The Legal Effect of the Authority of the Preceding Judgment (Applied Study on the Sudanese Law for Civil Procedures 1983)

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Abstract

The study aimed to explain of the concept of the authority of the res judicata between the litigants, analyzing the notion of the validity of the res judicata, and clarifying its concept and conditions, to highlight the legal issues it raises in the Sudanese law of 1983 AD, the study followed the descriptive, comparative, historical, and analytical method. The study obtains the following results:In the context of the enforcement of arbitration awards, the rules of preclusion do more than just strengthen judicial comity. They also help promote the finality of international arbitration awards under the Convention, the rules of preclusion differ from jurisdiction to jurisdiction, and the courts in every jurisdiction would be justified in applying their own rules of preclusion, as these rules should be considered as part of the procedural public policy, on the most basic level, the aim of enforcement proceedings is to provide relief for the collection of arbitration awards. Just as a party seeking to collect a money, damages judgment, a party seeking to enforce an award is not expected to plead the existence of a dispute on the merits and the proceedings for the enforcement of arbitration awards can thus be likened to the proceedings for the collection of monetary judgments, and there has always been wide support for

having a uniform system of enforcement for arbitration awards under the Convention. The study recommended the followings: separating the "principle of the authority of the res judicata" from the "principle of closure", because of the differences clear distinction between the two principles.Accordingly, amending the Evidence Law in this regard. And the text in one article on the different types of closure, except for closure by virtue of a ruling Because it relates to the authenticity of the matter res judicata, and treating the principle of closure as an objective law rule and not just a rule of evidence.

مستخلص:

هدفت الدراسة إلى شرح مفهوم سلطة الأمر المقضي بين المتقاضين ، وتحليل مفهوم صحة الأمر المقضي ، وتوضيح مفهومه وشروطه ، وإبراز القضايا القانونية التي يثيرها في القانون السوداني لعام 1983م ، اتبعت الدراسة المنهج الوصفي والمقارن والتاريخي والتحليلي. توصلت الدراسة إلى النتائج التالية: في سياق إنفاذ قرارات التحكيم ، فإن قواعد المنع تفعل أكثر من مجرد تعزيز المجاملة القضائية. كما أنها تساعد في تعزيز نهائية قرارات التحكيم الدولية بموجب الاتفاقية ، وتختلف قواعد الاستبعاد من ولاية قضائية إلى أخرى، وسيكون للمحاكم في كل ولاية قضائية ما يبررها في تطبيق قواعد الاستبعاد الخاصة بها ، حيث ينبغي اعتبار هذه القواعد جزءًا من السياسة العامة الإجرائية ، على المستوى الأساسي ، الهدف من إجراءات الإنفاذ هو توفير الإغاثة لتحصيل قرارات التحكيم. تمامًا مثل الطرف الذي يسعى إلى تحصيل أموال ، حكم تعويضات ، لا يُتوقع من الطرف الذي يسعى إلى إنفاذ قرار التحكيم أن يدافع عن وجود نزاع بشأن الأسس الموضوعية ، وبالتالي يمكن تشبيه إجراءات تنفيذ قرارات التحكيم بالإجراءات الخاصة بـ مجموعة الأحكام النقدية ، وكان هناك دائمًا دعم واسع لوجود نظام موحد لإنفاذ قرارات التحكيم بموجب الاتفاقية. وأوصت الدراسة بما يلي: فصل «مبدأ سلطة الأمر المقضي» عن «مبدأ الإغلاق» لوجود فروق واضحة بين المبدأين. وعليه ، تعديل قانون الإثبات بهذا الخصوص. ونص في مادة واحدة على أنواع مختلفة من الإغلاق ، باستثناء الإغلاق بحكم حكم لأنه يتعلق بصحة الأمر المقضي به ، والتعامل مع مبدأ الإغلاق كقاعدة قانونية موضوعية وليس مجرد قاعدة دليل.

