suit.

14] In **HCCS No. 36/2017**, in **paragraph 4 of the plaint**, the Plaintiffs' claims against the defendants jointly and severally was for recovery of 162,000,000/= as special damages resulting from an accident that was allegedly solely caused by the 2<sup>nd</sup> defendant, who the 1<sup>st</sup> defendant was vicariously liable.

In **paragraph 12 of the plaint**, it is averred that as a result of the said accident, scores of passengers were injured together with employees of the Plaintiff Company, to which the Plaintiff was partly settling.

In **paragraph 13 of the plaint**, the relevant particulars of special damages to this application were listed as follows:-

- i) .....
- ii) .....
- iii).....
- iv)Cost of lost items..... 4,500,000
- v) Medical expenses to the injured ..... 5,000,000

15] As can be seen from the above, there is nothing in **Civil Suit No, 36/2017** that refer to the current Respondent as a beneficiary of the suit or that he was one of the passengers on the Plaintiff's bus and sustained any injury. There was no list of passengers on the bus that

was attached to the pleadings to enable Court ascertain those injured and properly assess the damages. Nevertheless, a consent judgment was obtained by the parties of which the relevant parts to this application reads thus:-

- “1. *The 1<sup>st</sup> defendant is willing and does offer the Plaintiff a sum of 60,000,000/= (Sixty Million Shillings only) as full and final settlement of the Plaintiff's claim against both the defendants.*
2. *That the Plaintiff agrees to this payment of 60,000,000/= (Sixty Million Shillings only) in full and final settlement thereof and undertakes to make no further claims against the defendants in this suit.”*

16] Again, it is clear, the current Respondent is not a party to the consent judgment and there is no reference to him as one of the passengers on the bus or, beneficiary of the judgment. The sum of Ugx. 60,000,000/= appear to had been offered to the Plaintiff **Good Luck Services (U) Ltd** as the Plaintiffs in its own right.

17] The Respondent also however, appear to had filed **HCCS No. 48/2018** claiming against the same defendants as in **HCCS No. 36/2017**, recovery of Ugx. 100,000,000/- arising from a permanent incapacity as a result of a life threatening accident that occurred on the 20/9/2017 along Gulu-Kampala High Way at Wakisanyi Village, Kiryandongo District in his own right.

18] From the foregoing, it appears to me therefore, that if one is to find whether the current Respondent is or was a beneficiary to the 1<sup>st</sup> **Civil Suit No. 36/2017** or litigated under the same title with the Plaintiff, Court must first hear the suit and therefore determine the issue from the evidence as adduced by the parties. Otherwise, in the 2<sup>nd</sup> **Civil Suit No. 48/2018**, the current Respondent as the Plaintiff in that suit, he would have to prove that he was one of the passengers on the Plaintiff's bus thus, prove his case against the defendants.

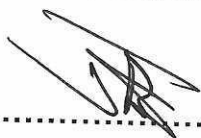
It would in the premises appear to me therefore, that such an issue of whether this suit in question is *res judicata* in light of **HCCS No. 36/2017** would better be handled after hearing of the suit where it would be framed as an issue during the determination of the suit.

19] As a result of the above, I would find this issue in the negative.

20] As regards whether the Respondent was served with the present application as required under O.12 r.3 (2) CPR, in the premises that the first issue is found in negative, that disposes of the application and therefore it is not necessary to indulge in this issue.

21] All in all, I find the application not having any merit and it is accordingly dismissed with costs to the Respondent.

Dated at Masindi this.....<sup>8<sup>th</sup></sup>.....day of October, 2023.



.....  
Byaruhanga Jesse Ruyema.

JUDGE