BETWEEN

Mohammd Ali Bin Othman — **1st Plaintiff**
Hj Muhammad Razif Bin Hj Ibrahim — **2nd Plaintiff**

AND

Mastadi bin Wahid — **1st Defendant**
Aisah binti Salleh — **2nd Defendant**

(Intermediate Court of Brunei Darussalam)
(Civil Suit No. 5 of 2022)

APPEAL FROM A JUDGE IN CHAMBER

Pg Hjh Masni Pg Hj Bahar, Judge
Date of Judgment: 31st October, 2026.

Headnote: Order 18 rule 18(1) (d)- Striking Out- Abuse of Court's Process- Doctrine of Res Judicata.

Ms Hjh Zalwatul Sakinah binti Hj Ibrahim (M/S Rashid & Sim Advocates and Solicitors) for the Appellants/Plaintiffs.
Ms Sa'adtun Naadhiyah Mohammad Rosli (M/S CCW and Partnership) for the Respondents/Defendants.

Cases cited:
Henderson v Henderson (1843) 3 Hare 100
Johnson v Gore Wood & Co [2002] 2 AC 1
Talbot v Berkshire County Council [1993] 4 All ER 9
Ram Thayalan Raman Siv & Anor v Liew Yap Tong t/a Tong Heng Motor Work [2002] 4 SLR 566

JUDGMENT

Pg Hjh Masni Pg Hj Bahar, Judge

Introduction

1. This appeal concerns the striking out of the Appellants' claim under Order 18 Rule 18 of the Supreme Court Rule where the Registrar ruled that the doctrine of *res judicata* applied and that the Appellant's claim tantamount to an abuse of Court's process.

2. The Registrar ruled that the Respondents' settlement of a personal injury claim in HCCS 48 of 2021 arising from a motor vehicle collision precludes the Appellant in this suit from pursuing an independent claim for the injuries and losses they sustained rising from the same accident on the 10th January 2019.

Facts and Chronology of the Case:

3. On or about 10 January 2019, at approximately 1610 hours, Mastadi (now deceased) was driving a motor vehicle bearing registration number BAS 2977 when he was involved in a road traffic collision with another motor vehicle bearing registration number KR 7036, driven by Mohd Ali.

4. Following the said collision, the estate of the late Mastadi, Aishah Salleh and the owner of motor vehicle BAS 2977, instituted proceedings in HCCS No. 48 of 2021 against Mohammad Ali Rahman bin Othman, the driver of motor vehicle KR 7036, and Hj Muhammad Razif bin Hj Ibrahim, its registered owner, for negligence and seeking damages for the personal injuries, loss and damage arising from the collision. The claim was brought on behalf of the late Mastadi and his son, Abdul Haziq bin Mastadi, who was travelling as a front-seat passenger at the material time.

5. The suit in HCCS 48 of 2021 read as follows:

IN THE HIGH COURT OF BRUNEI DARUSSALAM

HOLDEN AT BANDAR SERI BEGAWAN

HCCS 48 OF 2021

BETWEEN

1.AISHAH BINTI SALLEH — 1st Plaintiff
(BYCI No: 00-127358)
[suing her personal capacity and as the administratrix
of the estate of and behalf of the dependent of
MASTADI BIN WAHAB (deceased)
(BYIC No: 01-127393)

2. ABDUL HAZIQ BIN MASTADI — 2nd Plaintiff
(BYIC No: 01-127393

AND

1.MOHAMMD ALI BIN OTHMAN — 1st Defendant
(BYIC No: 01 -072239)

2.Hj Muhammad Razif bin Hj Ibrahim — 2nd Defendant
(BYIC No: 00-296500)

6. At the material time, the Defendants in HCCS No. 44 of 2021 were unaware that the Plaintiffs had commenced proceedings against them in respect of the same collision, as the matter was being handled by their insurers. Consequently, and without knowledge of the existence of those proceedings, the Defendants independently instituted a separate action against the Plaintiffs, seeking damages for the injuries, loss and damage they had sustained as a result of the same collision.

7. The subsequent action was filed as ICCS No. 5 of 2022, in which the parties' respective positions were reversed. In particular, the Defendants in HCCS No. 44 of 2021 became the Plaintiffs in ICCS No. 5 of 2022, whilst the Plaintiffs in HCCS No. 44 of 2022 became the Defendants in the subsequent proceedings.

8. The ICCS 5 of 2022 suits read as follows:

IN THE INTERMEDIATE COURT OF BRUNEI DARUSSALAM
HOLDEN AT BANDAR SERI BEGAWAN

ICCS No. 5 0F 2022

BETWEEN

1.MOHAMMD ALI BIN OTHMAN (BYIC No: 01 -072239)	1st Plaintiff
2.Hj Muhammad Razif bin Hj Ibrahim (BYIC No: 00-296500)	2nd Plaintiff

AND

1.Mastadi bin Wahid (BYIC No: 00-262333)	1st Defendant
2.Aisah binti Salleh (BYIC No: 00-127358)	2nd Defendant

9 Subsequent to the commencement of ICCS No. 5 of 2022, a Consent Order was entered in HCCS No. 48 or 2021, without any admission of liability on the part of the Defendants therein in March 2023.

