IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT KABWE
(Civil Jurisdiction)

APPEAL NO. 142/2013
SCZ/8/23/2013

BETWEEN:

HUSSEIN SAFIEDDINNE	APPELLANT
AND	
THE COMMISSIONER OF LANDS	1ST RESPONDENT
OKWUDILI TONY ANULUOHA	2ND RESPONDENT
THE ATTORNEY GENERAL	3RD RESPONDENT

CORAM: **Mwanamwambwa D.C.J., Musonda and Chinyama, J.J.S.,**
On 5th April 2016 and 11th August 2017

For the Appellant:	*Mr. K. Chenda of Messrs Simeza Sangwa and Associates*
For the 1st and 3rd Respondents:	*Mrs. S. M Wanjelani, Deputy Chief State Advocate*
For the 2nd Respondent:	*No Appearance*

JUDGMENT

Mwanamwambwa D.C.J., delivered the Judgment of the Court.

Cases Referred to:

1. ***Lawlor v Gray (1984) 3 ALL ER 345***
2. ***Overstone Ltd v Shipway (1962) 1 ALL ER 52***
3. ***Bank of Zambia v Jinas Tembo and Others (2002) ZR 103***
4. ***Development Bank of Zambia v Sunvest Ltd and Another (1995/1999) ZR 197***
5. ***Zambia Industrial and Mining Corporation Limited v Lishomwa Muuka (1998) ZR 1***
6. ***ANZ Grindslays Bank (Zambia) Limited v Christine Kaona (1995/1997) ZR 85***

7. ***Henderson v Henderson* (1843 – 1860) ALL ER 378**

8. ***SOCIETE Nationale Des Chemis De Pur Congo (SNCC) V Joseph Nonde Kakonde* (2013) 3 ZR 51**

Works Referred to:

1. **Halsbury's Laws of England, Vol. 16, 4th Edition**
2. **Black's Law Dictionary, 8th Edition**

This appeal is from a Ruling of the High Court which dismissed the appellant's action following a preliminary objection by the 2nd respondent that the matter was *res judicata.*

Brief facts are that there was a dispute between the appellant and the 2nd respondent regarding ownership of **Subdivision 5 of Subdivision 1 of Subdivision D of Farm 397, Lusaka.** The appellant commenced **Cause No. 2008/HP/0453,** and later withdrew it. After withdrawing his action, the appellant swung into action and forcibly evicted the 2nd respondent's servant who was in possession of the property at the time. He also razed the 2nd respondent's maize field and fruit trees with a bulldozer and commenced development on the property.

The 2nd respondent was not happy with the appellant's conduct. He sued the appellant and the 1st and 3rd respondents in **Cause No. 2009/HP/0628**. The High Court, after hearing the parties, found in favour of the appellant and

dismissed the 2nd respondent's action. Dissatisfied with the decision of the High Court, the 2nd respondent appealed to this Court under **Appeal No. 124/2011**. In our Judgment in that appeal, we overturned the decision of the High Court after we found that the 2nd respondent was the lawful owner of the property.

Thereafter, the appellant commenced this action under **Cause No. 2012/HP/1523**, seeking the following reliefs:

a. **A declaratory order that the appellant is entitled to compensation for all unexhausted improvements on the property known as Subdivision 5 of Subdivision 1 of Subdivision D of Farm 397, Lusaka; in the alternative**
b. **An order that the appellant salvage the building materials comprising the said unexhausted improvements on the property known as Subdivision 5 of Subdivision 1 of Subdivision D of Farm 397, Lusaka and be given sufficient time to properly dismantle the relative structures;**
c. **An order that the 2nd respondent do by way of compensation pay the appellant the value of the unexhausted improvements on the property known as Subdivision 5 of Subdivision 1 of Subdivision D of Farm 397, Lusaka; from the proceeds of the sale thereof;**
d. **An order against the 1st and 3rd respondents for damages emanating from injury caused by the misrepresentation of the relative officials and records of, and at, the Ministry of Lands on which the appellant relied in acquiring defective title in Subdivision 5 of Subdivision 1 of Subdivision D of Farm 397, Lusaka;**
e. **Costs**

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Before the matter could be heard, the 2nd respondent raised a preliminary objection that the appellant's action was *res judicata*. In his Ruling on the objection, the learned trial Judge considered the definitions of *res judicata* as expounded by the learned authors of **Halsbury's Laws of England, Volume 16, 4th Edition** and **Black's Law Dictionary, 8th Edition**. The learned trial Judge in his decision adopted the definition of *res judicata* as given by **Black's Law Dictionary** which states as follows:

> "Res judicata: an issue that has been definitively settled by Judicial decision (Judgment). An affirmative defence barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been - but was not - raised in the first suit. The three essential elements are:
> (1) An earlier decision on the issue;
> (2) A final judgment on the issue;
> (3) The involvement of the same parties or parties in privity with the original parties."

