

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

LAND CASE NO. 91 OF 2016

YOHANA MATTLE 1ST PLAINTIFF

ERICA HERMAN 2ND PLAINTIFF

VERSUS

MAGDALENA HERMAN (Suing as legal

personal representative of HERMAN MUNA

GIDADI.....RESPONDENT

MAIGE, J.

JUDGEMENT

Whether or not this suit is *resjudicata* to the High Court **Land Case No. 96 of 2014**("the former suit"),has been raised as a preliminary issue in the written statement of defense by the defendant.

When the matter came for disposal of the preliminary objection, the plaintiff appeared in persons and was not represented. The defendant enjoyed the service of Mr. Lawena, learned advocate. I allowed the parties to address me on the preliminary objection by way of written submissions. On his part, the defendant through his counsel filed the written submissions in support of the motion well within the scheduled time. For the reason better known to himself, the plaintiffs did not. On 6th November 2018 when the matter came for ruling, parties appeared before honourable Deputy Registrar. The plaintiffs did not make any comment for his default to file their written submissions within time. In the circumstance, I will take it that they have weaved their right to be heard on the preliminary objection and proceed accordingly to determine the preliminary objection basing on the submissions for the defendant.

In his brief written submissions, Mr. Lawena informed the Court that the issue of ownership of the **suit property** between the defendant's predecessor in title and the plaintiffs was finally and conclusively determined by this Court

in **Land Case No. 96 of 2014** wherein the defendant's predecessor in title was declared the lawful owner of the **suit property**. Relying on the authority of the Court of Appeal of Eastern in **JADRA KARSAM VS. HARMAN SIGH GHOGAI**, the counsel has invited me to dismiss the suit for being *resjudicata*.

I have considered the submissions and examined the pleadings and the judgment of this Court in **Land Case No. 96 of 2016**. I have no hesitation to hold right away that; this suit is *resjudicata* to the said **previous suit**. I will assign the reasons gradually as I go on. The doctrine of *resjudicata* as set out in section 9 of the **CPC** and further elucidated in explanations I to VII is self explanatory if I can say. The doctrine has been judicially considered in among others, the authorities of the Court of Appeal of Tanzania in **UMOJA VS. NBC HOLDING CORPORATION, CIVIL APPEAL NO. 3 OF 2001** AND **PENINEL LOTTA VS. GABRIEL TANAKI AND TWO OTHERS, CIVIL APPEAL NO. 61 OF 1999**. From the above authorities, the following conditions must be cumulatively established for the doctrine to apply. **First**, the former suit must pertain to the same parties or their successors in title. **Two**, the subject matter of dispute must be directly and substantially at issue

in both proceedings either actually or constructively. **Three**, the parties in the subsequent suit must have litigated under the same title in the former suit. **Four**, the matter must have been heard and finally determined. **Five**, the former suit must have been decided by a court of competent jurisdiction.

The existence of the proceeding in **Land Case No. 96 of 2014** and the fact that it was finally and conclusively determined is expressly admitted in paragraph 13 and 14 of the amended plaint. For putting the record properly, I find it desirable to reproduce the relevant paragraphs here below. They are as follows:

*13. That the deceased intentionally and after notifying that the house is complete and ready for use did institute a Land Case No. 96 of 2014 in the High Court of Tanzania claiming ownership of the plot No. 132 Block "G" Karatu Town and the case was held in his favour. **A copy of judgment is herein attached for ease of reference and marked "P4".***

14. That in the said case the transfer of plot No. 132 Block "G" Karatu Town from the deceased to the 2nd Plaintiff and later on to the 1st Plaintiff was cancelled and suit land was ordered to be returned to the deceased named herein.

The judgment in the previous proceedings in annexure **P4** of the Plaint, I have read it, was between the late HERMAN MUNA GIDADI and the plaintiffs herein. Though the defendant herein was not a party to the proceedings, by virtue of tracing title in the **suit property** from the late HERMAN MUNA GIDADI, he is covered by the doctrine as a successor in title. The first condition of the doctrine as above stated is thus met. The observance of the remaining four conditions is apparent and I need not make any explanation.

In the final result, the preliminary objection is sustained and the suit dismissed with costs.

It is so ordered.

Right to appeal is duly explained.


I. MAIGE
JUDGE
15/11/2018

Ruling delivered this 15th day of November 2018 in the presence of the plaintiffs in persons and Mr. Lawena, leaned advocate for the defendant.



I. MAIGE
JUDGE
15/11/2018