Introduction:

Evidence is undoubtedly one of the most important issues of law, because it is the main means of protecting rights. So whoever weakens his evidence weakens his claim to his right, hence the importance of proof in all legal, civil, penal and legal fields. The legislator put in civil or commercial law the general rules of proof, as the methods of proof in commercial matters are subject to the general rules of proof, but the development of commercial transactions has led the legislator to distinguish the rules of commercial proof from the civil rules. The argument for the authority of the thing judged is one of the most topics of law that needs study and research. The pens did not address it with sufficient research, and it is still a matter of controversy and controversy among jurists, starting from its name and ending with its authenticity, passing through its nature and legal adaptation, and its relationship to other legal principles Like public order, it occupies the forefront in the books of jurisprudence as one of the most important problems of law. The judiciary has also implemented many of its rulings, and is still dealing with the daily problems that this argument raises, due to its practical nature. The judicial ruling is issued on the presumption of health and justice, and therefore it must be implemented and it is not permissible to re-examine it again, as it is an argument with what it was decided upon. However, there are exceptions to this principle, as will be explained. Whatever the case,. In the event of a disruption of this unit, the judicial ruling is not valid. This research deals with the principle of the authority of the res judicata,

as a conclusive legal presumption, that the judgments issued by the judiciary and acquire that authority, are an argument in what it ruled, and it is not permissible to refute its significance or prove its opposite by any means of legal proof, including the admission and the decisive oath, for reasons of public order. Determining the strength of the order is based on the fact that the issuance of the judicial ruling justifies the assumption of its validity and the integrity of its procedures.

Significance of the Study:

The issue of the authority of the res judicata is one of the topics of particular importance because it is one of the important and highly complex issues, and its importance is mainly due to the necessity of resolving disputes and putting an end to disputes and avoiding conflicting decisions based on the fact that what has been previously submitted to the judiciary and has been adjudicated is not It may be brought up for discussion again before the same court that issued the decision, or before another court To decide on it again, except in the ways and dates specified by the law. Therefore, the importance of this study emerged through the following: First of the importance of the issue of the authority of the local arbitrators' decisions, and this importance also emerges from the fact that the authority of the local arbitrators' decisions has been regulated in the Arbitration Law, which is a new law that has not received sufficient and complete analysis and scrutiny, in light of the difference in comparative civil legislation in the provisions of this authoritative according to the different sources of those legis-

lation This is in addition to the problems raised by this topic, and the shortage in the Arab and national library of books and research that I talked about in detail and in depth, which prompted the researcher to study this topic and research.

Statement of the Problem:

The problem of this study revolves around the effect of the authority of the res judicata in the Sudanese law of 1983 AD, and to what extent do arbitrators' decisions enjoy authority? What is meant by this authenticity? What are the conditions for sticking to the authoritative thing res judicata? What is the content and scope of the authority of the arbitrators' decisions? What are the exceptions to the authenticity of arbitrators' decisions? These and other questions that the researcher tried to answer in this study.

Objectives of the Research:

This research aims to: 1- Explanation of the concept of the authority of the res judicata between the litigants. 2- Analyzing the notion of the validity of the res judicata, and clarifying its concept and conditions 3- To highlight the legal issues it raises in the Sudanese law of 1983 AD Research Methodology: The descriptive, comparative, historical, and analytical method.

Theme One:

Definitions and Concepts:

"By the authority of the res judicata, it means that the judgments issued by the judiciary are proof of what they have decided" (Qassem, 275), as Article 41 of the Jordanian Evidence Law stipulates that:

"1. Judgments that have attained the final degree are proof of the rights they have decided, and it is not permissible to accept evidence that contradicts these decisions. The presumption…" is that if a judgment is issued in a case, then this judgment is considered by the law as a title of the truth, and for this reason the litigants may not re-submit this dispute among themselves again, that is, they may not renew the dispute among themselves by filing a new lawsuit. It is accepted and returned because it has already been adjudicated, and this matter or this chapter is achieved for all the litigants in the same lawsuit and for the same reason, whether he is a loser or a winner of a lawsuit alike. .

he actions of the principle of the authority of the res judicata are represented in the defense of this res judicata, whereby the res judicata is pleaded with the intent of not accepting the case or not hearing it because it has already been decided upon. "Just as the res judicata may be pleaded, it is also permissible to hold onto this authority through a lawsuit, for example; the validity of the penal judgment in relation to the civil judgment and the extent of its binding, and the recourse to civil compensation based on the damage inflicted on the victim. (Antraki, 585)

Authenticity of the order:

The argument for the authority of the orderedorder occupies the forefront in the books of jurisprudence as one of the mostimportant problems of the law, and the judiciary has taken many of its rulingsto apply it, and there is an origin for this principle in the Prophetic Sunnah. It is permissible to reconsider or search for it again.

