

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

MISC. LAND APPEAL NO. 2 OF 2020

(Arising from Land Appeal No. 230 of 2019 at the District Land and Housing Tribunal for Mtwara originating from Michenjele Ward Tribunal in Land Case No. 83 of 2019)

ZUHURA AMANI KUMALA..... APPELLANT

VERSUS

FARIDA SAIDI MBISI RESPONDENT

JUDGEMENT

Written submission date on: 05/03/2021

Judgement date on: 22/4/2021

NGWEMBE, J:

This appeal is born out of the judgement of the District Land and Housing Tribunal for Mtwara at Mtwara exercising its appellate jurisdiction from Michenjele Ward Tribunal in land case No. 83 of 2019. The District tribunal's judgement was delivered on 27/3/2020, before H. I Lukeha – Chairman.



As a background to this appeal, the disputants are in loggerhead on a piece of land which for the first time, it landed to Michenjele Ward Tribunal, which tribunal decided in favour of the appellant in this appeal. Being aggrieved with such decision, the respondent herein, preferred an appeal to the district land and Housing Tribunal, which ended in favour of the respondent herein. Such decision was based on the principle of *res judicata* as same was finally and conclusively determined by a competent tribunal in Land Appeal No. 48 of 2019. Thus, the appeal was dismissed forthwith and rights of ownership remained to Farida Saidi Mbisi.

Being dissatisfied with such decision, the appellant is in this court clothed with two grounds of appeal to wit:-

1. The tribunal grossly erred in law and fact by allowing the appeal before him by relying on the issue of *res judicata* while misconceived the entire concept of the said principle of *res judicata*; and
2. The tribunal grossly erred in law by failing to consider the arguments given by the appellant during the hearing of the appeal before him.

According to the judgement and proceedings of the District Tribunal, the dispute on the same piece of land went twice before, Michenjele Ward Tribunal. The first dispute was between Farida Said Mbisi versus Saidi Hassan Heri in Land Dispute No. 28 of 2018. Said Hassan Heri is married to Zuhura Amani Kumala and the latter was a witness in that land dispute. When the Ward Tribunal confirmed ownership of the suit land to Farida who is the respondent herein, Said Hassani Heri appealed to the District Land Tribunal in Land Appeal No. 48 of 2018, which same confirmed the

decision of the Ward Tribunal. Such decision was not appealed against, thus remained judgement in rem.

Following closure of such dispute, a new dispute arose now between Zuhura Amani Kumala versus Farida saidi Mbisi, land dispute No. 83 of 2019. The subject matter is the same piece of land, obvious the same Michenjele Ward Tribunal and applicable law. In such new dispute, the Ward Tribunal ruled in favour of the applicant Zuhura Amani Kumala. Thus appealed to the District Tribunal as land Appeal No. 230 of 2019, whereby cahirman Lukeha ruled the matter as *res judicata*.

In hearing this appeal, both parties argued her side quite strongly with valid precedents related to the doctrine of *res judicata*. I appreciate for their inputs, but I think I need not to labour much on this issue for obvious reasons, that the doctrine of *res judicata* is well settled in our jurisdiction.

Res judicata is a well-known doctrine to every legal practitioner, that once a court of competent jurisdiction to determine the matter in issue between parties has finally and conclusively decided, unless reversed on appeal or revision, is conclusively closed forever, so that parties thereto or their privies are precluded from disputing or questioning in any later litigation, the correctness of such earlier decision, in law or in fact as against any other party or privy thereto. The doctrine also operates as an estoppel to such parties to re-litigate on the same matter in any subsequent suit. The doctrine aims in putting to an end such particular cause of action on which, the former litigation between the parties was founded.

The rationale of having that doctrine in our system of justice, is two folds; **one**, the interest of general public is that, there must be an end to litigation, the Latin Maxim is called "*rei publicae ut sit finis litium*" **two**, no man should be twice sued or twice prosecuted upon one and the same set of facts, if there has been a final decision of a competent court; the Latin Maxim is called "*nemo debet bis uecali, si constat curiae quod sit pro una et eadem causa*".

The doctrine of *Res judicata* serves two purposes, **one**, the public policy demand peace and harmony so that the citizen may have enough time to struggle for their better life and human development; **two**; the winner in litigation should know that he has all rights over any other person and he should enjoy fruits of the court decision. Likewise, the loser should know that he has no right over the disputed subject matter, hence start looking for alternative way of life.

There are four basic elements of the doctrine of *Res Judicata*, namely: A judicial decision was pronounced by a court of competent jurisdiction; the subject matter and the issues decided are the same or substantially the same as the issues in the subsequent suit; the judicial decision was final; and it was in respect of the same parties litigating under the same title.

Section 9 of the Civil Procedure Code Cap 33 R.E. 2019 provide same elements. In this appeal there is no dispute that, the suit land involved in land dispute No. 48 of 2018 between Farida Saidi Mbisi and Said Hassan Heri is the same as in land dispute No. 230 of 2020 between Zuhura Amani

Kumala and Farida Saidi Mbisi. Also it is not disputed that Saidi Hassan Heri and Zuhura Amani Kumala are/ were husband and wife and during the dispute between Saidi Hassan Heri and Farida Saidi Mbisi, Zuhura Amani Kumala appeared before, the Ward Tribunal as witness of Saidi Hassan Heri against Farida Saidi Mbisi.

Considering deeply on the parties to the dispute, it is true that the former dispute had different parties, when literally looked at with the current appeal. However, the question of parties to the suit has always been subject to discussion. For instance, if a suit is between a husband and another party and the tribunal or court decide on same, whether a wife simply because she has a different name may again claim on same subject matter? How about a guardian to a child, but later upon maturity of the former child can reinstitute a fresh suit claiming on the same subject matter?

In the case of **Zaruki Mbokemize Vs. Swaibu Omari & Francis Adolph [1988] T.L.R 160** considered similar land dispute whereby a guardian sued on behalf of a child, and the suit was finally and conclusively decided by a competent court. Later when the child reached the age of majority, he sued on the same subject matter. The court rightly decided that the case was *res judicata*.

In respect to this appeal, the appellant had every right to join the land dispute between Saidi Hassan Heri and Farida Saidi Mbisi to defend her rights if any, since she was aware on the existence of that dispute, and

that she appeared and testified in favour of her husband. Doing otherwise, obvious the doctrine of *res judicata* apply in the circumstances of this case.

In view of the aforesaid, and on strength of the doctrine of *res judicata*, this Court finds no cogent reason to fault the decision of the District Land Tribunal, consequently I uphold the judgement of the District Land Tribunal that the dispute is *res judicata*. The appeal is dismissed with costs.

I accordingly Order.

DATED at Mtwara this 22nd April, 2021



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P.J. NGWEMBE

JUDGE

22/4/2021

Court: Judgement is delivered at Mtwara in Chambers on this 22nd April, 2021, in the presence of the Appellant and the Respondent.

Right to appeal to the Court of Appeal explained.



A handwritten signature in blue ink, appearing to be "P.J. Ngwembe".

P. J. NGWEMBE

JUDGE

22/4/2021