

**IN THE HIGH COURT OF THE UNITED  
REPUBLIC OF TANZANIA  
(MUSOMA DISTRICT REGISTRY)**

**AT MUSOMA**

**MISC. LAND APPEAL NO. 32 OF 2019**

*(Arising from the Ruling of the District Land and Housing Tribunal for  
Mara at Musoma in Misc. Land Application No. 297 of 2018)*

**BUNDALA MASUBUGU.....APPELLANT**

**VERSUS**

**MSENYE MASUBUGU .....RESPONDENT**

**JUDGEMENT**

*Date of Last Order: 14/03/2020  
Date of Judgment: 30/04/2020*

**KISANYA, J.:**

This appeal originates from Misc. Application No. 297 of 2018 filed in the District Land and Housing Tribunal for Mara at Musoma. In the said application, the respondent, Msenye Masubugu had applied for execution of the judgement of the Butuguri Ward Tribunal (Application No. 56 of 2018) which declared him the lawful owner of the disputed land.

The appellant filed a preliminary objection on point of law that the application by the respondent was res-judicata. However, the application was decided in favour of the respondent and the appellant was ordered to vacate the disputed land with immediate effect. Aggrieved, the appellant has filed the present appeal on three grounds which are summarized as follows:

1. The Tribunal ignored the preliminary objection on point of the law that the application was res judicata.
2. The application was granted without considering the law and the background of the disputed land.
3. The Tribunal exercised its discretion arbitrarily.

Let me depict, albeit brief, the facts leading to this appeal. In its judgement dated 9/3/2018, the District Land and Housing Tribunal (Land Appeal No. 58 of 2017) ordered retrial of Application No. 65 of 2016 filed in the Bukabwa Ward Tribunal by Juma Masubugu against the respondent.

Following that judgement, the respondent filed Application No. 56 of 2018 in the Butuguri Ward Tribunal. The said Ward Tribunal entered exparte judgement against the appellant. On his part, the appellant through Juma Masubugo filed Application No. 74 of 2018 before the Bukabwa Ward Tribunal. Likewise, an exparte judgement was entered in favor of the said Juma Masubugu because the appellant had defaulted to enter appearance. As a result, the appellant (through Juma Masubugu) and the respondent claim to

have judgements on the same piece of land.

Further, the appellant's application for execution of the judgement of the Bukabwa Ward Tribunal was granted by the District Land and Housing Tribunal (Misc. Application No. 314 of 2018) on 2/4/2019. Three months later, the same Tribunal granted the application for execution of judgement of the Butuguri Ward Tribunal, which is subject of the appeal at hand.

When the appeal was placed before me for hearing, both parties appeared in person, legally unrepresented.

I called upon the appellant to elaborate on the grounds of appeal. In his submission, the appellant addressed the first ground only. He contended that, he was the lawful owner of the disputed based on the judgment of the Bukabwa Ward Tribunal. He stated that, the said application was filed in compliance with the order of the District Land and Housing Tribunal in Land Appeal No. 58 of 2017. The appellant argued further that, the District Land and Housing Tribunal had already granted the application for execution of the judgement of Bukabwa Ward Tribunal. Therefore, he was of the view that, the respondent was barred from filing the application in the Ward Tribunal contrary to the order of the District Land and Hosing Tribunal. The appellant concluded his submission by requesting the Court to grant the appeal and quash the decision of the Tribunal.

In response, the respondent submitted that, he instituted the application in the Kisamwene Ward Tribunal because the land is located in Kisamwene ward and not Bukabwa ward. He reiterated that he was declared the lawful owner of the disputed land as the appellant failed to appear before the Kisamwene Ward Tribunal. The respondent contended to have appeared before the Bukabwa Ward Tribunal where he was informed that the application at the Bukabwa Ward Tribunal would be stayed pending the application before Kisamwene Ward Tribunal. Therefore, the appellant urged me to dismiss the appeal for want of merit.

The appellant rejoined by stating that the disputed land is within Bukabwa Ward.

After due consideration to the evidence on record, petition of appeal, reply to petition of appeal and submissions by the parties, the issue is whether the Tribunal failed to consider that the application before it was res-judicata.

It is on record that upon being served with the application for execution, the appellant had filed a reply to application. He also raised a preliminary objection on point of the law to the effect that the suit was res-judicata. He explained how the suit was res-judicata when he stated:

*“That the suit is concerned with the disputed land which is already executed and being legal procedure by land application no. 214/2018*

*dated 2<sup>nd</sup> April, 2018.”*

However, the record does not show as to whether the appellant was called upon to address the Tribunal on the preliminary objection. For easy of reference, I reproduce what transpired when the application was called on for hearing on 19/6/2019.

*“Date 19/6/2019*

*Kitungulu, E.- Chairman*

*TA/ASS-*

*Applicant –*

*Respondent-*

*T/C- Pude*

*J/DEBTOR’S OBJECTION*

*The suit was decided by a Ward Tribunal where the suitland is not situate.*

*Order. Ruling on 9<sup>th</sup> July, 2019*

*Signed*

*Chairman*

*19<sup>th</sup> June 2019”*

Thereafter, ruling was delivered on 9<sup>th</sup> July 2019 as scheduled. The issue of res-judicata which had been raised by the respondent was not addressed at all. With respect, since the same had been raised by the appellant, the Tribunal was duty bound to call him to submit on the preliminary objection. This is when it is considered that, the appellant was unrepresented. Further, considering that particulars as to parties, judgement and rulings of the suit alleged to have been determined by the Ward Tribunal and the District Land and Housing Tribunal were provided in the notice of objection, the

Tribunal was duty bound to address the appellant's objection.