Theprinciple of the authority of the res judicata is established in modern man-madelaws. If the jurisprudence of the judiciary changes in a particular issue, thisdoes not invalidate the ruling issued in similar cases previously, but thisjurisprudence is applied in new cases.

Respectingjudicial rulings and giving them authority reassures the litigants, as it putsan end to the dispute and prevents its renewal again if it is between the sameparties, the same subject and the same reason.

In ourarticle, we will discuss the definition of the definitive presumption, the basison which that argument is based, and the conditions for the judgment to acquirethe authority of the decree in positive law.

First: Defining the categoricalpredicate

1. Article (41) of the Jordanian Civil Code stated a special definition of conclusive legalpresumptions, as it stated: "The judgments that have attained the final degreeare proof of the rights that have been decided upon, and it is not permissibleto accept evidence that contradicts this presumption. between the litigantsthemselves without changing their characteristics, and the dispute is attachedto the right itself as a subject and a cause."
2. The case is consideredsettledif itsconditions are met, which is that the lawsuit is between the same parties andrelates to the same subject, and that thosejudgments arefinalagainst them, inaccordancewith theprovisions ofArticle (1/41) of theevidence.

Authenticity of the Res Judicata:

Res judicata is that the judicial ruling has an argument for the rights it has been decided... The rulings issued by a court of first instance have their authority, but they are temporary authority that stops as soon as it is challenged by appeal and remains suspended until it is decided on the appeal. He lost that authenticity. and the judgment issued and has its merits - is respected, so that if one of the litigants files the same lawsuit in which it was decided again, it must not be accepted... due to the precedent of issuing a judgment in it between the litigants.

And the conditions for an authoritative ruling is that it be definitive, exhausting the jurisdiction of the court in relation to what it has dealt with in the chapter and preventing it from returning to its consideration or retracting its ruling in it.

The validity of the res judicata in which it is entrusted is that the final res judicata is a fundamental issue in which the two parties (the litigants) struggle in the first lawsuit and its truth has been established between them by the first judgment, and it is by itself the basis for what each of them claims before the other in the second lawsuit.

One of the effects of the validity of the judgments is that the case may not be re-examined after adjudication, and it restricts the judge to whom the case has been brought again, and also restricts the litigants to re-filing the case again.

Since what is meant by authenticity here is “the authority of the res judicata” that the judgment enjoys a kind of inviolability

according to which it is forbidden to discuss what has been ruled in a new case.

The power of the decreed order is that of the final judgments, which the final judiciary does not acquire except in the disputes that arose between the litigants themselves and related to the same right, subject and cause, and the court decided it explicitly or implicitly and inevitable, unless the court actually considers it does not have the power of the res judicata.

The litigants can plead with the authority of the judgments issued by fulfilling the conditions for their proof as indicated by Article No. /53 of Decree-Law No. 39 of 1980 promulgating the Evidence Law in Civil and Commercial Matters, which states that:

"The judgments that have the authority of the res judicata are an argument in the matter of the litigation and it is not permissible to accept evidence that contradicts this presumption, but these judgments do not have this force except in a dispute that has arisen between the litigants themselves without changing their characteristics and attaching to the same right in a place and a cause on its own."

As for the conditions that must be met by the judgment in order for it to be authoritative, that there be a judicial judgment and that the judgment is final or final and that the following conditions are met:

The union of opponents 2- The union of the shop 3- The union of the reason

What is meant by the litigation union is that the judgment is considered an argument against the real litigants in the lawsuit and their successors, whether the succession is public or private, and it is also an argument against the creditors.. It is not an argument for others, i.e. the general successor and the private successor.

By the union of the place, it is meant that the new lawsuit is the same lawsuit in which the judgment was decided in its evidence. And the unity of the shop remains in place regardless of the changes that affect this shop.

As for the union of cause, it means the union of the legal basis on which the case is built. The cause is the source from which the subject matter of the case is generated.

In addition to the fulfillment of the previous conditions, the case in which the adjudication is decided must be authentic, that the issue has been settled, the litigants discussed in it, its truth emerged between them, and the litigants struggle in it, and each presented his evidence and his requests, and the truth became clear with a final and final judgment.

And the effect that conveys the appeal is to limit it to what has been filed by the appeal, only the peremptory judiciary, which was not subject to appeal, has the power of the res judicata that transcends the rules of public order.

