

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE SUB REGISTRY OF KIGOMA)**

**AT KIGOMA**

**LAND CASE NO. 6 OF 2023**

**YASIN MATATA LUSAKA ..... PLAINTIFF**

**VERSUS**

**BARAKA HUSSEIN ..... 1<sup>ST</sup> DEFENDANT**

**PENDO SIMON ..... 2<sup>ND</sup> DEFENDANT**

**MILAS MEBO MVANO ..... 3<sup>RD</sup> DEFENDANT**

**KIGOMA/UJIJI MUNICIPAL COUNCIL ..... 4<sup>TH</sup> DEFENDANT**

**COMMISSIONER FOR LANDS ..... 5<sup>TH</sup> DEFENDANT**

**DISTRICT COMMISSIONER OF KIGOMA ..... 6<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 7<sup>TH</sup> DEFENDANT**

Date of Last Order:13.09.2023

Date of Ruling: 06.10.2023

**RULING**

**MAGOIGA, J.**

This ruling is on preliminary objection raised by the learned counsel for the first defendant and 4<sup>th</sup> to 7<sup>th</sup> defendants that the instant suit is res judicata, hence, barred under the provisions of section 9 of the Civil Procedure Code, [Cap 33 R.E.2019].

The brief facts of this suit are that the plaintiff instituted this suit against the abovenamed defendants claiming for ownership of plot No.405 H.D. Block 'D' Mlote Kigoma, Plot No.152 H.D. Block 'A' at Mlote Kigoma/Ujiji and plot No.42 MD Block 'D' Mlote, Kigoma/Ujiji as among the five plots issued by the 4<sup>th</sup> defendant, an order for compensation of



Tshs.25,000,000.00 by 1<sup>st</sup> defendant to the plaintiff for exhaustive improvement in plot No.405 H.D. Block 'D' Mlole Kigoma/Ujiji, Compensation of Tshs.25,000,000.00, costs of the suit and any other relief.

Upon being served, the 2<sup>nd</sup> defendant and 4<sup>th</sup> to the 8<sup>th</sup> defendant learned counsel filed written statement of defence disputing the plaintiff's claims and raised a preliminary objection that the instant suit is barred for being res judicata to Land Application No.88 of 2014 before District Land and Housing Tribunal for Kigoma and Land Appeal No.43 of 2013 in the District Land and Housing tribunal of Kigoma and urged this court to dismiss this suit with costs.

When the instant suit was called on for hearing, the plaintiff was present in person and unrepresented, whereas the 2<sup>nd</sup> defendant had the legal services of Mr. Michael Mwangati, learned advocate and the 4<sup>th</sup> to 7<sup>th</sup> defendant were jointly enjoying the legal services of Mr. Nixon Tenges, learned State Attorney.

Mr. Mwangati arguing the objection told the court that, this suit is res judicata because the dispute plots were adjudged in the District Land and Housing Tribunal of Kigoma in Land Application No.88 of 2014 between the plaintiff and 4<sup>th</sup> defendant, in which he was defeated and appeal to the High Court via Land Appeal No.32 of 2016, which dismissed the



plaintiff's appeal. No further steps were taken and instead the plaintiff opted to institute this suit, but which is barred under section 9 of the Civil Procedure Code, [Cap 33 R.E. 2019].

On that note, he urged this court to find so and consequently dismiss this suit with costs.

Mr. Tenges, learned Attorney fully supported what was argued by Mr. Mwangati. Besides argued that the plaintiff instituted Land Application No. 6 of 2014 in the Ward Tribunal of Gungu against the 1<sup>st</sup> defendant on plot No.405 Mlole against the 1<sup>st</sup> defendant and the ward tribunal decided in favour of the 1<sup>st</sup> defendant. And, his appeal no 43 of 2014 was dismissed. The learned Attorney cited the case of **Peniel Lotha Vs. Gabriel Tanak and 2 others, [2003] TLR 312** which gave conditions for res judicata to apply in which must co-exists. These are:-

1. The matter must be directly or substantially in issue in the subsequent former suit;
2. The former suit must have been in the same parties or privy claiming under them;
3. The parties must have litigated under the same title;
4. The court which litigated between parties must have jurisdiction to try the former suit;
5. The matter must have been formally decided in the former suit.




According to the learned Attorney, the said former suit was over the same plots as in this suit now, the issue was ownership in both plots, parties were the same.

Guided by the above stance, thus, invited this court to dismiss this suit with costs.

The plaintiff was not moved by the submissions of the learned counsel and equated them as not true because in the Land Appeal No.32 of 2016, the High Court through Malaba, J directed to file a fresh case. In the circumstances, the municipal wrote him a letter dated 10.02.2020 so no res judicata. According to the plaintiff, there is no res judicata as are alleging and all arguments by the learned counsel are misleading, misconceived and misplaced in the circumstances of this suit intended to defeat the end of justice.

In rejoinder the learned counsel for parties were of the opinion that the decision of the District Land and Housing Tribunal was affirmed by the High Court and dismissed the appeal, hence, this suit is res judicata.

Having carefully considered the rivalling arguments of the parties' learned counsel and having revisited the trial proceeding and the judgement of the District Land and Housing Tribunal in Land Application No.88 of 2014, I am constrained to find and hold that as to the dispute between the plaintiff and the 4<sup>th</sup> defendant, is a res judicata. I will explain. **One**, the



decision of Tabora High Court did not quash the decision of the Tribunal nor revise any part of the decision. And in this he had this to say:

**"...in the circumstances, the District Land and Housing Tribunal was right in dismissing the appellant's application.**

**For different reason as shown**

**above indicated, this court agrees with that decision."**

The High Court Tabora sub registry went on to hold that **"in view of what is stated above, thus court finds this appeal is without merits."**

**Two**, reading the judgement of the District Land and Housing Tribunal in Land Application No.88 of 2014 was heard on merits and the applicant lost and his appeal as noted above was dismissed as well, hence, falling under the doctrine of res judicata as shown above as against the 4<sup>th</sup> defendant. **Three**, in the said judgement it was as well referred Land Appeal No.43 of 2013 between the plaintiff and 1<sup>st</sup> defendant which remain intact to date. All these two culminate into one conclusion that, this suit is fully within the four corners of res judicate as against the 1<sup>st</sup> defendant and the 4<sup>th</sup> defendant and as such barred by the provisions of section 9 of the Civil Procedure Code. **Four**, the argument by the plaintiff that no such decision was made in merits and that the Judge advised him to pursue other avenues is misconstrued by the plaintiff in this suit.



That said and done, I find the preliminary objection on the res judicata is merited and consequently, I proceed to sustain the same and dismiss this suit with costs.

It is so ordered.

Dated at Kigoma this 06<sup>th</sup> day of October, 2023.



  
**S. M. MAGOIGA**  
**JUDGE**  
**06/10/2023**