

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND APPEAL NO. 46 OF 2017

(From the decision of the District Land and Housing Tribunal of Tarime at Tarime in Land
Application No. 38 of 2015)

NYASEBA MWITA APPELLANT

VERSUS

1. KISIRI MARWA CHACHA
2. ELIAS JOSEPH M. MKAMI
3. MAINA MWITA MAINA } **RESPONDENTS**

JUDGMENT

03/10/2018 & 24/01/2019

RUMANYIKA, J.:

Appeal is against the 05/05/2017 judgment and decree of the District Land and Housing Tribunal for Tarime at Tarime (the DLHT). Having, by way **a res-judicata** related preliminary point of objection (p.o), in a written statement of defence raised on 26/08/2015 by Kisiri Marwa Chacha (the 1st respondent). That according to copies attached to application by her, case had twice been determined by the DLHT.

The five (5) grounds of appeal essentially revolve around just a single point. Namely the DLHT erroneously suo motu dismissed the case allegedly being res-judicata (without availing one right to be heard). It is worth

noted here that the other two grounds were misplaced. As they touched on merits of the case.

Parties appeared in person. Except the 1st respondent who had son one Joseph Nyehongo in court. The latter also represented the 2nd respondent.

The appellant very briefly submitted that the DLHT should not have invoked the doctrine of res-judicata. Because he had the case and won it, but only against husband and son (strangers to case).

On reply, the respondents were at one and submitted that nothing had been advanced to fault the DLHT's chair.

The issue is whether the appellant's case was bad on account of res-judicata. The answer is no! The reason is not farfetched. Laying down foundation of its decision, the DLHT is in his own words on record saying:-

... the applicant himself he have submitted that this case was already been heard by this tribunal twice and he has attached two copies of the judgment on his application form, hence I agree with the first respondent preliminary objection that this application is res-judicata ...

Now that the application was, on the basis of res-judicata dismissed, were the common three criteria met! (1) the case may have been finally determined by the same and competent DLHT yes! (2) subject matter may

have been the same yes! (3) what about the parties? Were parties the same? No!

I had opportunity and went through copies of the said two judgments of the DLHT. One dated 13/12/2011 on Land Application No. 19 of 2011 and the other one of 17/03/2009 on Land Application No. 108 of 2008. In which case appellant appeared the applicant, but against Joseph Nyaihongo Marwa on one hand and Magasi Chacha and Rhobi Nyamhanga respectively. In other words the present respondents were not a party(s) to the previous two matters. The doctrine of res-judicata therefore was, with greatest respect prematurely and improperly invoked. The records are, with immediate dispatch remitted to the DLHT with an order that the latter (other than Mayeye S.M. Chairman and the set of assessors) proceed from where the p.o was raised and considered. Appeal is allowed with costs here and at the DLHT. Ordered accordingly.

Right of appeal explained.



S. M. RUMANYIKA
JUDGE
20/01/2019

Delivered under my hand and seal of the court in chambers this 24th day of January, 2019 in the presence of the appellant, 1st and 3rd respondents and in absence of second respondent.



O.H. Kingwele
DEPUTY REGISTRAR
24/01/2019