As for the relevance of the authority of the decree to public order, it is established for the public interest, which calls for the stability of judicial protection granted by the judiciary, meaning

that the authority is related to public order, and the judiciary must respect this argument, even if the opponents do not respect it and do not pay for it.It is Manst in Article 82 of the Civil Procedure and the Commercial Law No. 38/ 1980 , which was read as: -

"The plea that the case may not be considered due to a previous adjudication may be made in any state of the case, and the court shall rule on it on its own

National Regimes on Res Judicata:

Differences and Constituent ElementsThe doctrine of res judicata has developed as one of the mostsophisticated, technical and overregulated doctrines in national civilprocedures. A detailed consideration of the different national regimes on resjudicata goes far beyond the scope of this article. The aim of this briefcomparative overview is first to highlight the divergent approaches taken bylegal systems with regard to res judicata, and second to ascertain theconstituent elements of the meaning of res judicata.

Differences:

The difference is particularly marked between common and civil law jurisdictions. The basic difference in their approach may be summarizedas follows:

- In common-law countries, case law has developed a broader notion ofres judicata which prevents the re-litigation not only of the claims11but also the issues, factual and legal, adjudicated in the judgment. From this it appears that common-law countries consider that ajudgment represents a judicial record

of what actually happened withregard to the dispute. Res judicata in this sense carries a fact-findingvalue. It is considered as a means of evidence, as an authoritativedetermination of the whole "story" of the dispute. The term estoppelper rem judicata comes from the term estoppel by record in commonlaw and reflects exactly this common-law approach to res judicata, which is closer to the Roman rule that "res judicata pro veritateaccipitur."

- In contrast, in modern civil procedural systems, the codified resjudicata is normally confined to the claims rather than the issuesdetermined in a judgment.16 The prevailing view here is to separate constituent Elements of Res JudicataIt may be helpful at this point to explore conceptual features of resjudicata common to different legal jurisdictions. This common denominatorwill effectively provide the constituent elements of the meaning of resjudicata which will prove essential, in Section IV, to determining the third-party effect of an international arbitral award. The raison d'être of res judicata is the preservation of a decision'sauthority. While a decision determines the legal status of the dispute inquestion, res judicata ensures that this determination is not circumvented oroverturned by subsequent conflicting determinations.

To achieve thisobjective, res judicata produces different kinds of effects:

1.Prohibits reassertion:

This kind of effect comes into play in a casewhere the subject matter and the parties to the second set ofproceedings coincide

with those of the first set. In these cases theres judicata effect precludes the reassertion of the cause of actionadjudicated in the first judgment. This type of effect reflects thefundamental principle of the ***nebis in idem***[1*] in accordance withwhich a party cannot be granted relief twice on the same cause ofaction.18

2 . Preclusive effect: this kind of effect prevents the re-litigation ofany plea which was determined in the judgment and which pleaarises in the second set of proceedings not as the main subjectmatter but as an issue necessary to determine the main subjectmatter.19

The preclusive effect follows from the *nebis in idem*have been or could have been litigated in a prior action. In general terms, theselimitations include the rules of claim preclusion and issue preclusion." 20 This preclusive effect under particular circumstances may be extended not onlyto the issues that were actually raised in the proceedings but also to those that, by duediligence, could have been raised but eventually were not (the extended form of resjudicata). This is clearly the case in England, where this type of effect is understood aspart of the principle of abuse of process.

The extended preclusive effect also operates slightly differently in the U.S.,see RESTATEMENT, supra note 10 Para. 27. In addition, it is found in some civil-lawcountries, but not as part of the abuse of process principle, which is unknown to thesejurisdictions. See e.g., the Greek Civil Procedure Code, Art. 330: "Res judicata coversthose pleas that have been raised, as well as those that could have been raised but werenot." 21 Although there is

a fundamental difference between the common and the civillaw regarding the extent of this effect (it is extended to both claims and issues (factualand legal) in common law but only to claims in civil, supra), the preclusive effectconstitutes a basic common denominator of the res judicata concept in both legalsystems. See VINCENT-GUINCHARD, supra note 14, Para. 179.b. 22 See VINCENT-S.GUINCHARD, supra note 14, Para. 178: « l'autorité de la chosejugées'identifiealors avec la force obligatoire de la sentence ». In Switzerland seeFabienneHohl, supra note 17, Para. 4-1. In England cf. s.58 EAA: "unless otherwiseagreed by the parties, an award made by the tribunal pursuant to an arbitrationagreement is final and binding, both on parties and on any persons claiming throughor under them" (subjective boundaries of an arbitral award) with s.82(2): "…a partyto an arbitration agreement include any person claiming under or through a party tothe agreement" (subjective boundaries of an arbitration agreement) (emphasis added).Koch&Diedrich, supra note 9, Para. 13