The Appeal:

10 Neither party was initially aware of the existence of the respective proceedings. Upon becoming aware of the proceedings, the Defendants in the present suit, ICCS No. 5 of 2022, filed an application under SIC No. 37 of 2025 to strike out the Plaintiffs' claim pursuant to Order 18 rule 18(1)(d) of the Rules of the Supreme Court ("RSC").

11 The application was premised on the ground that the Plaintiffs' claim constituted an abuse of the process of the Court and was barred by the doctrine of *res judicata*, particularly the principle laid down in *Henderson v Henderson* (1843) 3 Hare 100. The Registrar allowed the Defendants' application and ordered that the Plaintiffs' claim be struck out. Dissatisfied with the Registrar's decision, the Plaintiffs have brought the present appeal.

12 For ease of reference, I shall hereinafter refer to the Plaintiffs in the present suit as the "Appellants" and the Defendants as the "Respondents".

13. Both counsels have assisted this court with various authorities in support their respective submissions. I have read and considered these authorities. However, I do not propose to go through each of them in details. I shall confine my determination to those authorities and principle that us most pertinent to the issues before this Court.

14. In coming to my decision, I have considered the chronology of the proceedings, the distinct nature of the parties' claims, and the applicable principles governing abuse of process. It is my decision that the striking-out order cannot be sustained on the facts presently established. My reasoning are as follows.

Court's Consideration:

Chronology:

15. The Respondents commenced High Court Suit in 2021 against the Appellants, claiming damages for personal injuries arising from a motor vehicle collision that occurred in 2019.

16. In January 2023, the Appellants commenced ICCS No. 5 of 2022 against the Respondents, seeking damages for the Appellant's own injuries and losses arising from the same collision.

17. On the 7th March 2023, the Respondent's claim in High Court Suit No. 4 of 2001 was settled by a Consent Order following payment by the respondent's insurer. The settlement was made without an admission of liability.

18. The Appellants maintains that the Appellant's claim was already pending before the settlement and that the Appellants was unaware of the Respondents' insurance settlement. The Appellants further contends that the claim in ICCS No 5 of 2022 concerns the Appellant's own injuries and losses and constitutes a separate cause of action.

Issues for determination:

19. The issues here are:

    a. Whether the settlement of High Court Suit No. 44 of 2001 renders the Appellants' claim in ICCS No 5 of 2022 barred by *res judicata* and

b. Whether the Appellants' proceedings constitute an abuse of process under the principles established in *Henderson v Henderson* and
c. Whether the circumstances justify striking out the Appellants' claim without a determination of its substantive merits.

Principles of Res Judicata:

20. The doctrine of *res judicata* is laid down in a landmark case of ***Henderson v Henderson* (1843) 3 Hare 100.** Under this principle, it provides that once a competent court *has determined a dispute*, parties generally cannot commence fresh proceedings concerning matters that could and should have been raised in the earlier action. This principle prevents abuse of the judicial process, promotes finality in legal disputes, and protects parties from repeated lawsuits. Nevertheless, this rule is not absolute. It allows that court to retain discretion to consider special circumstances where justice requires a different outcome.

21. In the subsequent case of *Johnson v Gore Wood & Co* [2002] 2 AC 1, the House of Lords clarified that the application of the Henderson principle requires a broad assessment of whether the later proceedings constitute an abuse of the court's process. Therefore, the rule seeks to balance two important considerations: the public interest in finality of litigation and the need to ensure fairness between the parties.

Whether the appellant's claim is barred by res judicata

22. The Respondents in this present case submits that the Appellants' case is barred by res judicata because the Consent order resolved the dispute arising from the collision.

23. I do not accept the Respondent's submission. The cause of action brought between the two proceedings are material.

24. The Respondents' action concerned the injuries and losses allegedly sustained by the Respondents, whereas the Appellants' action concerns the injuries and losses allegedly sustained by the Appellants. Although both claims arose from the same collision, they constitute distinct claims for relief, founded upon the respective rights and alleged losses of each party.

25. The mere fact that both claims arose from the same accident is insufficient to establish that the Appellants' cause of action are identical for the purposes of *res judicata*.

