



THE PRINCIPLES OF “RES JUDICATA” AND “RES SUBJUDICE” IN TANZANIA.

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(a). RES JUDICATA

In Tanzania, the principle of res judicata is governed by section 9 of the Civil Procedure Code, Cap.33 which provides that; when a matter has been finally tried by a court of competent jurisdiction, should not be re-opened or challenged by the original parties or their successors in interest which sets out the rules for the application of res judicata in Tanzania.

The Civil Procedure Code provides for doctrine of res judicata purposely to prevent the re-litigation of matters that have already been conclusively determined by a competent court. In Tanzania, this principle applies to both judgments and orders, and it operates as a bar to the initiation of fresh proceedings on the same subject matter.

ELEMENTS OF RES JUDICATA

In Tanzania, the principles of res judicata are based on common law principles and are also enshrined in the Tanzanian Civil Procedure Code. The following are the key elements of res judicata as applied in Tanzania:-

1. Final judgment

The principle of res judicata applies to judgments that are final and conclusive. Once a court has made a final decision on a matter, the decision is conclusive and binding on the parties involved, and thus they cannot re-litigate the same matter in a subsequent proceeding. This means if the judgment is final, leaves no further room for litigation.

1. Same parties

Res judicata applies only to parties who were involved in the previous litigation or their privies. This means that the parties must have had a fair opportunity to present their case in the previous litigation.

- Same subject matter



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The principle of res judicata applies only to the same subject matter that was previously adjudicated. This means that the cause of action, the subject matter, and the issues in the subsequent litigation must be the same as those in the previous litigation.

1. Jurisdiction

The principle of res judicata applies only where the previous judgment was made by a court that had jurisdiction to hear the matter. This means that the court must have had jurisdiction upon the matter.

(b). RES SUBJUDICE

Res subjudice is a Latin term that means “a matter under judgment” and a legal principle in Tanzania which prohibits discussing or commenting on a case that is pending before the court of law. Res subjudice is a legal principle that is recognized in Tanzania and is provided for under the Tanzanian Civil Procedure Code specifically, Section 8. The act provides that no court shall proceed with the trial of any suit or issue in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title, where that suit is pending in the same or any other court having jurisdiction in Tanzania to grant the relief claimed.

The act further provides for stay or dismissal of a subsequent suit that involves the same parties and the same subject matter as a previous suit that is still pending or has already been decided by a court in Tanzania or another jurisdiction. The purpose of this provision is to prevent inconsistent judgments and to ensure judicial efficiency by avoiding the unnecessary duplication of legal proceedings.

Thus, under this principle once a matter has been brought before a court, any public discussion or statements made about the case could be considered contempt of court. This is because such comments could potentially influence the outcome of the case or prejudice



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the parties involved.

CONCLUSION.

Res judicata and res subjudice are two related legal principles that are recognized and provided for under the Tanzanian legal system. While res judicata applies to matters that have already been finally adjudicated by a court, res subjudice applies to matters that are already pending before a court or tribunal. The purpose of both principles is to prevent the unnecessary duplication of legal proceedings, to ensure consistency in legal decisions, and to promote judicial efficiency in Tanzania.