Principles of Res Judicata:

The principle of *res judicata* is a universal principle recognized by the legal systems of all civilized nations. The *res judicata* principle should be applied by arbitral tribunals as the arbitral tribunals are alternative to the courts and when an award is enforced it becomes a part of the legal order of the country where it is enforced.[1)] The reflection of this doctrine in international arbitration is that where the matter in dispute has already been decided

by a national court or by an earlier arbitrator, it should be barred by law as the existence of two enforceable awards on the same issue, between the same parties would be contrary to procedural public policy.

Although the *res judicata* doctrine is not codified in some countries' laws, it is established and recognized by case law. For instance, under **Article 190(2)(e) of the Swiss PIL**, if the award is incompatible with public policy it is a reason for annulment.[2)] Not every violation of the mandatory laws of a country constitutes a violation of public policy, but rather only a violation of the fundamental rules of a country's legal system. The only case where a violation of procedural public policy was affirmed until 2013 under Swiss Law concerned an award that disregarded the fundamental procedural principal of *res judicata*.[3)] Therefore, under this doctrine, a tribunal should be barred from deciding in the event there is a final, conclusive and binding judgment or arbitration award regarding the same cause of action, with the same claims and between the same parties.

This principle was recognized in a **Swiss Federal Supreme Court Decision rendered in 2001** (4P.37/2001) where the Supreme Court held that two contradicting decisions on the same subject matter between the same parties both of them enforceable within a specific legal order would be contrary to public policy.

Similarly, on 13 April 2010, the **Swiss Federal Supreme Court** (Decision 4A_490/2009) explained the obligation of an ar-

bitral tribunal in respect of *res judicata* and emphasized that an arbitral tribunal sitting in Switzerland violates procedural public policy if it renders an award without taking into account the *res judicata* effect of a prior award or judgment between the same parties.

Four years later, the **Swiss Federal Supreme Court held, in a decision dated 27 May 2014** (4A_508/2013), that an award issued by an international arbitral tribunal seated in Switzerland that disregards the preclusive effect of an earlier state court judgment or arbitral award violates the principle of *res judicata*, and breaches procedural public policy within the meaning of Article 190(2)(e) of the Swiss PIL. The Federal Court also stated that if in such a case the arbitral tribunal must hold the request inadmissible.

There are divergent views as to what constitutes the "subject matter of a dispute". Some of the scholars suggest that it is comprised of the legal rule relied upon by a party as the legal basis of the claim. Some scholars defined it as the relief sought in the parties' submissions and others suggest that the subject matter of a dispute comprises both the parties' claims and the set of facts relied upon in support of the claims.The Swiss Federal Court defined it as facts relied upon in support of the claim without reference to legal grounds, where it emphasized that the identity must be understood from a substantive and not grammatical point of view and that the *res judicata* effect extends to all the facts existing at the time of the first judgment, whether or not they were known

to the parties, stated by them, or considered as proof by the first court. The Court concluded that "*A new claim, no matter how it is formulated, will have the same object as the claim already adjudicated even if it appears to be its opposite or if it was already contained in the preceding action, such as a claim decided on the merits in the first litigation and presented as a preliminary issue in the second.* "

Another condition for *res judicata* is "*being capable of enforcement"*. As correctly described by the scholars, the logic behind this is that if the award does not meet the conditions for the enforcement, there would not be any risk for two enforceable conflicting decisions. In other words, a foreign judgment can never have effects in a country's law that would not equally be available to a country's domestic judgment. Therefore, the arbitral tribunals should carefully analyze whether the foreign state court judgment or foreign arbitral award meet the conditions of recognition as per the place of arbitration's law.[4)]

It is accepted by Swiss scholars and by the Federal Court decisions that an arbitral tribunal with its seat in Switzerland may decide itself on the recognition of the foreign judgment subject to **Article 25 and 27 of Swiss PIL** or award as a preliminary issue before determining the res judicata effect in accordance with Art. 29(3) of the Swiss PIL.[5)]