Based on the three elements of *res judicata* as outlined in **Black's Law Dictionary,** he found that *res judicata* could not be pleaded in respect of **Cause No. 2008/HP/0453** since it was withdrawn by the appellant before trial and there was no final judgment on the issues in that cause.

As regards **Cause No. 2009/HP/0628,** he found that there was a Judgment of the High Court in that matter and after the appeal, there was a final Judgment of the Supreme Court under **Appeal No. 124 of 2011**. He observed that the parties in **Appeal No. 124 of 2011** were the same parties in the matter that was before him. He found that the issue in **Appeal**

No. 124 of 2011 and in the case before him, had its genesis and revolved around a piece of land, namely, **Subdivision 5 of Subdivision 1 of Subdivision D of Farm 397, Lusaka**. He pointed out that from the three essential elements of *res judicata*, the only issue that remained to be resolved was whether the Supreme Court Judgment in **Appeal No. 124 of 2011**, could effectively be said to be an earlier and final decision on the issues raised and the reliefs sought in the case before him. He pointed out that the Supreme Court Judgment made a determination on the ownership of the property in issue and declared that the 2nd respondent and his wife were the rightful and legal owners of the land.

The learned trial Judge noted that the reliefs sought in the matter before him related to compensation, damages and salvage of property arising from the same piece of land. That since the appellant was a defendant in the earlier action under **Cause No. 2009/HP/0628**, his advocate should have exercised due diligence in defending the matter by counter-claiming the reliefs being sought in this matter. He stated that it was not prudent for a defendant to go to court with a one-track mind that he will succeed at trial and ignore the consequences of not succeeding; to have a mindset that if he fails, he can then bring a fresh action for compensation and damages when he had an opportunity of making a counter-claim in the alternative. That

doing so was an abuse of the court process and an affront to the legal maxim *'interest reipublicate ut sit finis litium'* (it is the public interest that there should be an end to litigation).

The trial Judge dismissed the argument by counsel for the appellant that the reliefs sought were post-judgment and could not have been foreseen at an earlier stage. He took the view that counsel for the appellant could have pleaded for compensation for his client in the event of not succeeding, by way of a counterclaim in the alternative.

He therefore found that the issues raised and the reliefs sought, in the case that was before him, arose from the same transaction as those upon which this Court had delivered a Judgment in **Appeal No. 124/2011**. He found that the reliefs which were being sought in the case before him could have been raised in **Cause No. 2009/HP/0628,** because they were evident at that time and foreseeable in the event of the appellant not succeeding at trial or on appeal to the Supreme Court, as it turned out to be. The trial Judge was satisfied that all the three essential elements of *res judicata* had been met and the defence of *res judicata* had succeeded. He therefore dismissed the appellant's action.

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Dissatisfied with the Ruling of the learned trial Judge, the appellant appealed to this Court advancing two grounds of appeal. These read as follows:-

1. **That the Court below misdirected itself both in law and in fact when it found that the issues and reliefs sought by the appellant could have been but were not raised in Cause No. 2009/HP/0628 as the same were evident at that time and also foreseeable in the event of the plaintiff not succeeding at trial or Supreme Court as it turned out to be;**
2. **That the Court below misdirected itself when it found that all the three elements of *res judicata* had been met.**

The parties filed written heads of argument based on these grounds of appeal. At the hearing of this appeal, counsel for the parties augmented the written heads of argument with oral submissions. We shall deal with both grounds at the same time since they are interrelated.

In support of the first ground, Mr. Chenda attacked the finding by the Court below that the issues and reliefs which were being sought by the appellant in this matter could have been raised in **Cause No. 2009/HP/0628** as the same were evident at that time and also foreseeable in the event of the appellant not succeeding at trial or on appeal to this Court as it turned out to be. He argued that the lower court made this observation without reviewing the pleadings from the first action by way of comparison with the second action. He submitted that this finding was therefore speculative and without any basis, as there was no examination done on the pleadings in the two causes.

