

**IN THE HIGH COURT OF TANZANIA**

**(IN THE DISTRICT REGISTRY)**

**AT MWANZA**

**LAND CASE No.04 OF 2019**

**SISI KWA SISI PANEL BEATING AND**

**ENTERPRISES LIMITED ..... PLAINTIFF**

**VERSUS**

**MANDELA INDUSTRIAL CO-OPERATIVE**

**SOCIETY LIMITED ..... DEFENDANT**

**RULING**

*Last Order: 26.11.2019*

*Ruling Date: 21.02.2020*

**A.Z.MGEYEKWA, J**

On 20<sup>th</sup> June 2019, the plaintiffs herein, instituted this suit against the defendant Mandela Industrial Co-operative limited seeking the following reliefs:-

- i. *A declaration that the plaintiff is the rightful owner of plot No. 103/1 Igogo Industrial area in Mwanza City with a certificate of title No. 033046/84 and the defendant invitation to that area has come to an end.*
- ii. *The defendant be ordered to vacate from Plot No. 103/1 Igogo industrial area with immediate effect and handle the said property to the plaintiff.*
- iii. *The defendant be ordered to pat Tshs. 100,000,000/= to the plaintiff for the loss of business*
- iv. *Costs of the suit be paid by the defendant to the plaintiff.*

The plaintiff lodged this application by the way of PLAINT and the defendant on his WSD raised a Preliminary Objection to the effect that the plaintiffs' lacked legal standing (*locus standi*) to institute the suit and that the said suit was in any event *res judicata* and/or abuse of the court process.

In prosecuting this suit, Mr. Emanuel Mwita, learned counsel represented the applicant and the respondent employed the service of Mr. Mhingo, learned advocate.

At the hearing of the plaintiff's application, the defendant prays to be allowed to argue on the Preliminary Objection he raised, the prayer which was duly granted by this court.

Mr. Mhingo learned counsel for the plaintiff raised 3 points of Preliminary objection. Regarding his 1<sup>st</sup> point of preliminary objection, he submitted that this case is res judicata as per section 9 of Cap. 33. He went on that, the claim was filed by the plaintiff in the DLHT against the defendant in Land Case No. 175 of 2015, heard on merit and decided on 19/02/2016 and the same claims were against defendants on plot No. 103/1 Igogo industrial area and the prayer to evict the respondent was the same as prayed in this case which prayers were not admitted. He submitted further that, the plaintiff filed a Land Revision No. 3 of 2016 in this court which was dismissed on 28/09/2017.

He went on enlighten this court that, the plaintiff attempted to seek leave to appeal to the court of appeal vide Application No. 224 Of 2017 and it was struck out. The plaintiff filled misc. Application No. 60 of 2018 which he withdrew and later on filed misc application No. 160 of 2018 seeking

leave to appeal to the CAT and it was dismissed and the plaintiff decided to file this case.

He continued to submit that, in all this chain of events, the parties, claims and subject matter were the same and therefore arks this case res judicata and abuse of the court process. The learned counsel went further that, the other two points already taken by events in his submission and therefore prays this court to reject this suit as it is res judicata.

Objecting to the submission, the learned counsel for the respondent disagrees that this suit is res judicata. He submitted that the case does not fall under the ambit of section 9 of Cap 33 as it does not involve the same parties, claims, and litigation. He went on that, the cited case before the Tribunal of 2015 was rejected for not disclosing cause of action under Order 7 Rule 13 of Cap. 33 and parties cannot be stopped to come back to the court. On the claims that he matter is res judicata as it involves same parties, the counsel objected to the tune that, the application before the tribunal parties were Sisi Kwa Sisi Panel Beating and Enterprises vs. Mwanza City council and Mandela Industries Co-operative society different

from the parties in this application who are on records as Sisi Kwa Sisi Panel Beating and Enterprises Limited vs. Mandela Industries Co-operative society. He claims that Sisi Kwa Sisi Panel Beating and Enterprises and Sisi Kwa Sisi Panel Beating and Enterprises Limited are two distinctive persons that cannot make the suit res judicata.

On the 2<sup>nd</sup> and 3<sup>rd</sup> point, the counsel for the applicant in responding to the Po he submitted that, they are already consumed in argument by the 1<sup>st</sup> point and prays this court to entertain the suit in merit as it has jurisdiction and therefore assist at upholding substantive justice.

In the brief rejoinder, the respondent counsel enlightens this court further that in DLHT the application was held and determined in merit and the matter was never rejected. On the issue of parties, he prays this court to find that the applicant in this application was the part as the 2<sup>nd</sup> respondent before DLHT and the case bears the same claims and prays this court to find it was the same case and dismiss it with costs.

I have given careful deliberation to the arguments for the application herein advanced by the learned counsel for the respondent and that of the

Counsel for the applicant on the preliminary objection so raised. I find the central issue for consideration and determination is whether this application before me is res judicata.

