CHAPTER FIVE
RES JUDICATA AND SPLITTING OF CLAIMS

- **Res Judicata**

❖**Latin** term which literally means "**the matter having been litigated**."

❖The **purpose** is to **insure finality of litigation**.

- **General Principles**

- Once a matter has been litigated, it may **not be re-litigated**, and issues that have been **determined** once may **not be determined again** in subsequent suit.
- In the **absence** of **review** of judgment the **decision on the issue in the suit is final**.

Principle of res judicata Vs Principle of Pendency

- Art. **5** Vs Art. **8**
- Art. 5 An issue once litigated, it may **not be re-litigated**.
- Art. **8 Principle of Pendency**
- **One and the same civil suit** may **not be instituted in more than one civil court.**
- Where a suit instituted in **several** courts, the court in which the statement of claim was **first filed shall have jurisdiction.**
- Pendency in a **foreign** court shall **not preclude the courts in Ethiopia**.

General condition for the application of the rule of res judicata Art 5

- 1. Matters **Directly** and **Substantially** in **Issue**,
- 2. Between **the same parties**, or between **parties under whom** they or **any of them claim**, or claimed in **common** for **themselves** and **others**
- 3. Litigating under the **same title**,
- 4. Has been **heard** and **finally decided**.

- A party who is **not bound by the former judgment** and so **rules of res judicata is not applicable on them includes**:-
  - A party who **properly withdraws**,
  - A party whose **name is struck off** ceases to be a party,
  - A person who **was not named** in the suit although his **rights may have been asserted**,
  - **Minor** who show that he was **not represented in accordance with**

The Scope of Res Judicata

- The scope of res judicata is **very broad**.
- There are **two aspects of this broad scope**.
  - **1st**, any **matter** on which **might** and **ought** to have been **made** a ground of **defense** or **attack** in the suit shall be **deemed** to have been **substantially and materially in issue**.
  - **2nd**, any **relief** claimed in the suit which has **not been expressly**

The general overview of the scope of res judicata

- **1. Matters to Be Raised**
- Res judicata **applies** to the issues that were **expressly decided** and issues that **would have been decided if raised** by the parties.
- If plaintiff **fails to assert certain grounds** that would **entitle** him to relief, he **cannot** brings a subsequent suit alleging a **different ground** as the **subsequent suit is barred by res judicata**.
- But **failure** to assert a claim of **counterclaim** or **set-off** by the defendant **does not bar** his doing so in a **subsequent** suit

2. Relief not Granted Art 5(3)

- Relief claimed in the former suit which has **not been expressly granted** by the decree passed in such suit shall be **deemed to have been refused**.

•General Principles Art 216

- The rule under Art 216 is **prohibiting the splitting** of cause of action
- Every suit shall as far as **practicable** be framed so as to **afford** for **final decision** and to **prevent further litigation**.
- Every suit must include **the whole of the claim** and if the **plaintiff omits** to sue in respect of any portion of his claim, he **may not**

The two aspects to the Rule against Splitting

- There are **two aspects** to **the rule against splitting** a cause of action:-
  - **1st** The plaintiff must **include the whole of his claim** with respect to the cause of action on which he sues, and
  - **2nd** The plaintiff must **seek all**

Leave to sue for additional relief at another time Art. 216(4)

- There is **one situation** where the whole of the claim need **not be included**.
- The plaintiff may **intentionally relinquish** a portion of his claim so as to **bring** it within the jurisdiction of a **particular court**.
- For a claim of 5200, relinquishing 200 and sue for **500** at High court

The rule of “**Omitting a portion of his claim**.”

- So long as the plaintiff was **aware** of the claim, the **omission** of a portion, even if **unintentional**, **bars a subsequent suit** with respect to that portion.

The effect of the plaintiff's splitting his claim

- There are **three** (3)
  - **1**. To hold that the suit should be **consolidated**,
  - **2**. **To hold** that one must be **dismissed.**
  - **3**. The **plaintiff** may **select** which suit he **wants** to prosecute; **amend** his statement of claim to **add** the amount omitted.