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He contended that the appellant's claims in this action for compensation for the unexhausted improvements erected on the property could not have realistically been pleaded in the first action for two reasons. That firstly, the 2nd respondent had obtained an injunction against the appellant restraining him from undertaking any further developments on the land in dispute while the first action, **Cause No. 2009/HP/0628** was pending. That secondly, whereas the High Court judgment in **Cause No. 2009/HP/0628** was delivered in favour of the appellant, the decision of this Court in the resultant **Appeal No. 124/2011** was only passed on 11th October, 2012, reversing the decision of the High Court in **Cause No. 2009/HP/0628**. He contended that the appellant could not possibly have claimed for compensation for the improvements done in the interval between the Judgment of the High Court in **Cause No. 2009/HP/0628** and the Judgment of this Court in **Appeal No. 124/2011**. He stated that the right to claim for the improvements clearly arose after the passing of the Judgment in **Appeal No. 124/2011**, which divested the appellant of ownership of the land. He stated that the appellant could not therefore have pleaded his case for compensation for the improvements within the first action in **Cause 2009/HP/0628**.

Mr. Chenda submitted that the Court below appears to have glossed over the appellant's claim for damages for

misrepresentation against the State arising from the injury suffered following the Supreme Court Judgment. He argued that the Court below made no specific finding as to whether this claim too could have been pursued in the previous action, especially that the High Court had decided the matter in favour of the appellant. He contended that the Court below fell into grave error when it found that the appellant could have raised the claim against the State in the earlier action in **Cause No. 2009/HP/0628** when the appellant's right to relief crystallized with the passing of the Judgment in **Appeal No. 124/2011**.

On the appellant's claim for an order that the appellant be allowed to salvage the building materials, Mr. Chenda submitted that this is an issue that arose post-judgment and it could not have been pursued in the earlier proceedings. He pointed out that there was evidence that the appellant attempted to recover building materials and other salvageable property from the premises following the Judgment of the Supreme Court but was prevented from doing so by the 2nd respondent. He submitted that it was the 2nd respondent's post-Judgment conduct of preventing the appellant from recovering his salvageable property that formed the basis of the claim in the second action, which claim was in fact a separate and distinct cause of action from those relating to compensation for improvements and damages for misrepresentation.

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He submitted that a plea of *res judicata* cannot prevent a party from pursuing separate and distinct causes of action notwithstanding that they may be similar to a previously adjudicated cause or that they arise from substantially the same facts. For this argument, Mr. Chenda referred us to the case of **Lawlor v Gray**[1], and the case of **Overstone Ltd v Shipway**[2]. He submitted that where two separate causes of action arise out of the same set of facts, a party is estopped by *res judicata* from pursuing the second cause in subsequent proceedings. He stated that r*es judicata* does not apply where the two causes are based on entirely different causes of action. He argued that the cause of action in this matter arose out of post-judgment events and could not thus have been contemplated and litigated upon under the previous action. It was counsel's contention that the appellant could not have been expected to claim in the earlier action based on future events and wrongs which he had not suffered yet.

Mrs. Wanjelani on behalf of the 1st and 3rd respondent countered ground one of this appeal. She supported the decision of the lower court and submitted that the issues and reliefs sought by the appellant in this case could have been raised in **Cause No. 2009/HP/0628** because the two matters pertained to the same contention. She pointed out that the

matters revolved on **Subdivision 5 of subdivision 1 of subdivision D of Farm No. 397, Lusaka**. She observed that in the Court below, the appellant, who was a defendant in **Cause No. 2009/HP/0628,** had legal representation at all times. That it was the duty of the appellant's advocate to approach the matter with due diligence because it is not proper for a party in a matter to go to Court with a one-track mind that he will succeed at trial and therefore ignoring the consequences of not succeeding. She stated that it
was for that reason that she was arguing that the issues and reliefs sought were foreseeable in **Cause No. 2009/HP/0628**.