In particular, the final **International Law Association Committee (ILA) Report on *Res Judicata* and Arbitration** identified the

requirements for the application of the *res judicata* doctrine between arbitral tribunals. One of the requirements is a prior award that is final and binding and capable of recognition in the country where the arbitral tribunal of the subsequent arbitration proceedings has its seat. Where a request for recognition or enforcement has already been brought at the arbitral seat, the arbitral tribunal may deem it appropriate to await the enforcement court's decision. However, where no such request has been brought, the arbitral tribunal has to determine whether the prior judgment was issued by a court that had jurisdiction in the international sense in accordance with **Article II (3) of the New York Convention on the Enforcement and Recognition of Foreign Arbitral Awards** and is capable of recognition at the arbitral seat.[6)]

In a recent decision of the **German Federal Court of Justice (BundesgerichtshofBeschloss) of October 2018**, the Court decided that a violation of *res judicata* not only occurs when a tribunal disregards that it is bound by the *res judicata* effect of an award or judgment rendered in a separate proceeding, but also where a tribunal incorrectly assumes to be bound by a decision or award rendered in a separate proceeding. The Court held that the underlying idea of this decision is due process, as one may be prevented from bringing a claim which it is entitled to pursue in court or arbitration in violation of German public policy under the **German Code of Civil Procedure Section 1059(2)**.

Notwithstanding the arbitral tribunals' duty to carefully analyses whether they are bound by a previous award or court decision, the

arbitrators' decision as a result of this analysis may be taken to the court for its review during the annulment. In fact, this was the case in the *Boxer Capital Corp. v. JEL Investments Ltd*[7] decision of the British Columbia Court of Appeal where the court was asked to examine arbitrator's decision on not being bound by the earlier award of a previous arbitrator or the decision of the judge who heard an appeal from that earlier award. The Appeal Court decided that this is not purely a question of res *judicata* but in fact it is a review of the arbitral tribunal's decision. The Appeal Court held that the court could only interfere with the tribunal's jurisdiction when there is a complete loss of jurisdiction or a clear breach of a law as a result of the arbitrator's erroneous decision.In other words, the court should respect the arbitrator's decision on the applicability of the *res judicata* doctrine. However, the arbitrators should conduct their analysis diligently when assessing the conditions of *res judicata* and limiting their powers accordingly as their incorrect decision as to be bound by an earlier award or judgment would also violate public policy.

Theme Two:

Res Judicata and Estoppel:

There is a great difference between the principle of closure (prevention of denial) and estoppel, The validity of the judicata-Res order is that the most important manifestations of that disagreement are: follows: (While the rule of authenticity shifts between the court and entering into the discussion of any of the

above matters Deciding on it by a judgment in the manner previously explained, considering that the issued judgment has transmitted the facts Reality into legal facts, the closure relates only to evidence without going beyond it to Prejudice to the case itself, which prevents the judge from establishing any fact that violates an established order Pursuant to a valid judgment issued by a competent court, the evidence is valid if it is defended and it is If it meets its conditions, it will result in the court rejecting the case and refraining from considering it Entirely, as for closing the argument, it will entail preventing the litigant from prosecuting any matter that may be possible . (1) (Contrary to the judicial ruling issued in that order "The theory of res-judicata is to presume by a conclusive presumption that the former adjudication declared. The truth, whilst an estoppel, to use the word of Lord Coke, "Is where a man is concluded by his own act acceptance to say the truth" Law of Evidence, C.D.Field. H.11 Edition.In five volumes, (1985:2205).

Which means that the basis for the validity of the decreed order is a conclusive presumption that the judgment the former is the title of the truth, while estoppel prevents the person from proving the contrary the truth of his words or actions? In the case of Sitaram v. Amir Begum & Co. (1) The plea of res-judicata proceed upon grounds of public policy properly so-called, whilst an estoppel is simple the application equitable principle between man and man two individual parties to litigation.

The validity of the res judicata is based on reasons related to public order (justifications principle), while the authority of the closure is in application of the principle of justice between the two disputing opponents. Earlier Smt, RadharaniDassi v. Smt, Binodmoyee. Dassi(2) The doctrine of res-judicata chiefly differs from estoppel in as much the farmer results from the decision of the court while the later result from act of partly himself.The principle of the authority of the res judicata differs from the principle of closure, as the first is a consequence for the judgment of a court while the latter is the result of an act of the litigants themselves. “The plea of res-judicata is not merely a play of estoppel. It amount to an assertion that the very legal rights of the parties are such as they have been determined to be by the judgment of a competent court and no other court should proceed to determine this again. On the other hand, in case of estoppel there is no doubt that the express admission of a party to the suit or admission implied from his conduct: are evidence and storing evidence against him, he is not estopped or concluded by them unless, another person has been induced by them to alter his condition”(Law of Evidence) .

