

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

LAND APPEAL NO. 52 OF 2021

(Originating from the District Land and Housing Tribunal for Kyela
at Kyela in Land Application No. 14 of 2020)

JANSA MWAKIPESILE..... APPELLANT

(Administrator of the Estate of the
Late Jafari M. Mwakabole)

VERSUS

BENEDICTOR MWAMBWILA..... RESPONDENT

JUDGMENT

Date of last Order: 10.02.2022

Date of Judgment: 18.03.2022

Ebrahim, J.

The appellant, JANSA MWAKIPESILE has filed the instant appeal basing on a single ground of appeal that:

***That the trial Tribunal erred in law and fact to hold
that the land application was res-judicata without
considering the fact those elements of res-judicata
was not co-existed as required.***

The matter has a chequered background. In 2020 vide Land Application No. 14 of 2020, the appellant instituted the land application before the District Land and Housing Tribunal for Kyela at Kyela claiming a piece of land alleged to be a property of his late father one Jafari Mwakapoke Mwakabole. The late Mwakabole passed on way back in the year 1955. The application was against the respondent, BENEDICTOR MWAMBWILA.

The respondent objected the application and raised a Preliminary Objection (PO) that the application was *res-judicata*. The respondent alleged that the dispute between them had been finally determined by the then Land Appeal Tribunal Dar es Salaam vide Appeal No. 5/2000.

The trial Tribunal heard both parties on the Preliminary Objection and finally upheld the Preliminary Objection and dismissed the application with costs. Aggrieved, the appellant instituted the present appeal.

When the appeal was called for hearing, both parties appeared in person and unrepresented. On agreement by the parties and the order of this court, the appeal was disposed by way of written submissions.

Submitting in support of the appeal, the appellant basing on the conditions for *res-judicata* as observed by this court in the case of **Nyabichune Village Council v. Marwa Mang'era Kesongo, Land Appeal No. 90 of 2020, HCT at Musoma** (unreported) contended that; the alleged determination of the matter was not made by a competent court. According to him the matter was heard by the incompetent tribunals to wit; the then Ward Tribunal (Baraza la Kata), the District Land Reconciliation Tribunal (Baraza la Usuluhishi wa Ardhi la Wilaya) and the Land Appeal Tribunal Dar es Salaam (Baraza la Ardhi la Rufaa).

The appellant also contended that the competent courts to adjudicate land disputes before the establishment of the Land Disputes Courts in 2003 were the Subordinate Courts within the jurisdiction of which the land is situated.

The appellant went further contending that parties in the former suit were different with the current suit. That, the subject matter is also different from the former suit. The appellant thus prayed for this court to allow the appeal and order the matter be heard on merits before the trial Tribunal.

In his reply, the respondent submitted that the trial Tribunal was correct when it upheld the preliminary objection that the matter was *res-judicata*. He referred this court to **section 9 of the Civil Procedure Code, Cap, 33 R.E. 2019** on the conditions for *res-judicata*. According to the respondent, parties and subject matter in the former suit are one and the same as in the current suit. The respondent also contended that the only changes in the current matter is the addition of the clause “as administrator of the estate of the late Jafari Mwakapoke Mwakabole” which appears after the name of the appellant.

The respondent further submitted that the adjudicating authorities were competent as per **sections 6 and 9 of the then Regulation of Land Tenure (Established Villages) Act, No. 22 of 1992**. It was the respondent's argument that the instant matter intends to cause a multiplicity of the suit and abuse the process of the court against the intention of the law on the finality of litigations. To strengthen his argument, he cited the case of **Paniel Lotha v. Tanaki and Others [2003] TLR 312**. The respondent thus, prayed for this court to dismiss the appeal with costs.

I have considered the submissions by the parties. Like it was the case in the trial Tribunal, the issue for determination is whether the trial Tribunal was justified to hold that the matter was *res-judicata*.

The doctrine of *res-judicata* essentially prohibits a court of law from entertaining a matter that has already been decided by a competent court, as between the same parties regarding the same subject matter; - **Section 9 of the Civil Procedure Code, Cap. 33 R. E. 2019**. See also the cases of **Esterignas Luambano v. Adriano Gedam Kipalile**, Civil Appeal No. 91 of 2014, Court of Appeal of Tanzania at Zanzibar (unreported) and **Nyabichune Village Council** (*supra*).

From the provision of section 9 and the cases cited above, it is insisted that the conditions for *res-judicata* must co-exist for it to bar a subsequent suit. The conditions are:

- i) The matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit.
- ii) The former suit must have been between the same parties or privies claiming under them.

iii) The parties must have litigated under the same title in the former suit.

iv) The court which decided the former suit must have been competent to try the subsequent suit.

v) The matter in issue must have been heard and finally decided in the former suit

It is evident from the record that the application, subject of this appeal was founded in the suit which had been conclusively determined by the defunct Land Appeal Tribunal Dar es Salaam vide Appeal No. 5 of 2000, the Judgment dated 31st July, 2003. The contention by the appellant that the said Tribunal had no competent jurisdiction is untenable. This is because, this court cannot engage in questioning the powers of the said Tribunal where the appellant did not appeal against the decision made thereat since 2003.

Again, the complaint by the appellant that parties and subject matter in the former suit were different does not hold water. The record is clear that the appellant herein was the same appellant in Appeal No. 5 of 2000 same applies to the respondent. The appellant is trying to trap this court to believe that he was not

the one in the former suit just because in the current matter he is appearing as the administrator of the estate of the late Jafari Mwakabole Mwakapeta. However, the judgement of the defunct Land Appeal Tribunal is clear that the appellant was claiming the land of the late Jafari Mwakabole Mawakapeta. It is also a fact that the subject matter in the former suit is one and the same as in the current one.

Having so said, it is my concerted view that the trial Tribunal did not err when it decided that the application before it was *res-judicata*. I thus, dismiss the appeal with costs.

Ordered accordingly.



A handwritten signature in blue ink, appearing to read "R.A. Ebrahim", is written over a horizontal line.

R.A. Ebrahim

JUDGE

Mbeya

18.03.2022

Date: 18.03.2022.

Coram: Hon. A.E. Temu -DR.

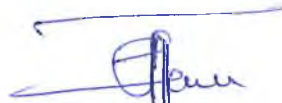
Appellant: }

Respondent: } Present.

B/C: P. Nundwe.

Court: This appeal is coming for judgment today.

The same delivered in the presence of both parties.



A.E. Temu

Deputy Registrar

18/03/2022