Mrs. Wanjelani referred us to the case of **Bank of Zambia v Jonas Tembo and Others**[3] where we said that in order for the defence of *res judicata* to succeed, it is necessary to show not only that the cause of action was the same, but also that the plaintiff had an opportunity of recovering and, but for his default might have recovered in the first action that which he seeks to recover in the second. She contended that the principles in the case of **Bank of Zambia v Jonas Tembo and Others**[3] apply to the present case. That this was because the cause of action in **Cause No. 2009/HP/0628** and the present case were the same as they emanated from a dispute on the ownership of **Subdivision 5 of subdivision 1 of subdivision D of Farm No. 397, Lusaka**. She stated that the appellant might

have had an opportunity to recover in **Cause No. 2009/HP/0628** but because he had a one-track mind of success, he overlooked the opposite of success.

Counsel cited the case of **Development Bank of Zambia v Sunvest Ltd and Another**[4] where we held that we disapprove of parties commencing a multiplicity of actions over the same subject matter between the same parties. She argued that allowing this appeal would be allowing litigation by instalments over the same matter involving the same parties because all the issues ought to have been raised by the appellant in **Cause No. 2009/HP/0628**. She urged us to dismiss this appeal as the appellant was simply trying to abuse the court process by twisting the arm of the Court on a matter that had already been settled.

On ground two, Mr. Chenda submitted that the Court below misdirected itself when it found that all the three elements of *res judicata* had been met, namely, that there was an earlier decision on the issue; that there was a final judgment on the issue; and that the parties in the two causes were the same. He argued that before one can talk about whether or not there has been an earlier and final decision on the issue sought to be litigated, it must be considered whether the issues in the second action were in fact adjudicated upon in the earlier proceedings.

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Counsel referred us to the reliefs which were sought by the 2nd respondent in the first action under **Cause No. 2009/HP/0628** and the reliefs which the appellant was seeking in this action under **Cause No. 2012/HP/1523**. It was Mr. Chenda's submission that the issues raised and the reliefs sought in the two actions were not the same. He also referred us to the findings we made in **Appeal No. 124/2011** and argued that neither our decision in **Appeal No. 124/2011** nor the High Court in **Cause No. 2009/HP/0628** ever adjudicated upon the issues which were being raised in the present case. He referred us to **Paragraph 975 of Halsbury's Laws of England, Vol. 16, 4th edition Re-issue**, which states that in order that a defence of *res judicata* may succeed, it is necessary to show that not only the cause of action was the same, but also that the plaintiff has had an opportunity of recovering, and but for his own fault might have recovered in the first action that which he seeks to recover in the second. That a plea of *res judicata* must show either an actual merger, or that the same point had been actually decided between the same parties. Further that it is not enough that the matter alleged to be concluded might have been put in issue, or that the relief sought might have been claimed, it is necessary to show that it actually was so put in issue or claimed.

In this regard, counsel submitted that not only was the

lower court required to show that the cause of action or issues raised in the two actions were the same, but also that there is a conclusive determination made by a court of competent jurisdiction on the issues so that to litigate anew on those issues would be an abuse of the process of court. Mr. Chenda again referred us to **Paragraph 975 of Halsbury's Laws of England, Vol. 16, 4th edition Re-issue**, which states that where *res judicata* is pleaded by way of estoppel to an entire cause of action, rather than to a single matter in issue, it amounts to an allegation that the whole legal rights and obligations of the parties are concluded by the earlier judgment, which may have involved the determination of questions of law as well as findings of fact.

He argued that before dismissing the appellant's action, the lower court ought to have investigated whether the earlier judgment addressed the appellant's claim for compensation for the unexhausted improvements on the land and whether it also addressed the appellant's claim to salvage the building materials on the property or his claims for damages for misrepresentation against the State. He pointed out that neither the question of compensation for the appellant nor that of salvaging building materials or damages for misrepresentation arose in **Appeal No. 124/2011.** He submitted that these issues were therefore not addressed or

adjudicated upon by this Court as they did not arise in the Judgment of the High Court in the first action. It was his submission that *res judicata* cannot arise where there has been no adjudication on a particular issue. Counsel relied on the case of **Zambia Industrial and Mining Corporation Limited v Lishomwa Muuka**[5] for this submission.

It was Mr. Chenda's argument that *res judicata* could not apply to this case because firstly, the issues raised in this case constituted separate and distinct causes of action from the issues in **Cause No. 2009/HP/0628**. That secondly, the issues raised in this case were never adjudicated upon in **Cause No. 2009/HP/0628** nor in the resultant **Appeal No. 124/2011**. He stated that the elements of *res judicata* were not satisfied as was erroneously concluded by the lower court. He urged us to allow this appeal and send the matter back to the High Court so that the substantive action may be heard and determined on its merits.