This means that paying with the authority of the res judicata is not the same as paying with authority Closure if the first confirms that the exclusive rights of the parties that have been decided upon By a competent court, which cannot be re-examined by another court other. On the other hand or while in the event of a closure that the express acknowledgment of the party in The case or the judgment and the conclusions from his behavior are con-

sidered proof, but rather strong evidence in the matter Evidence against that party as it cannot be denied even if there are other persons - Stakeholders, of course - blamed that party for changing its position on that acknowledgment contained in the case or judgment Finally, I decided:Smt, RadharaniDassi v. Smt, Binodmoyee. Dassi(A.L.R 1942. Cal.92 at P.98 (D.B): I.L.R. (See also) Law of Evidence,) previously mentioned the followings: It well established rule of law that estoppel binds parties and privies and not strangers.The closure rule is a legal rule that binds the parties and their successors, and is not binding others. In other words, it is an argument against the parties and their successors, and not an argument against others. As for Indian law, although authenticity is treated in some cases As part of the theory of closure or prevention of denial (Estoppel), but the opinion The prevalent among Indian jurists is that the two theories differ fundamentally Related to the law of evidence, it prevents a person from making any claim that contradicts the above A tool of facts, while authenticity prevents a person from suing the same thing in lawsuits Consecutive. The differentiation between the two ideas as previously decided by the Indian judiciary in a precedent:Cassomally v. Carrimbhoy((1911). Bon (See also) Mulla. P.51)

Although English and Indian law dealt with the validity of the res judicata As part of the principle of closure as we have seen, however, we see that the two rules are completely different The difference is based on the opinions of the English and Indian jurists themselves, who enumerated the manifestations of this The differ-

ence is based on case law. As for the Sudanese law, it followed the English, where it studied the authority of the matter Judgment under the principle of closure.

Theme Three:

The effect of Res Judicata in the Sudanese Law (1983):

The arbitrators' judgment enjoys conclusive authority, because its judgments are final and possess the authority of the res judicata, and it is not permissible to appeal against them except by filing an action for nullity, for reasons mentioned exclusively in the legislation regulating arbitration.... The duration of the action for nullity in Sudanese law is two weeks from the date of pronouncement of the judgment. The nullity should be based on serious and logical reasons.

The authority of the arbitrators' judgment the judgments issued by the arbitrators are conclusively authoritative, they are binding and final judgments and thus they are enforceable All relevant legislation and international agreements regulating arbitration stipulate this. The authority of the judgment means what is characterized by the force or presumption that prevents it from re-presenting the dispute that has been resolved in it 1 to the judiciary, unless it is through an appeal established by law This argument relates to the final judgment issued on the subject The dispute is because there are non-final provisions, so the authenticity is related to the final substantive provisions and not the procedural ones It applies from the date on which the arbitrators sign the award and

relates to the parties to the dispute only and does not exceed others. In jurisprudence, the argument has multiple meanings, in which there is no elaboration system here. Whoever sees it as a legal presumption that does not accept proof It is not permissible to lose this authority except on behalf of A problem and a right subject On the contrary, it attests that the judgment was valid The method of appeal established in such a ruling, i.e., the authenticity here is just one of the proofs of evidence. And whoever sees it as a rule Objective legal, and who sees it as a procedural system with objective content. And there are those who see it include all of these This is due to the general references in evidence and pleadings meanings together 2 . The judgment of the arbitrator is the primary goal For which the arbitration took place, and because this provision stems from the arbitration contract, it is affected by the agreement on which the arbitration is based It is influenced by the people who issued it because they are people who have been entrusted with the task of adjudicating the dispute rather than the judges Therefore, it is necessary to know this ruling, its types, nature, procedures, effects, ways of complaining about it, challenging it, and methods implement it.

