

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**LAND APPEAL NO. 32 OF 2021**

(Arising from LAND APPLICATION NO. 9 OF 2020, THE DISTRICT LAND AND HOUSING  
TRIBUNAL FOR KILINDI AT SONGE)

**SOLOMON LESION.....APPELLANT**

**VERSUS**

**MATHEW LUCAS..... RESPONDENT**

**JUDGEMENT**

**Mansoor, J:**

**Date of JUDGEMENT- 29<sup>TH</sup> JULY 2022**

The dispute is over 32 acres land located at Kwaluguru Village in Negero Ward within Kilindi District "the suit land". Solomon Lesion filed a suit at the District Land and Housing Tribunal for Kilindi (Land Application No. 9 of 2020) claiming that the suit land belongs to him. He claims that he has purchased this land from Gaspar Mbwana on 23<sup>rd</sup> August 2011. The respondent on the other hand claims to have purchased the land from Salim Ally who is the Administrator of the Estate of the Late Halima Ally. The respondent purchased the land on 18<sup>th</sup> September 2019. The appellant sued the respondent for

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trespass in 2020, but the suit was dismissed for being Res Judicata. The respondent raised an objection at the earliest before the District Land and Housing Tribunal, that the suit before it was Res Judicata since the issue of ownership of the suit land was already determined by Negero Ward Tribunal, and that the case at Negero Ward Tribunal was between Gaspar Mbwana and Halima Ally, and the Negero Ward Tribunal had declared Halima Ally to be the owner of the suit land. The decree passed by Negero Ward Tribunal was never reversed by any appellate court. Halima Ally applied for execution of the Decree of the Ward Tribunal before the District Land and Housing Tribunal for Kilindi/Korogwe, it was execution No. 157 of 2012, and the execution was carried out. The decision of the Negero Ward Tribunal reads, and I quote:

UAMUZI WA BARAZA

"Kutokana na Ushahidi uliotolewa Baraza limeridhika kabisa eneo linalogombaniwa ni mali halali ya mlalamikaji Halima Ali na mdaiwa Gaspar Mbwana amevamia eneo hilo hali ana eneo lake alilonunua toka kwa Bwana Ali Salum Msami. Hivyo

Baraza linaamuru Mdaiwa Gaspar Mbwana aache shamba la mlalamikaji shamba lake na kumlipa gharama zake zote alizotumia katka shauri hili.”

The decision above was given by the Ward Tribunal on 14.09.2012, and the suit before Negero Ward Tribunal was initiated by the late Halima Ali on 10<sup>th</sup> August 2012. The appellant herein claims to have purchased the land in dispute on 23<sup>rd</sup> August 2011 before the suit was filed at the Ward Tribunal. From the records of the Negero Ward Tribunal, the respondent was Gaspar Mbwana, and he defended the suit till the judgement was passed, and never disclosed before the Ward Tribunal that he had already sold the land to Solomon Lesion, the appellant herein since 2011. Instead of appealing to the decision of Negero Ward Tribunal or to apply for Revision, the appellant herein initiated a fresh case at the District Land and Housing Tribunal, Land Application No. 9 of 2020, which is the subject of this appeal.

The objection on res judicata raised by the respondent herein was upheld, and the case before the District Land and Housing Tribunal was declared to be Res Judicata. The appellant was aggrieved, he filed the Petition of Appeal, raising the following ground:

- The case filed by the appellant at the District Land and Housing Tribunal was not res judicata since decision of Negero Ward Tribunal was between different parties.

I have seen the records of Negero Ward Tribunal, it was the case regarding the land in Kwaluguru Village in Negero Ward wherein Halima Ali filed a complaint/suit against Gaspar Mbwana, the person who sold the suit land to the appellant.

On 14/08/2012, the Ward Tribunal decided in favour of Halima Ali, and declared her the owner of the suit land. Having won the case, Halima Ali applied for execution of the decree passed by the Negero Ward Tribunal. He filed an application for execution before the District Land and Housing Tribunal for Korogwe, Misc. Land Application No. 157 of 2012. The District Land and Housing Tribunal for Korogwe allowed the execution

of the Decree passed by the Negero Ward Tribunal and the Decree was executed by the Court Broker. The Decree of the Negero Ward Tribunal is intact, it has not been reversed. No one made any appeal against that decision of Negero Ward Tribunal. In the judgement of the District Land and Housing Tribunal for Kilindi in Land Application No. 9 of 2020, the Chairman acknowledged that Halima Ali had filed a suit at Negero Ward Tribunal over the same suit land and had won the case and decided that the suit before the District Land and Housing over the same piece of land could not stand, and he dismissed it. Even if the decision of Negero Ward Tribunal was wrong, it is still a valid decision which was not appealed against, and if the appellant herein claim any interest on the land, he was to object the execution, and his ownership would have been determined by the executing court, and not by way of a separate suit.

The matter of the later suit filed by Solomon Leison was also the subject matter in the Negero Ward Tribunal between Halima Ali and Gaspar Mbwana. Although the parties to the former suit are not the same as in the later suit, but the

subject matter is the same, and hence the judgment is in respect of the same subject matter and should bind everybody claiming title under it. This is a judgement in rem. It was held in the case of **Lotta Versus Tanaki and others (2003) 2 EA 556** that a person does not have to be formerly enjoined in a suit but will be deemed to claim under the person litigating if he has a common interest in the subject matter.

Land Case decided by Negero Ward Tribunal was between Halima Ali and Gaspar Mbwana for the same piece of land. Halima Ali won the case and executed the decree emanated from the decree passed by the Ward Tribunal. Indeed, the subject matter of the later suit filed by Solomon Leison at the District Land and Housing Tribunal is res judicata as it has already been determined by a competent Tribunal whose decision have not been challenged.

The proper way to challenge execution of the Decree of the Tribunal is by way of objection proceedings, under Order XX1 of the Civil Procedure Code, 1966 in the same court /Tribunal which issued the decree.

To make a matter res judicata, there must be a concurrence of the four conditions following: (a) identity in the things sued for or subject matter of the suit; (b) identity of the cause of action; (c) identity of persons or parties in the action; and (d) identity of the capacity in the person for or against whom the claim is made. As required to support the plea of res judicata, a party must reflect a positive requirement that there be identity of the thing sued for, or the subject matter of the cause of action. It has been submitted and confirmed by the records that the subject matter of this suit forming the cause of action was also the subject matter in the former suit, and the Court/Ward Tribunal had already adjudicated upon it.

I agree that a final judgment in rem may be pleaded in bar of another action on the same subject matter if its effect is to merge a distinct cause of action; but it has been held not to operate as a bar to a subsequent action for a judgment in personam. Although the parties in this appeal were not parties to the case before the Negero Ward Tribunal, but the judgment was in rem as it has determined on the land subject

of this present suit. Parties are bound by the decision of the Negero Ward Tribunal, and if the appellant wishes to pursue for his rights (if any) the proper way to do it is through objection proceedings at the same Court/Tribunal which issued the decree, and I guess he is too late to do that.

Judgments for a property are among the types of proceedings held to be quasi in rem. A judgment in a prior action between the same parties or their privies is res judicata in a second action only as to questions which property were determinable in the prior action.

That being the case, the appeal fails, and the decision passed by the District Land and Housing Tribunal for Kilindi in Land Application No. 9 of 2020 is confirmed.

Appeal dismissed with costs.

**DATED and DELIVERED at TANGA this 29<sup>TH</sup> day of JULY 2022**



  
**MANSOOR  
JUDGE,  
29<sup>th</sup> July 2022**