On behalf of the 1st and 3rd respondents, Mrs. Wanjelani opposed ground two. She submitted that the court below was on firm ground when it found that all the elements of *res judicata* had been met. She pointed out that this ground was concerned with **Cause No. 2008/HP/0453**, which was withdrawn, and **Cause No. 2009/HP/0628**, which culminated

into **Appeal No. 124 of 2011**. She stated that upon review of these matters, it will be known whether or not, in the current case, *res judicata* can be argued. Counsel referred us to the definition of *res judicata* as defined in **Black's Law Dictionary, 8th Edition**, which the court below relied on.

She submitted that firstly, it was worth establishing whether or not either cause reached finality, that is, judgment was passed. She argued that *res judicata* cannot be successfully pleaded in relation to **Cause No. 208/HP/0453** because it was withdrawn by the appellant and it did not reach finality. That as for **Cause No. 2009/HP/0628**, judgment was passed by the High Court in the matter, and on appeal to the Supreme Court, final Judgment was passed, meaning that the matter had reached its finality.

That secondly, it was worth establishing whether or not the parties in both matters were the same. She submitted that it was quite evident that the parties to **Cause No. 2009/HP/0628** and the present case were the same, in that the plaintiff was the same and the defendants too, were the same.

That thirdly, it was important to establish whether or not the Supreme Court Judgment in **Appeal 124/2011** was an earlier and final decision on the issues raised and the reliefs

being sought in the present case. It was her submission that our Judgment in **Appeal No. 124/2011** was an earlier and final decision. She therefore submitted that all the three elements of *res judicata* were met and the Court below was on firm ground when it so found.

We anxiously considered the Ruling appealed against and the issues raised in this appeal. The critical issue as we see it, is whether the appellant's action is *res judicata*. In order that the defence of *res judicata* may succeed, it is necessary to show that not only the cause of action was the same, but also that the plaintiff has had an opportunity of recovering, and but for his own fault, might have recovered in the first action, that which he seeks to recover in the second. For this principle, **see:**

1. **Halsbury's Laws of England, 4th Edition, Vol. 16, in paragraph 1528**
2. **Bank of Zambia v Tembo and Others**[4]
3. **ANZ Grindslays Bank (Zambia) Limited v Chrispine Kaona**[6]

In our previous decision in the case of **Societe Nationale Des Chemis De Pur Congo (SNCC) v Joseph Nonde Kakonde**[7], we indicated that the rationale for *res judicata* is that there must be an end to litigation. Basically, the purpose of the principle of *res judicata* is to support the good administration of justice in the interests of both the public and the litigants, by preventing abusive and duplicative litigation.

Its twin principles are often expressed as being (1) the public interest that courts should not be clogged by re-determinations of the same disputes and (2) the private interest that it is unjust for a man to be vexed twice with litigation on the same subject matter. It is therefore important that parties to litigation bring forward their whole cases at once. In the celebrated case of **Henderson v. Henderson**[8], it was held that:

> **"where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole cases, and will not, except in special circumstances, permit the same parties to open the same subject of litigation, in respect of the matter which might have been brought forward as part of the subject in content, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies except, in special cases, not only to points on which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time."**

In this matter before us, the Court below dismissed the appellant's action for being *res judicata*. Mr. Chenda on behalf of the appellant in this appeal argued that this action is not *res judicata*. He anchored this argument on two major points. That firstly, the cause of action in the earlier proceedings under **Cause No. 2009/HP/0628** was not the same as the cause of action in this matter. He indicated that the issues raised and the reliefs sought in the two actions were not the same and also that there was no earlier and final decision on the issues raised

in the present matter. That secondly, the cause of action in this matter arose out of post judgment events, which could not have been pleaded in the earlier proceedings under **Cause No. 2009/HP/0628**.