The Authenticity of Arbitrators' Ruling in Sudanese Law:

National legislation, the rules of international conventions and the regulations of international arbitration centers dealt with the authority of the arbitrators' judgment and its possession of the authority of the res judicata, as some of them stipulated that it is a conclusive argument and others stipulate that it is final and not

subject to appeal, and both of them are one, as will come later when addressing the appeal of the judgment. Some believe that if the authority of the res judicata established for judicial rulings is related to public order, then the authority of arbitrators' rulings is related to private interest, and the basis for this view is that the law grants authoritative arbitrators ruling protection of private rights and not protection of public interest as is the case with regard to rulings of state courts, and that arbitration has Contractual nature and has no judicial nature. Therefore, just as the two parties have the right to rescind the contract and conclude a new one, they have the right to relinquish the arbitration ruling and resort again to arbitration with that in mind. The Civil Procedures Law 0891AD remained in the articles regulating arbitration in the repealed Chapter Four, in which no reference was made to the authority of the arbitrators' decisions. As for the Sudanese Arbitration Law issued in the year (612) AD, which is repealed, it is stipulated that the decision of the Commission is binding on the parties and has the validity of the res judicata. It may not be appealed except by filing an invalidity lawsuit. Thus, we find that this law closes the door of appeals with respect to judgments issued by the arbitrators, as it is not permissible to It is not appealed except by a claim of invalidity, for certain reasons mentioned exclusively.With the issuance of the Sudanese Arbitration Law for the year 2016 AD, which canceled the Arbitration Law for the year 2012 AD, reference was made to the authoritative rulings of the arbitrators in Article (40), which reads as follows:- Subject to the provisions of Articles (18, 41, 19)

(or automatically and bindingly, the judgment of the arbitral tribunal shall be final, a written request to the competent court attached), and the phrase has been deleted with a certified copy of the original judgment, and it is only accepted through the invalidity lawsuit. Which was mentioned in Article 41 of the repealed law issued in 2012 AD, and the word "decision" in the repealed law was replaced by the word "rule" in the new law. It is a final judgment or based on a written request to the competent court, and this argument is related to the dispute that is automatically implemented and binding on this dispute and does not go beyond this dispute. Thus, this law, by its text on the finality and obligatory judgment of the arbitral tribunal, has followed the international system of arbitration by its text on this final purpose and the desired objectives of resorting to arbitration, realizing.

Results and Recommendations:

1. In the context of the enforcement of arbitration awards, the rules of preclusion do more than just strengthen judicial comity. They also help promote the finality of international arbitration awards under the Convention.
2. The rules of preclusion differ from jurisdiction to jurisdiction, and the courts in every jurisdiction would be justified in applying their own rules of preclusion, as these rules should be considered as part of the procedural public policy.
3. On the most basic level, the aim of enforcement proceedings is to provide relief for the collection of arbitration awards. Just as a party seeking to collect money.
4. Damages judgment, a party seeking to enforce an award is not expected to plead the existence of a dispute on the merits.
5. Proceedings for the enforcement of arbitration awards can thus

be likened to the proceedings for the collection of monetary judgments.

6. There has always been wide support for having a uniform system of enforcement for arbitration awards under the Convention.
7. The rule of issue estoppel would appear to be conducive to achieving this purpose
8. Sudanese law adopted the same concept as English law by recognizing the exclusionary role of the principle of closure.
9. The main source of the principle of closure in Sudanese law is case law and jurisprudence Islamic.
10. 10- Sudanese law did not apply the principle of closure based on judicial precedents in a way mechanism. In each case, he took into account the circumstances surrounding it, to see if there was room for it to differentiate it from the previous one.

Recommendations:

1. Separating the "principle of the authority of the res judicata" from the "principle of closure".Because of the differences clear distinction between the two principles.Accordingly, amending the Evidence Law in this regard. And the text in one article on the different types of closure, except for closure by virtue of a ruling because it relates to the authenticity of the matter res judicata.
2. Treating the principle of closure as an objective law rule and not just a rule of evidence.

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(2)Rizk Allah Antaki, Principles of Trials in Civil and Commercial Matters, ibid., p. 585.

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(1)The Civil Judiciary Law of 1929.

(2)The Civil Procedures Law of 1972.

(3)The Civil Procedures Law of 1974 AD.

(4)The Civil Procedures Law of 1983.

(5)Evidence Law for the year 1983 AD.

(6)The Evidence Act of 1994.

(7)The Muslim Personal Status Law for the year 1991 AD.

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المصادر والمراجع:

(1)* The nebis in idem principle is laid down in Article 50 of the Charter of Fundamental Rights of the European Union: «No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law."