

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 365 OF 2002

IBRAHIM S. KAJEMBO..... PLAINTIFF

VERSUS

1. COMMISSIONER FOR LAND.....DEFENDANTS
2. ATTORNEY GENERAL
3. MARY MAREALE

R U L I N G

A. Shangwa,J.

This is a preliminary objection against the plaintiff's suit. It has been raised by the 3rd defendant Mrs Mary Marealle. The said defendant is represented by MS Nyange and Co; Advocates. In her notice of preliminary objection, she raised two points of objection against the suit. These are as follows and I quote:

- (a) The matter is subjudice, the 3rd defendant having first filed Civil Case No. 134 of 2001 lodged in the District Court of Kinondoni at Kinondoni and Civil Revision No.127 of 2001 lodged in the High Court of Tanzania Dar es Salaam District Registry at Dar es Salaam and which is now subject of appeal in the Court of Appeal of Tanzania vide Civil Appeal No. 101 of 2004. In the said revision and appeal, the plaintiff herein contend that the District Court lacked jurisdiction by virtue of the Land Act 1999,Section 167(1).
- (b) Land matters are within the exclusive jurisdiction of Courts and Tribunals established under S.167 (1) of the Land Act, 1999.

In his written submission, learned counsel for the 3rd defendant submitted that the suit between the parties involves the issue of ownership of plot No.1637 Msasani

Peninsula Kinondoni District and that a similar issue between the parties was raised in Civil Case No. 134 of 2001 in the District Court of Kinondoni in which a preliminary objection by the plaintiff that the District Court had no jurisdiction over land matters was upheld by Wambura, DM and that upon doing so, the 3rd defendant filed Civil Revision 127 of 2001 in which Madame Kimaro, J held that the District Court had jurisdiction as the Land Dispute Settlement Institutions under the Land Act had not become operational . He added that upon so holding, the plaintiff applied for leave to appeal to the Court of Appeal of Tanzania on a point of law as to whether in the light of the Land Act, 1999, the District Court had jurisdiction to entertain land disputes and that upon being given the said leave by Ihema, J(Rtd), the plaintiff went to the Court of Appeal and filed Civil Appeal No.101 of 2004 which is still pending.

It was further submitted on behalf of the 3rd defendant that as the issue of ownership of plot No.1637 Msasani Peninsula was first taken to the District Court of Kinondoni and so long as it has not been resolved, no suit concerning the same issue could be filed in another Court with concurrent jurisdiction. It was contended on behalf of the 3rd defendant that the issue involved in the suit is subjudice.

Furthermore, it was submitted on behalf of the 3rd defendant that in the light of S.54 (3) and (4) of the Land Disputes Act Cap.216 R. E 2002, this Court is statute barred from continuing with the trial of the suit between the parties and that it should be dismissed with costs.

On the other side, it was submitted by Mr. Hosseah for the plaintiff that the issue in this case is revocation of title deed over plot No. 1637 Msasani Peninsula and its allocation to the 3rd defendant. He contended that Mr. Nyange's

submission that the principle of res-subjudice applies to the existing situation is not correct. He argued that it would have been correct to infer res-subjudice if in the present case, the issue is jurisdiction of District Court on Land matters. He prayed the Court to overrule the 3rd defendant's preliminary objection with costs.

In rejoinder, learned counsel for the 3rd defendant contended that in this case, the central issue is ownership of plot No.1637 Msasani Peninsula.

In my opinion, the doctrine of res subjudice does not apply in this case. I say so because the question as to whom between the plaintiff and the 3rd defendant is a rightful owner of plot No.1637 Msasani Peninsula is not awaiting the decision of the Court of Appeal of Tanzania in Civil Appeal No. 101 of 2004. Instead, what is awaiting the decision of the said Court is whether or not the District Court of

Kinondoni has jurisdiction to determine that question in the light of the provisions of the Land Act, 1999 and repealed Land Ordinance, Cap 123.

That being the case, there should be no cause for alarm. In case the Court of Appeal of Tanzania holds that the District Court of Kinondoni has no jurisdiction to entertain the land dispute between the parties, then the suit will either be struck out by the District Court of Kinondoni or be withdrawn by the 3rd defendant. Due to the fact that the dispute which is involved in the suit before this Court is almost the same as the one which is involved in the suit before the District Court, this Court which is superior to the District Court will hear and determine all issues pertaining to it. That is to say that, this Court will determine the question of ownership of plot 1637 Msasani Peninsula and the interrelated question as to whether or not revocation of the plaintiff's title to the said plot and its allocation to the 3rd

defendant is valid. In general, I overrule the 3rd defendant's preliminary objection. Costs to be in the main cause. In the meantime, I hereby fix this suit for mention on 18/9/2006.



A. Shangwa, J.

29/6/2006.

Delivered in open Court this 29th June, 2006.



A. Shangwa,

JUDGE

29/6/2006.