

**IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM**

CIVIL CASE NO.365 OF 2002

IBRAHIM S. KAJEMBOPLAINTIFF

VERSUS

**1) COMMISSIONER FOR LANDDEFENDANTS
2) ATTORNEY GENERAL
3) MARY MAREALE**

R U L I N G

A.Shangwa,J.

On 2nd December, 2004, Mr.Nyange for the 3rd defendant, Mrs Mary Marealle filed a notice of preliminary objection to the suit on grounds that it is subjudice.

On 17th May, 2005 when the suit was fixed for hearing, Mr.Nyange informed the Court that there is a pending

preliminary objection raised on behalf of the 3rd defendant which has to be determined first before hearing the suit.

Mr. Seme for the plaintiff objected to the hearing of the 3rd defendant's objection. He submitted that during the First Pretrial Conference, the Court was informed that there were no further applications to be made and it was accordingly so ordered. He contended that the 3rd defendant is bound by the Court's order made during the said pre trial conference.

Mr. Nyange contended that although the order of the Court is binding upon the parties to whom it is intended, the Court can depart from it under S.95 of the Civil Procedure Code, 1966 If the interest of justice so dictates. He said that when the scheduling order was made, the plaintiff had not gone to the Court of Appeal of Tanzania vide Civil Appeal No.101 of 2004 and that the point which he is raising in the

preliminary objection is that the suit is subjudice as there is a case which is pending between the parties in the Court of Appeal on similar matters.

The issue to be determined by this Court is whether or not after making the First Pre –Trial scheduling order, the parties are barred from raising any preliminary objection.

For me, I think that there is nothing in law which prohibits any of the parties from raising a preliminary objection after the first pre –trial scheduling order has been made by the Court if something new crops up which could not be foreseen during the first trial conference.

In this case, when the first pre-trial scheduling order was made in a way it appears to have been made on 10/9/2003, the plaintiff had not lodged his appeal to the

Court of Appeal vide Civil Appeal No. 101 of 2004 in which similar matters are being contested by the parties. This means that the 3rd defendant's preliminary objection that the matter is subjudice has been brought at the right moment. Therefore, it must be heard and determined on merit. I therefore order that it should come for hearing on 15/2/2006.



A. Shangwa, J.

15/12/2005

Delivered in Court this 15th day of December, 2005.



A. Shangwa,

JUDGE

15/12/2005