The principle of res-judicata applies where the case or matter that is being litigated before the court or tribunal between the same parties or parties claiming under the same title has been at issue in another court with competent jurisdiction and finally decided. This principle is provided for under section 9 of the Civil Procedure Code [Cap. 33, R.E. 2002] as follows:

*“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating 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.”*

In the present appeal, the appellant had claimed that he had the judgement of the Bukabwa Ward Tribunal (Application No. 74/2018 ) and the execution order of the District Land and Housing Tribunal (Misc. Application No. 314 of 2018) over the disputed land. Likewise, the respondent claims that there is judgement of the Butuguru Ward Tribunal (Application No. 56 of 2018) and the execution order was granted by the District and Housing Tribunal (Misc. Application No. 297/2018) over the disputed land in his favour. However, at the hearing of this appeal, he mentioned Kisamwene Ward Tribunal which is not on record.

It is not clear as to whether both cases relate to the same subject matter. This is because in the application filed by the appellant

before the Bukwaba Ward Tribunal, he claimed for ownership of a piece of land located at Mzamani Village, Butiama District. On the other part, before the Butuguri Ward Tribunal, the respondent claimed for ownership of a piece of land located at Nyaminozi hamlet, Kisamwene Village, Butuguri Ward. Therefore, going by record, the doctrine of res-judicata does not fit in the case at hand because the subject matter in the two cases is not the same.

However, I have the time of hearing both parties, it appears that the said judgements and the execution orders relates to the same land. Their dispute is on the ward or village in which the land is located. Therefore, if the judgement and the execution order of each party refers to the same land, the dispute between the parties has not been resolved. Further, execution and enforcement of the said judgements poses a huge challenge. This is because each party is entitled to execute the judgement and execution order issued in his favour.

The appellate or revisional jurisdiction of this Court is on the decision made by the District Land and Housing Tribunal at its appellate or original jurisdiction. It is the District Land and Housing Tribunal which has appellate or revisional power on the decision made by the Ward Tribunal. For instance, section 36 of the Land Court Disputes Act, 2002 (as amended) to call for and examine the proceedings of the Ward Tribunal and revise them accordingly. The section reads provides that:

*“36.-(1) A District Land and Housing Tribunal may call for and examine the record of any proceedings of the Ward Tribunal for the purpose of satisfying itself as to whether in such proceedings the Tribunal's decision has-*

*(a) not contravened any Act of Parliament, or subsidiary legislation; or*

*(b) not conflicted with the rules of natural justice; and whether the Tribunal has been properly constituted or has exceeded its jurisdiction, and may revise any such proceedings.*

*(2) In the exercise of its revisional jurisdiction, a District Land and Housing Tribunal shall have all the powers conferred upon it in the exercise of its appellate jurisdiction.”*

In the case at hand, the District Land and Housing Tribunal has not made any decision in respect of applications filed by the parties before the Ward Tribunals. Therefore, this Court lacks mandate to make order in respect of the proceedings before the Butuguri Ward Tribunal and Bukabwa Ward Tribunal.

In view of the above, I am of the considered opinion that, in order to resolve the issue whether each party has judgement over the same piece of land, the District Land and Housing Tribunal has to call for record and examine proceedings of the Butuguri Ward Tribunal and Bukabwa Ward Tribunal and revise them if the need arises. For the aforesaid reasons, I hereby order as follows:

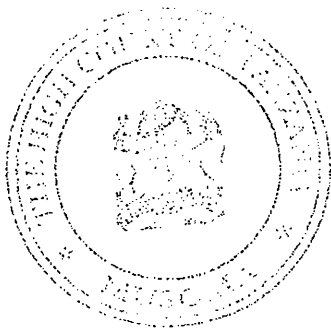
1. The District Land and Housing Tribunal to call for record and examine proceedings of the Butuguri Ward Tribunal (Application No. 56 of 2018) and Bukabwa Ward Tribunal (Application No. 74 of 2018) and revise them.
2. In exercising its revisional powers, the District Land and


Housing Tribunal should visit the locus in quo of the land in dispute in the applications before the Butuguri Ward Tribunal and Bukabwa Ward Tribunal to satisfy itself as to whether the disputed land is the same.

3. The enforcement of the execution orders issued by the District Land and Housing Tribunal in Micl. Application No. 297 of 2018 and Micl. Application No. 314 of 2018 to be stayed pending the revision to be conducted under 1 and 2 above.
4. In the event the land in dispute in the proceedings before Butuguri Ward Tribunal (Application No. 56 of 2018) and Bukabwa Ward Tribunal (Application No. 74 of 2018) is the same, the District Land and Housing Tribunal to refer the proceedings in Micl. Application No. 297 of 2018 and Micl. Application No. 314 of 2018 for revision by this Court.
5. The file is remitted back to the District Land and Housing Tribunal for its necessary action as ordered herein.
6. Each party to bear its own costs due to the nature of this matter where parties are relatives.

Order accordingly.

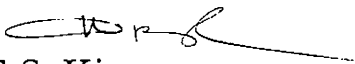
DATED at MUSOMA this 30<sup>th</sup> day of April, 2020.



  
E.S. Kisanya  
JUDGE  
30/4/2020

Court: Ruling is delivered this 30<sup>th</sup> April, 2020 in the absence of the parties due to COVID-19 outbreak. Parties to be notified to collect copy of judgement.



  
E.S. Kisanya  
JUDGE  
30/4/2020