In view of the arguments advanced by Mr. Chenda, we scrutinized the issues and the reliefs sought in both **Cause No. 2009/HP/0628** and the present case. What comes out clearly is that both matters arose out of a dispute between the appellant and 2nd respondent over the ownership of **Subdivision 5 of subdivision 1 of subdivision D of Farm 397, Lusaka.** As we have already indicated above, the appellant's claims in the present action are for compensation, salvage of building materials and damages. In the earlier matter in **Cause No. 2009/HP/0628**, it was the 2nd respondent who sued seeking several declarations against the appellant and the 1st and 3rd respondents. Key among them, was a declaration that the 2nd respondent and his wife were the lawful proprietors of **Subdivision 5 of subdivision 1 of subdivision D of Farm 397, Lusaka**. He also sought damages and compensation from the appellant for the unlawful destruction of his property and the unlawful eviction of his servant from his land as well as, the illegal occupation of his property by the appellant.

We noted that the appellant on the other hand, filed a defence and counter-claim in which he sought the following

reliefs against the 1st and 3rd respondents in the event that the Court found in favour of the 2nd respondent:

a) **Full indemnity against all the 2nd respondent's claims should the same be upheld, together with an order that the 2nd respondent should claim the reliefs directly from the 1st and 3rd respondents;**
b) **Re-imbursement of all costs incurred in the transfer of the property into the appellant's name;**
c) **Re-imbursement of all costs for the developments effected on the property;**
d) **Damages to be assessed;**
e) **Further and other reliefs;**
f) **Costs**

The appellant also sought the following reliefs against the 2nd respondent:

a.) **An order of absolute bar and estoppel**
b.) **A declaration that in any event the 2nd respondent does not have consent under the President's hand to be able to own land in Zambia;**
c.) **Further and other relief;**
d.) **Costs**

It is quite evident, from the appellant's counter-claim for re-imbursement of costs for developments on the property, that at the time the earlier proceedings in **Cause No. 2009/HP/0628** were commenced, the appellant had already started developing the property in issue. We therefore take the view that the appellant's claim for compensation for the unexhausted improvements could have been raised in the earlier proceedings under **Cause No. 2009/HP/0628.** The fact that the appellant had already commenced development on the property at the time of the first action, means that compensation was a foreseeable remedy which he could have pleaded in the alternative, in the event of the Court finding in

favour of 2nd respondent. We are of the considered view that the appellant had an opportunity to make a counter-claim in the alternative, against the 2nd respondent for compensation for the unexhausted improvements. Similarly, we take the view that the appellant could have raised his claim to salvage building materials in the earlier proceedings, because the building materials were closely associated to the developments which the appellant was effecting on the property.

On the appellant's claim in this matter against the 1st and 3rd respondents, for damages emanating from injury caused by the misrepresentation of the officials and records at the Ministry of Lands, we think that this claim too could have been raised in the earlier proceedings because it did not arise out of post judgment events as claimed by Mr. Chenda. The fact that the appellant counter-claimed against the 1st and 3rd respondents, for re-imbursement of costs incurred in the transfer of the property into his name, means that even the claim for damages could have been raised in the earlier proceedings as it existed and was foreseeable at the time.

We entirely agree with the learned trial Judge that all the issues raised in this matter and the reliefs sought, could have been claimed under **Cause No. 2009/HP/0628** as alternative reliefs. We say so because the said reliefs were evident at the time and were foreseeable in the event of the appellant not

succeeding at trial or on appeal to this Court. We do not, therefore, agree with Mr. Chenda that this action arose out of post judgment events which could not have been pleaded in the earlier proceedings. If the appellant's advocates had exercised reasonable diligence, all the issues raised and the reliefs sought by the appellant in this matter could have been brought forward in the earlier proceedings under **Cause No. 2009/HP/0628**. In the case of **Societe Nationale Des Chemis De Pur Congo (SNCC) v Joseph Nonde Kakonde**[7] we indicated that:

> **"Res Judicata is not only confined to similarity or otherwise of the claims in the 1st case and the 2nd one. It extends to the opportunity to claim matters which existed at the time of instituting the 1st action and giving judgment."**

Accordingly, we hold that this matter is *res judicata*. We find no merit in both grounds one and two. We hereby dismiss them. We shall in the circumstances dismiss this appeal for lack of merit. We award costs to the 1st, 2nd and 3rd Respondents, to be taxed in default of agreement.

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M. S. MWANAMWAMBWA
DEPUTY CHIEF JUSTICE

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M. MUSONDA, SC.
SUPREME COURT JUDGE

.....
J. CHINYAMA
SUPREME COURT JUDGE