Deciding on the matter at hand, I find it prudent to first venture on the meaning of res judicata and its main appliances that when appears, mark its meaning in this legal juncture. In the **Black's Law Dictionary 9<sup>th</sup> Edition**, the term *res judicata* is defined as an affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been but was not raised in the first suit. The three essential elements are *(1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties.*

Following the legal definition of the principle of res judicata, and on the determination of the issue at hand as to whether the suit is res judicata, I, therefore, venture on the records as to whether the three elements has a stand in this application. Starting from the first element as

whether there is already an earlier decision on the issue, this court went through court records and upon perusal, I find that the issue at hand is Land Application No. 04 of 2019 with the issue of the dispute of land ownership of plot No. 103/1 Igogo Industrial area in Mwanza City with the certificate of title No. 033046/84 which was also the issue on the land application No. 175 of 2005 before the DLHT for Mwanza at Mwanza. For the first element, therefore, I find the answer is in affirmative.

On the second element so far, in determination as whether there was a final judgment on the earlier suit on the same issue decided on merit, to qualify sustaining the preliminary objection, I perused the court records and found that the applicant on the Application No. 175 of 2005 before DLHT at Mwanza, following dissatisfaction of the decision by the trial tribunal which was decided in favour of the respondents applied for revision in this court vide Land Revision No. 03 of 2016 which also falls short of merit and was dismissed. Dissatisfied the applicant filed Misc. Land Application No. 160/2018 praying for leave to appeal to the court of appeal against the decision of this court on land revision no 03/2016 where it was observed by this court that the application No. 175/2005 was decided on

merit and legal issues under Land Revision Application No. 3/ 2016 was concluded and nothing was to be intervened by the CA and therefore the application was dismissed for lack of merit. My point for determination on this element was satisfactory answered positively that, there was in fact a judgment in the earlier application on the same issue decided on merit.

I now finally venture on the last element as to whether the issue which was decided on merit was between the same parties. I started my perusal with Application No. 175 of 2005 which is the basis of the respondent preliminary objection. The parties to this application were as I quote:-

*SISI KWA SISI PANEL BEATING ENTERPRISES.....Applicant*

*Versus*

*1. MWANZA CITY COUNCIL*

*2. MANILA INDUSTRIA CO-OPERATIVE SOCIETY* } ....Respondents

In all series of events, the applicant venture to convince this court with no avail, I come across to the High Court Land Revision No. 3 of 2016 of which the name of the applicant abruptly went on change and it was to this time written as I quote:-



*SISI KWA SISI PANEL BEATING ENTERPRISES L.T.D.....Applicant*

The claims by the applicant counsel that Sisi Kwa Sisi Panel Beating and Enterprises and Sisi Kwa Sisi Panel Beating and Enterprises Limited are two distinctive persons that cannot make the suit res judicata. The name appears the same as in Land Revision No. 3 of 2016 before this court and was lodged on 24/10/2019 bearing the same parties' name as appearing in Land Revision No. 3 of 2016.

To my observation on records, I share the views with Mr. Mlingo learned counsel for the defendant that the claim was filed by the Plaintiff at the DLHT against the defendant in Land Case No. 175 of 2015, heard on merit and decided on 19/02/2016 and the same claims were against Defendants on Plot No. 103/1 Igogo industrial area and the prayer to evict the respondent was the same as prayed in this case which on the trial tribunal prayers were not admitted. Revisiting the case of **PANIEL LOTH** **vs. TANAKI AND OTHERS** [2003] TLR 312 it was held that:-

*"The doctrine of res judicata is provided for under section 9 of the Civil Procedure Code, 1966. Its object is to bar the multiplicity of suits and guarantee finality to litigation. It makes a conclusive a final judgment between the same parties or their privies on the same*

*issue by a court of competent jurisdiction in the subject matter of the suit”.*

Guided by the above authority and section 9 of the Civil Procedure Code Cap.33 which provides that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially issue in a former suit between the same parties or between parties under whom they or any of them claim to litigate under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court. I find that the counsel for the applicant's contention that the application was born of different parties was wrong.

I hereby dismissed the High Court Land Case No. 04 of 2019 for being res judicata without costs.

Order accordingly.

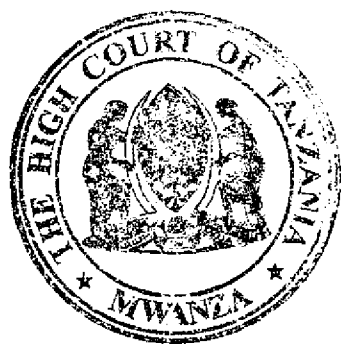
Dated at MWANZA on this 21<sup>st</sup> day of February, 2020.

  
A.Z.MGEYEKWA

**JUDGE**

21.02.2020

Ruling delivered on 21<sup>st</sup> day of February, 2020 in the presence of both parties.



  
A.Z.MGEYEKWA  
**JUDGE**  
21.02.2020