Consent Order:

26. In relation to the Consent Order, it provides that the Appellants (the Defendant in HCCS 44 of 2021) is to pay the Respondents (the Plaintiff in HCCS 44 of 2021 in full and final settlement of the Plaintiffs' claim amounting to $460,000.00 on or before March 16th 2023. Paragraph 5 of the Consent Order further provides that, "Upon payment of the sum stipulated, the Defendants and insurers shall be discharged and released from all claims made by the Plaintiffs in this action". The nature and scope of the settlement is only in relevant to the resolving the claim made by the Respondents. The fact that the Respondents' action was settled without any admission of liability does not change this position. While the settlement is final and binding in respect of the Respondents' claim, it does not necessarily mean that the Appellants' independent claim was also settled or abandoned. These are separate matters, and the settlement of one does not, by itself, extinguish the other.

27. Having considered the material before this Court, I find no sufficient basis to conclude that the settlement of the Respondents' action also extinguished the Appellants' claim. There is nothing sufficiently established in the terms of the Consent Order to show that the Appellants were prevented from pursuing his own cause of action.

28. In the circumstances, I am of the view that the doctrine of *res judicata* does not apply merely because the Respondents' claim was previously settled and both claims arose from the same collision.

29. In addition to that, the Consent Order was entered as a result of a settlement without admission. No adjudication as conducted. Therefore, in the present case, Res Judicata does not apply.

Timeline:

30. Another important factor in this case is the timeline of the legal proceedings.

    a. 30 June 2021- Respondents started their case first. The Respondent's original proceedings were already underway.
    b. 4 January 2023 — Appellants filed a separate case. The Appellants' claim was already before the Court.
    c. 7 March 2023 — Respondent's case was settled. A consent order was recorded, but the appellant's separate case had already been commenced
    d.

31. The timeline is important because the Appellants did not start a new case after the Respondents' settlement. Instead, the Appellants were continuing a case that had already been filed before the settlement.

32. I refer to the case of *Talbot v Berkshire County Council* [1993] 4 All ER 9 *and Ram Thayalan Raman Siv & Anor v Liew Yap Tong t/a Tong Heng Motor Work* [2002] 4 SLR 566.

33. The most significant distinction between *Talbot* and *Ram Thayalan* concerns the capacity in which the litigant participated in the earlier proceedings.

34. In *Talbot*, although Mr Talbot was initially a defendant in the passenger's action, he had already brought third-party proceedings against Berkshire County Council seeking compensation. Those proceedings constituted a claim by Mr Talbot against the council. His subsequent personal injury action was therefore an attempt to pursue an additional claim against a party whom he had already proceeded against in relation to the same accident.

35. In contrast, Mr Liew *in Ram Thayalan* was merely defending the original action commenced by SBS. He had not previously pursued his own claim for damages against SBS. His subsequent proceedings were therefore his first affirmative claim against SBS and the bus driver. This distinction was expressly recognised where the court emphasised that Mr Liew was not the plaintiff in the first action and could only recover his own damages through a counterclaim or separate proceedings.

36. Therefore, based on the timeline the Appellants commencement of the Appellants' claim before the settlement is a material circumstance that must be taken into account. It would be wrong to disregard that fact and treat the Appellants as though the Appellants had commenced a new action only after the respondent's claim had been settled- *Ram Thayalan Raman Siv & Anor v Liew Yap Tong t/a Tong Heng Motor Work* [2002] 4 SLR 566.

<u>Whether the proceedings constitute an abuse of process</u>

37. The Respondents submits that the Appellant's claim should have been brought as a counterclaim in HCCS 44 of 2001. It is argued that the claims ought to have been dealt with together to avoid duplicative litigation and the possibility of inconsistent findings.

38. The case of *Ram Thayalan* directly addresses the right to commence a separate action instead of filing a counterclaim. It does not conclusively determine whether a subsequent Consent Order in the earlier proceedings bars the continuation of that separate action. That issue requires independent consideration. Both parties are seeking compensation for their own respective injuries and losses.

39. Accordingly, I rule that that ICCS No. 5 of 2022 remains a distinct and independently maintainable action, and that Consent Order in HCCS No. 44 of 2021 does not compromise or otherwise dispose of the claims advanced in ICCS No.5 of 2022 and does not amount to abuse of Court's process.

40 The Respondents remain entitled to raise any properly available defence to the Appellants' claim, including issues concerning negligence, causation, contributory negligence, the nature of the injuries, and the recoverability of the losses claimed.

Decision:

41. For the reasons set out above, I allowed the Appellants' appeal. The order striking out ICCS No. 5 of 2022 is hereby set aside and the Appellants' claim is therefore reinstated. I wish to emphasis that this judgment does not determine whether either party was negligent in the collision, whether either party is liable for the other's injuries, or the amount of any damages recoverable. These are matters to be determine at a proceeding.

42. As to costs, the Appellants shall have the costs of this appeal. Costs to be taxed if not agree.

PG HJH MASNI PG HJ BAHAR
Judge, Intermediate Court