

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MBEYA DISTRICT REGISTRY**

**AT MBEYA**

**LAND CASE NO. 7 OF 2021**

**REGINA NDAGALA**

**RONALRD NDAGALA**

**HENRY WILSON MSUKWA**

**RAPHAEL NDAGALA**

**PLANTIFFS**

**VERSUS**

**ENTERPRISES FINANCE LIMITED**

**UMOJA PROFESSIONAL LIMITED**

**HIGHLAND AUCTION MART**

**DEFENDANTS**

**RULING**

**A.A. MBAGWA J.**

This ruling is in respect of preliminary objection raised by the defendants' counsel one Daniel Bushele, learned advocate.

Mr. Bushele raised two points of preliminary objection namely, one, the Court has no jurisdiction over the suit in hand and two, that the suit is poor and bad in law for being Res judicata basically on the ground that the similar matter was disposed of via deed of settlement in Land Application No. 72 of 2020 which was in the District Land and Housing Tribunal for Mbeya. He thus prayed for dismissal of the suit and order of costs.



When the matter came for hearing of preliminary objection, Mr. Daniel Bushele, learned advocate appeared for the defendants whereas the plaintiffs were represented by Ezekiel Mwampaka, learned advocate.

Before Mr. Daniel Bushele could expound on the two points of preliminary objection, Mr. Ezekiel Mwampaka readily conceded to the objection raised. He, however, hastily beseeched the court not to issue an order of costs because his clients (the plaintiffs) were financially hand capped.

Mr. Bushele welcomed the concession but parted way with Mwampaka on the issue of costs. It was the submission of Bushele that the plaintiffs were aware of the deed of settlement reached in the District Land and Housing Tribunal for Mbeya yet maliciously instituted the present suit. In addition, Mr. Bushele submitted that the defendants have incurred costs in travelling from Dar es Salaam to Mbeya to attend this case because of the **mala fide** acts of the plaintiffs.


I have gone through the submissions by both counsels along with record in the court file particularly, the Deed of Settlement dated 15<sup>th</sup> day of October, 2020 and Consent Judgment of the District Land and Housing Tribunal for Mbeya (Hon. A. Mapunda Chairman) dated 16<sup>th</sup> October, 2020.

From the record, it is common cause that all the plaintiffs in this case were parties to the Land Application No. 72 of 2020 which was concluded by entering into a deed of settlement that resulted into consent judgment. This tells it all that the plaintiffs were aware of the existence of consent judgment but maliciously instituted the present suit. It is further clear that due to malicious institution of this suit, the defendants have incurred costs.




In view of the above, I find the preliminary objection meritorious. The suit is Res judicata in terms of section 9 of the Civil Procedure Code [Cap. 33 R.E. 2019]. Consequently, this suit is hereby dismissed with costs.

The right of appeal is explained

  
**A.A. Mbagwa**  
**Judge**  
**08/09/2021**

This ruling has been delivered in the presence of Tumaini Amenye holding briefs of Ezekiel Mwampaka for plaintiffs and in absence of defendants this 8<sup>th</sup> day of September, 2021.



  
**A.A. Mbagwa**  
**Judge**  
**08/09/2021**