

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF TANZANIA - - DAR ES SALAAM DISTRICT REGISTRY AT DAR ES
SALAAM CIVIL APPEAL NQ 107 OF 2014- - - (Originating from the Decision of Ilala District
Court in Civil Case No. 47 of 2012) RAMADHANI IDD APPELLANT
VERSUS DAR ES SALAAM CLASS WORKS LTD RESPONDENT

JUDGMENT

MKASIMONGWA, J. Before the District Court of Ilala at Samora, one RAMADHANI IDD (Plaintiff/ Appellant) sued DAR ES SALAAM GLASS WORKS LTD (Defendant/ Respondent) claiming for general damages for consequential incapacitations sustained by the plaintiff as a result of negligence by the Defendant. The plaintiff/ appellant lost the case in the Ruling of the court which sustained the Preliminary Objection raised by the Defendant on grounds that the court had no jurisdiction to try and determine the suit and that the suit was res judicata before the court. Being aggrieved by the decision of the court the \ppellant challenges it by appeal. He has two grounds of appeal by which he prays the court for orders that nullify and quash the ruling and orders of the trial court and that the suit to be remitted before another Magistrate for trial. The grounds of appeal are that:-

1. The Honourable Trial Magistrate erred in law and fact in holding that the trial court lacks jurisdiction to determine the matter. 1
2. The Honourable trial magistrate erred both in law and facts in holding that the suit was res judicata So that one comprehends the matter let me shortly narrate the facts of the case- which are that the Appellant used to work as a -porter Whereby fie carried luggage for other people, and offload various loads from motor vehicles and containers. On 22/12/2009 the appellant with other co-porters were hired by the Respondent to offload Aluminum Glasses from the container at the Respondent's go-down situated at Kariakoo Gerezani Street. While was working, unexpectedly, one glass carried by the plaintiff/ appellant and his co- porter broke and it severely wounded the plaintiffs right arm which was _eventually amputated sometime on 24/12/2009 at Muhimbili National Hospital. It is alleged that the plaintiff and the co-porters worked in not safe environment for they were not supplied with the protective equipment by the Defendant/Respondent. Sometime in 2011 the Appellant instituted in the same trial court a Civil Case No 70 of 2011. The suit was however struck out for it was commenced by a defective plaint and that as the dispute arose from the employee-

employer relationship, the court had no jurisdiction to entertain and determine it in terms of the Employment and Labour Relation Act No. 6 of 2004 and the Worker's Compensation Act No. 20 of 2008. When the matter came up for hearing there appeared before me, Mr. Salim Bakari and Mr. Emmanuel Maro, learned advocates representing the Appellant and the Respondent respectively. In his submission Mr. Salim contended that it was an error by the court when it held the same to be deceased with jurisdiction to entertain and decide on the matter. He said Sections 16 (1) and 19 (1) of the Workman's Compensation Act confer jurisdiction to courts to deal with the matter. The learned advocate referred the court to the decisions in the cases of ALI NAHD V / S ABDULLAH MOHAMED

(1961) E. A 456 and ALLY VUAI V/S MANAGING DIRECTOR CHINA RAILWAY JIANG CHANG ENGINEERING CO. LTD; CIVIL CASE NO. 98 of

2009. (H/C - Dar es Salaam) to support his argument. He added that it is an undisputed fact that the accident had occurred and that it occurred within the 2 geographical limits of the court at the place where the employer had a residence. As regards to the second point that, the suit was res judicata Mr. Salim contended that Section .9 of the Civil Procedure Code requires that the plea of Res-judicata must satisfy three conditions which are:- One: that the parties to the suits must be the same. Two: that there must be same issues involving the suits and Three: that the competent court to try the matter has already determined it. He submitted that in this matter the court did not determine issues involved it. The Court did only strike out the suit (Civil Case No. 70 of 2011). When the suit is struck out, that does not amount to delivering a judgment. The learned counsel referred the court to the decision in the case of MWANZA TEXTILES MILLS V/S JUMANNE RAMADHANI MICHAEL, H/C ... and prays the appeal be allowed with costs. On the other hand Mr. Maro {Advocate} submitted that, there is no citation provided by his colleague of the MWANZA TEXTILE MILLS case referred. He added that the Workman's Compensation Act (Cap. 263 R.E 2002) was repealed by the Workers Compensation Act No. 20 of 2008 which became operative by virtue of the GN. No. 205 of 11/3/2011. According to the law all matters with regard to compensation to employees resulted from employment have been determined by that Act. The Act establishes the Workers Compensation Fund. Generally the trial court had no jurisdiction to entertain the suit and therefore the first ground of appeal should be dismissed. As regards to the second ground of appeal Mr. Maro supported the finding by the lower court that the case which was before it was res judicata. This like a matter was instituted in the same lower court as Civil Case No. 70 of 2011 and the same was determined on 9 / 11/2011 when the court dismissed it for want of jurisdiction to adjudicate on it following the Preliminary Objection raised by the Defendant. As such the matter is res-judicata. He prays therefore that the appeal be dismissed. In a short rejoinder Mr. Salim contended that, the newly enacted Workers Compensation Act was not in force at the time the cause of action 3 arose and the that it does not have the retrospective effect. As such, the old law is applicable. I have considered submissions along with the pleadings in this matter. Going by them, it is clear to me that determination of the Appeal is based on the following issues.

1. Whether the trial court had jurisdiction to try the suit and
2. Whether the suit was res judicata However, I may need to answer first, the question whether the matter was properly in court. As it has been shown above, following the accident that caused injury to the plaintiff now appellant, the latter sued the Defendant/Respondent vide Civil Case No. 70 of 2011 of Ilala District Court. The suit was struck out for reasons that the plaint was defective and that the court had no powers to entertain and determine it. I agree with the Appellants counsel that when a matter is struck out, the order striking it out does not bar a party against whom it is made to start the matter afresh, subject to observance of the jurisdiction of the court and time limitation. It was not wrong, therefore, when the plaintiff thought of instituting the suit. However, as the court had held itself to be deposed with powers to entertain the suit and since the latter suit was based on same facts and with same reliefs as that struck out one, the appellant could not re-institute the matter in that court without first obtaining an order vacating the finding of the court to the effect that it had no jurisdiction to entertain and try the matter. Such order could have been obtained upon review of the decision by the trial court, revision by or appeal to the Superior Court (High Court) as it is being done now. In this matter the court is not told if such remedies were sought and respective orders were obtained. This fact lives the court's finding that it has no jurisdiction to be intact. As the declaration of the court that it has no jurisdiction to adjudicate on the matter is remaining intact the appellant could not legally institute the suit in that same level of the court. It is therefore my finding that the suit before the lower court was not properly instituted. For that reason I will not engage myself determining the issues above. Instead, acting under the revisionary powers of this court, I declare all proceedings of Ilala District Court at Samora in Civil Case No. 47 of 2012 a nullity and they are hereby nullified. Each party should bear his own costs. Dated at Dar es Salaam this 3rd of May, 2017. oUR}:::~ /); fi0 ~>~ ·... , '\ ~\ E.~~gwa JUDGE \:c 3/5/2017 '•~::~ ... 5

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