

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
BUKOB DISTRICT REGISTRY  
AT BUKOBA**

**LAND CASE APPEAL NO. 85 OF 2021**

**TERESIPHORY ISHENGOMA SEBASTIAN.....APPELLANT**

**VERSUS**

**JULIUS ONESMUS.....1<sup>ST</sup> RESPONDENT**

**GERAZ KAJUNA.....2<sup>ND</sup> RESPONDENT**

**GODFREY FREDRICK.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

*06<sup>th</sup> May & 13<sup>th</sup> May 2022*

***Kilekamajenga, J.***

Before this Court, the appellant preferred an appeal challenging the decision of the District Land and Housing Tribunal in Land Application No. 52 of 2015. In his petition of appeal, the appellant was armed with three grounds of appeal coached thus:

- 1. That the trial tribunal erred in law to construe that the matter filed before it was a res judicata, without satisfying itself as to whether the same was qualifying to be so; hence default of justice;*
- 2. That the trial tribunal erred in law for denying the appellant the right to be heard, as the fresh matter which was filed, had to be determined and concluded, but dismissed without legality;*
- 3. That the trial tribunal erred in law and fact for concluding that the Land Application No. 52 of 2015 before it, basing on the decision of the civil case No. 1/2015 of the Magati/Karutanga Ward Tribunal, while the decision of the tribunal decide (sic) that the applicant who was Julius*

*Onesmo Ishengoma did decide on his own need to withdraw the matter without any reason.*

The case was finally scheduled for hearing; the appellant appeared in person and without representation whereas the respondents were all present and enjoyed the representation of the learned advocate, Mr. Abel Rugambwa. In his oral submission, the appellant stated that, he bought a piece of land of about an acre from the 3<sup>rd</sup> respondent. Later the 1<sup>st</sup> and 2<sup>nd</sup> respondent asked him whether he actually bought the same land from the 3<sup>rd</sup> respondent. The 1<sup>st</sup> respondent threatened him that he (1<sup>st</sup> respondent) would take the whole land from him in case he does not leave the 3<sup>rd</sup> respondent's land. Later, the 1<sup>st</sup> respondent sued the appellant at the Ward Tribunal. The 1<sup>st</sup> respondent finally withdrew the case and continued to threaten the appellant. The appellant filed a case at the District Land and Housing Tribunal against the respondents who, during the hearing, tendered a minute showing that the case was previously determined. The appellant further stated that the respondents encroached into his land and they want to take his whole fifteen acres of land from him. He finally prayed for the appeal be allowed with costs.

In response, Mr. Rugambwa for the respondents argued that, the appellant's application No. 52 of 2015 was dismissed for being *res judicata* as the case was


previously decided by the Ward Tribunal of Karutanga vide Civil Case No. 01 of 2015. In the case before the Ward Tribunal, the parties agreed to settle the matter out of the tribunal. When the appellant filed the case at the District Land and Housing Tribunal, the tribunal discerned that the matter was previously decided. As the case was settled, it was wrong for the appellant to institute it again before the District Land and Housing Tribunal. Therefore, the case is *res judicata* and the instant appeal should be dismissed with costs.

When rejoining, the appellant confirmed that his name is Ishengoma Sebastian but he further stated that the respondents forged some of the documents. He urged the court to declare him as the lawful owner of the piece of land.

Having considered the submissions from the parties and the grounds of appeal, the major issue for determination which may be gleaned from the grounds of appeal, is whether the instant case was *res judicata*. In resolving this issue, I was prompted to peruse the records of the Ward Tribunal in Civil Case No.01 of 2015 and found the following information: On 10<sup>th</sup> February 2015, the 1<sup>st</sup> respondent filed a case against the appellant. When the case commenced hearing but before judgment, on 24<sup>th</sup> February 2015, the 1<sup>st</sup> respondent who was the complainant was absent but the appellant was present. The appellant informed the Ward Tribunal that they (appellant and 1<sup>st</sup> respondent) agreed to

settle the case out of the tribunal. He told the tribunal that, they met at the disputed land and fixed boundaries and that the agreement was reached and signed on 21<sup>st</sup> February 2015. The appellant urged the Ward Tribunal to fix the case for the nearest date so that the matter may be marked settled. The case was thereafter scheduled on 26<sup>th</sup> February 2015. When this date came, the 1<sup>st</sup> respondent appeared and informed the Ward Tribunal on the agreement reached by the appellant on 21<sup>st</sup> February 2015. The Ward Tribunal received the deed of settlement and there was no objection from the appellant. As a result, a letter was written by the Ward Tribunal to mark the end of the dispute. Thereafter, the appellant filed the instant case before the District Land and Housing Tribunal. Now, based on the above evident facts, it is crystal clear that the instant dispute was previously resolved and there was no justification for the appellant to raise it again at the District Land and Housing Tribunal. I therefore find no merit in the instant appeal and hereby dismiss it. The boundaries fixed by the parties which also feature in the agreement signed by the parties on 21<sup>st</sup> February 2015 should be respected and if the appellant have removed them, the same boundaries should be re-fixed at the expense of him (appellant). I further order the appellant to pay the costs of this appeal. It is so ordered.



  
**Ntemi N. Kilekamajenga**  
**JUDGE**  
**13/05/2022**

**Court:**

Judgment delivered this 13<sup>th</sup> May 2022 in the presence of the all parties present in person. Right of appeal explained.



A handwritten signature in blue ink, appearing to read "Ntemi N. Kilekamajenga".

**Ntemi N. Kilekamajenga**

**JUDGE**

**13/05/2022**