REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL APPEAL NO. 110 OF 2020

JAMES RUIRU CHEGE.....APPELLANT

-VERSUS-

TOSHA DIARY PRODUCTS LIMITED.....1st RESPONDENT

KENYA NUT COMPANY LTD.....2ND REPONDENT

(Appeal from the Ruling of the Senior Resident Magistrate C. N.

Mugo, dated 18th August, 2020 in the Chief Magistrate's court

at Limuru in Misc. Civil Application No.5 of 2020 (OS))

JUDGMENT

1. ***JAMES RUIRU CHEGE***, the appellant filed an *ex parte* originating summons before the Chief Magistrate's Court at Limuru seeking leave to file a suit out of time under section 27 of the Limitation of Action Act.

2. That originating summons was heard at the Limuru Chief Magistrate's court and by a Ruling dated 18th August, 2020 that court dismissed the same. The trial court found that the appellant had previously filed a suit before that court seeking damages for an accident that occurred on 24th June, 2013 where the appellant alleged he was crushed by motor vehicle KAY 126F. That suit was dismissed before that court and accordingly that court failed to grant leave to file an action over the same facts would render such a suit *res judicata*. The appellant has filed this appeal against that finding.

3. **Section 7** of the Civil Procedure Act forbids the hearing of a suit that has been heard and finally determined. That **Section 7** provides:-

> ***"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 can claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."***

4. As stated appellant filed a case seeking damages in special and general damages for an accident that occurred on 24th June, 3013. That suit was fully heard and that court rendered its judgment on 6th July, 2018 when the appellant's suit was dismissed. That court having fully heard and having finally determined the suit, the law barred any further or other suit being filed on the same issues. The suit is then considered as *res judicata*

5. The role of the doctrine of *res judicata* was considered in the case ***THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMSSION VS. MAINA KIAI & 5 OTHERS, (2017) eKLR*** wherefore:-

> ***"The rule or doctrine of*** *res judicata* ***serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and commonsensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of*** *res judicata* ***thus rest in the public interest for swift, sure and***

certain justice."

6. In the Canadian case ***GUARDIAN INSURANCE CORP. OF ST. JOHN, 2013 NLCA 62 CanLII*** the court considered the policy underlying that doctrine and stated:-

> ***"[40] The policies underlying the res judicata doctrine are the promotion of finality of litigation and the prevention of a multiplicity or fragmentation of proceedings so that "[a] person should only be vexed once in the same cause":*** *DANYLUK V. AINSWORTH TECHNOLOGIES INC., 2001 SCC 44*, [2001] 2 S.C.R. 460 ***per*** *Binnie J.* ***at*** *para. 18****;*** *QUINLAN V. NEWFOUNDLAND (MINISTER OF NATURAL RESOURCES)* (2000), *2000 NFCA 49 (CanLII)*, 192 Nfld. & P.E.I.R. 144 (NFCA), ***per*** *Green J.A.* ***at para. 6. In*** *PENNER V. NIAGARA (REGIONAL POLICE SERVICES BOARD), 2013 SCC 19, Cromwell and Karakatsanis JJ.,* ***writing for the majority, elaborated on the rationale as follows:***
>
> ***[28] Re-litigation of an issue wastes resources, makes it risky for parties to rely on the results of prior litigation, unfairly exposes parties to additional costs, raises the spectre of inconsistent adjudicative determinations and, where the initial decision maker is in the administrative law field, may undermine the legislature's intent in setting up the administrative regime. For these reasons, the law has adopted a number of doctrines to limit re-litigation.***
>
> ***[41] In deciding whether a discretion not to apply the res judicata doctrine should be exercised, the potential promotion or hindering of these policies of putting an end to litigation and prevention of unnecessary harassment of individuals through multiple litigation should be taken into account in deciding whether to exercise the discretion."***

7. The trial court did not err in dismissing the *ex parte* Originating Summons. The trial court correctly applied the provisions of **Section 7** Civil Procedure Act.

8. There is no merit in this appeal, it is dismissed with no orders as to costs.

JUDGMENT DATED AND DELIVERED AT KIAMBU THIS 2ND DAY OF DECEMBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant **Maurice**

For the Appellant : Mr. Muindi

For the Respondents : Ex parte

COURT

Judgment delivered virtually.

MARY KASANGO

JUDGE