

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM**

**LAND CASE NO. 48 OF 2019**

**TWAHA SAID MASSAWE----- PLAINTIFF**

VERSUS

- 1. Teresia Damian(Administratrix of the Estate  
of the late Hamis Rashid Mnunduma)----- 1<sup>st</sup> DEFENDANT**
- 2. Mohamed Muhidin Mnunduma(Administrator of the Estate of  
the late Hamis Rashid Mnunduma----- 2<sup>nd</sup> Defendant**
- 3. Joshua Elias Mwaituka t/a Foster Auction Mart Co. and Court  
Broker ----- 3<sup>rd</sup> Defendant**

**RULING**

Date of last order: 20.12.2019

Date of Ruling: 07.02.2020

**Ebrahim, J.:**

The plaintiff in this matter has filed this suit claiming from the administrators of the estate of the late **Hamis Rashid Mnunduma** a refund of Tshs. 72,000,000/- being the purchase price of the commercial house situated at Plot No. 171 Block B Yombo Vituka Temeke Municipal that he purchased on 5<sup>th</sup> August, 2010 from the

deceased. The Plaintiff is also claiming to be refunded Tshs. 362,000,000/- being renovations costs, general damages, interests and costs of the suit.

What could be gathered from the documents filed in court is that following the sale of the said house to the Plaintiff by the deceased, the 1<sup>st</sup> defendant filed a case before this court. The High Court nullified the sale and ordered the return of the purchased house and advised the plaintiff to claim the refund of his purchase price from the deceased. However the deceased passed on before the plaintiff could recover his purchase price; hence the present suit.

When the 1<sup>st</sup> defendant was served with the plaint; through the services of Women Legal Aid Centre raised a point of preliminary objection that the present suit is res subjudice. The Plaintiff is represented by advocate Mohamed Mkali.

On 24<sup>th</sup> October 2019 on the prayer made by the 1<sup>st</sup> defendant, the court ordered the point of objection to be disposed of by way of written submission and set a schedule thereto. Both parties adhered to the set schedule.

In her submission the 1<sup>st</sup> defendant mainly discussed the four elements of res subjudice as per the provisions of **Section 8 of the**

**Civil Procedure Code, Cap 33, RE 2002.** Those elements are that there must be two or more suits pending at the same time in the respective courts having jurisdiction to grant the relief sought by the same parties claiming under the same subject matter

She explained therefore that apart from the present land case before this court, there is a pending Civil Case in the Resident Magistrate Court of Dar Es Salaam at Kisutu, Civil Case No 132 of 2019 between the same parties. The subject matter in both cases arises from the property located in Plot No. 171 Block B Yombo Vituka, Temeke Municipality, Dar Es Salaam. She thus prayed for this court to dismiss the present case before this court.

Responding to the point of preliminary objection, Counsel for the Plaintiff also outlined the four elements forming the doctrine of res subjudice. He recanted that the matter is res subjudice on the basis that the two cases are distinct being that the one filed in this case is a land case and the other one in the Resident Magistrate Court at Kisutu is a Civil Case. Counsel for the Plaintiff concluded that Kisutu RM's court has no jurisdiction to entertain a land matter hence the objection raised be overruled with costs.

I have dispassionately followed the arguments for and against the point of objection raised. Indeed there are two pending cases pending in both the High Court and the RM's court which the subject matter at issue is the property located in Plot No. 171 Block B Yombo Vituka, Temeke Municipality, Dar Es Salaam.

As alluded earlier, the Plaintiff in this case had way back in 5<sup>th</sup> August, 2010 purchased the property at issue from the deceased, the late Hamis Rashid Mnunduma. This court nullified the sale and advised the plaintiff to take legal measures to claim the refund from the then 1<sup>st</sup> defendant (the deceased).

Advertently, the Plaintiff filed Civil Case No. 132 of 2019 in RM's Court Kisutu claiming against the 1<sup>st</sup> and 2<sup>nd</sup> defendant (as administrators the late Hamis Rashid Mnunduma) of a total of Tshs. 110,000,000/- whereby Tshs. 60,000,000/- is for recovery of purchase price following the nullification of the contract of sale of the above stated landed property. He also claims for Tshs. 50,000,000/- being specific damages for renovating the said house and general damages. While the matter is still on going at Kisutu, the Plaintiff has also filed a land case 48 of 2019 against the same administrators in this court claiming to be refunded the above outlined amount or in

the in the alternative the court to order a foreclosure of the landed property.

Counsel for the Plaintiff has expressly agreed in his submission that the subject matter is the said landed property and that there are two cases pending claiming under the same subject matter.

In essence, Counsel for the Plaintiff is admitting to have filed multiple cases claiming for the refund of purchase amount at different courts having different jurisdiction on the pretext that one is a land case and another one is a civil case.


Out-rightly, this court cannot condone fishing expedition done by the Plaintiff considering that foreclosure is sanctioned by the law. In essence what the plaintiff is claiming is the recovery of his purchase price as a result he is filing multiple cases to see where the egg nests.

While I agree that the two courts have different jurisdictions, I am still with the 1<sup>st</sup> defendant that the act by the Plaintiff is an abuse of court process and goes contrary to the spirit of the law of preventing multiplicity of litigation. Considering both court can grant the same relief claimed.

It is for that reason that I need not belabor much in addressing the issue of subjudice as the Plaintiff clearly abuses the legal machinery by playing the game of pick and choose.

In the end result, I accordingly find the objection to have merits and for the avoidance of multiplicity of unnecessary cases and abuse of court processes, I accordingly struck out Land Case No 48 of 2019 with costs. For that reasons, Miscellaneous Land Application No. 59 of 2019 serves no useful purpose and it is accordingly struck out with costs.

Accordingly ordered



**R.A. Ebrahim**  
**Judge**

**Dar Es Salaam**  
**07.02.2020**