

HIGH COURT EXTENDS THE OPERATION OF THE "ONCE AND FOR ALL" RULE - (Managing Partner, John Carr-Hartley)

There is little doubt that the "once and for all" Rule has applied to claims for damages for many years. Until recently, the "once and for all" Rule required that a party who had a claim for damages must claim all his damages in a single action and would not be permitted to approach the Court piecemeal.

The rationale behind the rule is to preclude a Plaintiff from instituting two or more actions for damages based on the same set of facts. In the event that a Plaintiff was able to institute two or more actions for damages arising from the same cause of action and on the same facts, there is a danger that the two different Judges seized with each matter might find differently on the two portions of the claim even though these arose out of the same facts. This would clearly be undesirable and would lead to conflicting decisions.

Until recently, the "once and for all" Rule was applied only to claims for damages, however, in the recent Judgment of the High Court in **Bash Carriers v Minopex Botswana CVHGB 003581-2015**, it was held that the "once and for all" Rule applies equally to claims arising in contract, in appropriate circumstances.

In the Bash Carriers matter, Bash Carriers had previously instituted an action against Minopex for payment of invoices which it alleged were due to it for the hire of certain plant and machinery. It alleged in the first action that the contracts had been cancelled and that all the invoices it was claiming were due and payable. That action was dismissed. Thereafter, Bash Carriers then instituted a second action against Minopex claiming payment of further invoices (which had also become due and payable before the contracts were cancelled) and it also claimed for damages for unlawful cancellation of the contracts.

In a watershed Judgment, Judge Tafa found that the operation of the "once and for all" Rule was not confined to only actions for damages. The Judge found that the Rule applies all actions whether they be for damages, services rendered or contractual and reiterated the rationale behind the Rule was to "guard against duplication of actions, possible conflicting decisions by different Courts on the same facts, and the expense of multiple proceedings."

It must be noted that the Judgment will not apply universally and there will clearly be situations where different claims on similar facts will be allowed; but litigants will be well advised to ensure, wherever possible, to prosecute all claims in a single action.