THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL SUIT NO.214 OF 2008

SEKIDDE RICHARD :::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

1. **MBABAZI FIONA**
2. **FRED ARINAITWE::::::::::::::::::::::::::::::::DEFENDANTS**

BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE

RULING

This ruling arises from a preliminary objection raised by Counsel for the defendants that the plaintiff's suit is barred by the doctrine of res judicata. The first defendant was represented by Mr. Lwalinda Godfrey; the second defendant by Mr. George Spencer; while the plaintiff was represented by Ms. Shela Birungi.

The facts leading to this objection are that on the 4th day of June 2006, the 1st defendant rented out her premises situate at Kawempe to the plaintiff at a monthly rent of Ug Shs.250,000=. The house had a pending electricity bill of Ug. Shs.1,384,004= which was to be paid by the plaintiff and converted into rent with an agreement to be executed in that respect. The plaintiff defaulted to pay the electricity bills as agreed and they accumulated to Ug.Shs.3,965,251=. On 27th April 2007, the

plaintiff made an undertaking to pay the said monies within a period of 1 month failing which the 1st defendant was at liberty to seek legal redress. By 15th May 2007, the plaintiff had not paid the electricity bill and thus the 1st defendant instituted a suit for distress for rent which was granted to her. The plaintiff being dissatisfied with the Distress Order filed three cases, that is to say;

1. Civil suit No.482 of 2007, in the Chief Magistrate Court of Nakawa.
2. Civil suit No.489 of 2007 in the Chief Magistrate Court of Nakawa.
3. Civil suit No. 214 of 2008 in the High Court.

All the above suits were based on the same fact and the same cause of action; same prayers and parties.

When Civil Suit No. 214 of 2008 came up for hearing, the defendants raised a preliminary objection that the matter was res-judicata since there were other pending suits of the same nature. They prayed that the suit be dismissed with costs. The plaintiff replied that the other suits had been withdrawn, and Court ordered him to produce a withdrawal order.

On 14th March 2013, the plaintiff appeared before the Chief Magistrate Court of Nakawa and formally applied to withdraw Civil Suit No.487 of 2007. However, the Chief Magistrate dismissed the suit, instead of allowing the application for withdrawal.

Dissatisfied with the dismissal, the plaintiff filed Misc. Application No. 503 of 2013 arising from Civil Suit No.482 of 2007 seeking orders that the ruling delivered in Civil Suit No.482 of 2007 be corrected, adjusted, amended for purposes of reflecting the application for withdrawal made by the applicant. The application is still pending before the Chief Magistrate Court at Nakawa.

The defendants in their submissions prayed that Civil Suit No. 214 of 2008 be dismissed with costs as it is an abuse of court process and res-judicata.

In reply, Counsel for the plaintiff submitted that Civil Suit No.482 of 2007 was not determined and or adjudicated upon its merits. Counsel applied for withdrawal but instead the trial Magistrate dismissed it. He had therefore filed Misc. Application No.503 of 2013 seeking to correct, amend and adjust the ruling. He prayed that Civil Suit No.214 of 2008 be stayed pending the determination of Misc. Application No.503 of 2013 before the Chief Magistrate Court at Nakawa.

The issue for determination before this court is whether the present suit, that is to say, Civil Suit No.214 of 2008, is res-judicata and should therefore be dismissed.

The doctrine of res judicata is founded under Section 7 of the Civil Procedure Act, Cap 71 which provides that:

> ***"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".***

In ***Semakula Vs Magala & Others [1979] HCB 90*****,** the Court of Appeal laid down the test for determining whether a suit was barred by *res judicata,* which is whether the plaintiff in the second suit was trying to bring before the court in another way in the form of a new cause of action a transaction which has already been presented before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. (See also ***Kamunye and Others Vs The Pioneer General Assurance Society Ltd, [1971] E.A. 263).***

Essentially, the test to be applied by court to determine the question of res judicata is this: is the plaintiff in the second suit or subsequent action trying to bring before the court, in another way and in the form of a new cause of action which he or she has already put before a court of competent jurisdiction in earlier proceedings and has been adjudicated upon. If the answer is in the affirmative, 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 belong to the subject matter of litigation and which the parties or their privies exercising reasonable diligence might have brought forward at the time.

I have carefully considered the submissions of the Counsels for the parties, the pleadings and the judgment in the previous suit. What must first of all be determined in this matter is whether there was a former suit between the same parties. I find that there was Civil Suit No.482 of 2007 filed in Chief Magistrates' Court, Nakawa between the same parties and with the same cause of action. It is however important to consider certain key provisions. The first is that court is barred from trying a suit in which the subject matter was directly in issue in the former suit. The question of whether the subject matter was directly in issue in the formal suit is a question of fact. In this case, the question would be whether the liability of the defendants for the vandalized maize mills and the maize products was directly or substantially in issue and I find that the liability in issue in both suits is the same.

The second contention is whether the matter if found to be directly in issue in a former suit was between the same parties and corollary to this issue, is whether the parties are claiming under the same parties in the former suit or litigating under the same title. This has been resolved above in the affirmative.

Lastly, the matter in issue must have been finally adjudicated upon by a court of competent jurisdiction. After analyzing the judgment of the lower court which is on record, I find that the trial Magistrate dismissed the matter after the plaintiff made an application for withdrawal. The matter had not been adjudicated

upon on its merits or heard and finally determined by court as provided for under Section 7 of the Civil Procedure Act (supra).

The mere fact that the suit was dismissed does not mean that the issues in contention were adjudicated upon. The doctrine of res judicata does not apply in the present case. The plaintiff has the right to pursue other remedies under the law.

For the reasons stated above, the preliminary objection on the ground that the suit is barred by the doctrine of res judicata is overruled and the suit shall proceed to be heard on its merits.

Elizabeth Musoke

JUDGE

31/10/2014