DAC 002/25 K/25

IN THE DISTRICT APPEAL COURT

HOLDEN IN THE KENEMA JUDICIAL DISTRICT

BETWEEN

FATMATA KAMARA **-APPLICNAT/RESPNDENT**
20 COMBEMA ROAD
KENEMA

AND

BORBOR KAMARA **-RESPONDENT/APPELLANT**
20 COMBEMA ROAD
KENEMA

DELIVERED BY MAGISTRATE/CHAIRMAN HADIRU DABOH
DATED 11TH DAY, SEPTEMBER,2025

RULING

This Court sitting as a District Appeal Court, Holden in the Kenema Judicial District, has listened the Notice of Motion dated the 14th day of April,2025, the Affidavit in Opposition dated 14th day of May, 2025, the Affidavit in Reply dated the 5th day of June,2025, and Submissions by both Counsel. The Orders prayed for on the said Notice of Motion are/were:

- That this Honorable Court grants an Order dismissing the Notice of Appeal dated the 28th February, 2025, on the ground of ***res judicata***
- Any further Order(s) that this Court may deem fit and just
- Cost of the Application to be borne by the Respondent

In appreciation of the facts, thus substantiating the plea of res judicata, I am faced with the following questions:

- Is the plea as stated in the Notice of Motion appropriate
- Succession of the Intestate Estate of Pa Lamina Kamara
- The ***"Out of Court Settlement"*** as evidenced by the exhibited letters

In answer, this Court holds in affirmation that A. G. Kamanda's Application to dismiss the Notice of Appeal on the ground of ***res judicata*** is appropriate, and that the reasoning in ***AMAL TOUFIC HUBALLAH v. CHERNOR SOW***, delivered on the 23rd June, 2011, by Late Hon. Justice Hamilton JSC, is ***'distinguished'*** to stand. The plea in the instant Case is also known as claim preclusion, a legal principle preventing the same Parties from litigating the same issue or claim

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more than once. The requirements to uphold or dismiss such a plea was outlined in the landmark case of ***POST v. PEYTON (1958)***, as follows;

- **Final Judgment Rule:** For an objection to hold on res judicata, a final Judgment on its merits must have been rendered by a Court of Competent Jurisdiction; deciding the substantive issues in a case.
- **Same Parties or Privies:** The Court is expected to confirm that the Parties involved in the original case must be the same as those in the subsequent case, or have a legal relationship, such as representatives or heirs.
- **The Same Claim or Cause of Action Rule:** The claim in the second action must be based on the same factual transaction or series of transactions as in the first action.

The Learned Judge in ***AMAL TOUFIC HUBALLAH***, was right to say ***"unless the above preconditions are established, the plea of res judicata cannot be sustained".*** They are established in the instant case and that the Judgment dated the 14th day of February,1991, by **His Worship Gabriel A.S. Baion,** was delivered in a **Competent Court of Jurisdiction,** on the same subjectmatter, facts, and parties/privies. The Respondent/Appellant, ***BORBOR KAMARA,*** remains bound by the previous decision of my Learned brother. I therefore see no reason for the extravagant proceeding at the Nongowa Local Court No.2, in June,2024. The Judgment by His Worship Gabriel A.S. Baion was secured on facts and pure question of law and must operate as an estoppel by record in the instant suit. The Respondent/Appellant herein could have done better with Leave for enlargement of time to appeal against same at the High Court, Holden in the Kenema Judicial District.

It is trite law that a Judgment is final when its finality disposes of the rights of the Parties and leaves nothing to be judicially determined. This was emphasized in the case of ***Federated Department Stores, Inc. v. Moitie (1981),*** where the U.S. Supreme Court held that a final Judgment is binding and should not be set aside unless there are extraordinary circumstances. A final judgment can be best challenged by way of appeal and not by reopening of the suit. Reopening the same case will occasion to procedural prejudice and an increased costs for all involved and a potential erosion of finality. I am not satisfied that litigating this case for the second time would lead to a different procedure and outcome. Therefore, and for the reasons outlined, I dismiss the Notice of Appeal for ***abuse of process.***

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HADIRU DABOH (SNR.MAGISTRATE)
PRINCIPAL MAGISTRATE, COURT NO.1, KENEMA JUDICIAL DISTRICT

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