



REPUBLIC OF MALAWI  
MALAWI JUDICIARY  
IN THE HIGH COURT OF MALAWI  
CIVIL DIVISION  
PRINCIPAL REGISTRY  
CIVIL APPEAL NO. 46 OF 2018

BETWEEN:

ESTHER CHILALA.....FIRST APPELLANT

-AND-

MIRRIAM KUCHAWO.....SECOND APPELLANT

-AND-

EVELYN MSUKU.....RESPONDENT

CORAM: THE HONOURABLE JUSTICE JACK N'RIVA

Appellants present

Respondents not present

Mrs D Mtegha, Court Clerk and Official Interpreter

JUDGMENT

This is an appeal from the decision of the Third Grade Magistrate Court sitting at Blantyre Central.

This matter involved land dispute between the parties. That was at a time when Magistrates had jurisdiction over customary land matters. In the trial court, the Magistrate ruled in favour of the defendant (then plaintiff) in civil case number 100 of 2018. The appellants were dissatisfied with this decision appealed to this court. The main ground of appeal appears to be that this matter was already heard by

another Magistrate in *Esther Chilala and 4 Others v Bester Msuku* Civil Cause Number 105 of 2016.

This court on 17<sup>th</sup> of October 2018 ordered the respondent to respond to the issue that the matter was already heard by another Magistrate. The respondent responded and, in her submission, she refuted the claim that the matter was already heard by another Magistrate. I found that it was in dispute whether or not the matter was heard by another Magistrate.

I referred the matter back to the Chief Resident Magistrate, under section 22 of the Courts Act, to reassign the matter to another Magistrate. This was to rehear this matter and determine whether the two disputed pieces of land are the same. The learned Senior Resident Magistrate sitting at Blantyre re-heard the issue and found that the piece of land is the same one that was already subject to litigation. There was, therefore, relitigation on the very piece of land. The matter was already litigated upon.

The doctrine against relitigation, classically known as '*res judicata*' exists for the purpose of stopping an abuse of court process. A matter that has already been adjudicated upon should not be re-litigated. It has been held that it is an abuse of court process to bring a matter with the same or similar issues for litigation when it has already been dealt with by a court or a tribunal of competent jurisdiction. In the case of *Stephenson v Garnet* [1898] 1 QB 677 at page 680, Smith LJ says:

"The issue now sought to be raised in this action has been determined by a court of competent jurisdiction and as the cases... show that it would be an abuse of the process of the Court to allow a suitor to litigate over again the same question which has already been decided, and to dismiss an action as frivolous and vexatious, yet it ought to do so when, as here, it has been [shown] that the identical question sought to be raised has already been decided by a competent court."

Lord Blackburn in *Locker v Ferryman* (1877) 2 App. Case, 519 said:

"The object of the rule of *res judicata* is always put upon two grounds the one public policy, that is in the interest of the state that there should be an end to litigation and the other, the hardship on the individual, that he should be vexed twice for the same cause."



See also *Nthara v ADMARC* [1995] 1 MLR 177 (HC). In *Urban Mkandawire v Council for The University of Malawi* [2007] MLR 419 (SCA), the Supreme Court said at page 406:

We shall now deal with the first ground of appeal which is that his employment was unlawfully terminated. Upon reading the judgment of this Court which was delivered on 12 July, 2004 which we have partly cited earlier on in this judgment, we are satisfied that the issues for determination and the parties to the appeal are the same. It is very clear to us that this case falls into a classic definition of *res judicata*. *Black's Law Dictionary* 6 edn. defines *res judicata* as follows:

Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of *the* parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action... *Res judicata* bars relitigation of the same cause of action between the same parties where there is a prior judgment

In summary, a case would be dismissed if the same dispute has undergone litigation in another court. For that very reason, this appeal succeeds. For that reason, I find that the respondents were in abuse of the court process. Furthermore, the respondent did not attend the hearing of the appeal before me. Neither did she attend the rehearing before the Senior Resident Magistrate. I believe these are reasons enough for me to award the appellants costs of the appeal.

MADE in Open Court at Blantyre this 16<sup>th</sup> day of March, 2019.



J N'RIVA

JUDGE