

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
AT TABORA
LAND CASE NO. 6 OF 2019
SWALEHE S/O SUDI HAMADI.....PLAINTIFF
VERSUS
FUNDIKIRA S/O MUSSADEFENDANT

RULING

Date: 12/7/2022&22/7/2022

BAHATI SALEMA, J.:

The plaintiff **Swalehe s/o Sudi Hamadi** filed this suit against the respondent **Fundikira s/o Musa** claiming a declaratory judgment and decree that the suit on surveyed land at Ngámbo (Tukutuku) street within Tabora Municipality is the property of the late Sudi Hamad Saidi; further, the plaintiff claims payment of compensation Tzs. 100,000,000/= or any sum to be commensurably assessed by this court for trespass.

The respondent having been served with a plaint, responded by filing a Written Statement of Defence which was accompanied by a preliminary objection on point of law that the case instituted by the plaintiff is res judicata.

During the hearing, the applicant was represented by Method R. G Kabuguzi, Senior learned counsel whereas the respondent enjoyed the services of Ms. Flavia Francis learned Counsel. The hearing of the Preliminary Objection was disposed by way of written submissions, both parties did not comply with the order of the court

since they filed their respective written submissions out of time, I thank the learned counsels who realized the necessity to implore for an extension of time for this court to accept their submissions. I do not intend to reproduce the party's submissions.

Section 9 of the Civil Procedure Code, Cap. 33 [R.E 2022] involves the identity of the parties or their privies, subject matter, and cause of action between two cases, one which has been conclusive and finally determined prior to the suit in question before a court of competent jurisdiction.

In deciding whether the matter is *res judicata* the following points must be proved by the party alleging *res judicata*;

1. The matter was directly and substantially in issue in the former suit.
2. The issues are between the same parties or between parties under whom or any of them claim to litigate.
3. The parties have litigated under the same title.
4. The former suit was determined by the court with competent jurisdiction.
5. There are two suits, the former suit and subsequent suit.
6. The issue has been determined conclusively.

This requirement prohibits the plaintiff to relinquish and reinstitute another case in which the subject matter was directly and substantially in issue in the subsequent suit and has been heard and finally decided in the former suit.

The doctrine of *res judicata* is based on three maxims, no man should be punished twice for the same cause (*nemo debet bis vexari pro una et eadem causa*); it is in the interest of the state that there should be an end to litigation (*interest rei publicae ut sit finis iitium*) and a judicial decision must be accepted as correct (*res judicata pro veritate occipitur*).

For this court to come to a proper decision as to whether the matter at hand is *res-judicata* or not I find it necessary to trace the record of the litigation at hand and the history of the alleged previous litigations.

As it can be discerned from the pleadings and historical records attached thereto is that on an unknown date in 2003, Sudi s/o Hamadi (now deceased) filed a land dispute at Ng'ambo Ward Tribunal against Fundikira s/o Mussa. After hearing of the dispute, the tribunal declared the respondent Fundikira Musa to be the lawful owner of the disputed land.

Dissatisfied, Sudi Hamadi appealed to the Tabora Urban Primary Court, it was registered as Original Civil Case No. 1/2003. After hearing of the same the decision of the trial tribunal was confirmed on 28/08/2004. Still dissatisfied with the decision of the Primary Court, Sudi Hamadi lodged a second appeal to the District Court vide Civil Appeal No. 16/2004. Upon hearing of the appeal, the learned District Magistrate quashed the Primary Court Proceedings

and ordered a fresh hearing of the appeal before another Magistrate, that was on 26/01/2005.

From that time no one bothered to approach the Primary Court for a fresh hearing of the appeal as it was ordered by the District Court. More than a year later the District Court upon receiving complaint letters from Sudi Hamadi and National Organization for Legal Assistance (NOLA) reviewed its own decision and subsequently on 16/10/2006 the Primary Court Proceedings and judgment were declared null and void for the reason that the Primary Court had no jurisdiction to entertain land matters.

Still enthusiastic and after the establishment of the District Land and Housing Tribunal Sudi Hamadi changed course and opted to file a fresh appeal in the District Land and Housing Tribunal which was registered as Land Appeal No. 10 of 2007. Upon hearing, the appeal was dismissed and the decision of Ng'ambo Ward Tribunal was upheld.

Aggrieved, Sudi Hamadi appealed to this Court via Misc. Land Case Appeal No. 10 of 2008. Upon hearing of the appeal, my learned sister Ngwala J. faulted the District Land and Housing Tribunal's Chairman for entertaining a matter that commenced in the Ward Tribunal before the establishment of the District Land and Housing Tribunal. The judge declared the proceedings and judgment of the District Land and Housing Tribunal null and void for lack of jurisdiction.

The plaintiff, in this case, Swalehe Sudi Hamadi, the son of the late Sudi Hamadi and in this case, he is suing as the Personal Legal representative of his late father Sudi Hamadi against the respondent Fundikira Mussa who was the respondent in a former suit with his late father.

Further, there is no doubt that the cause of action in a suit instituted by the late Sudi Hamadi is the same as the one Swalehe Sudi Hamadi is claiming against the respondent. This Court having perused the record, I have noted that the matter in the former suit which was finally determined by Nga'mbo Ward Tribunal, the respondent was declared the rightful owner of the disputed land.

The record revealed that, the proceedings and judgment of Tabora Urban Primary Court were nullified by the District Court so the decision of the Ward tribunal remained intact, from that stage no one ever appealed against the decision of the District Court. On the other hand, when Sudi Hamad opted to appeal to the District Land and Housing Tribunal those proceedings were also nullified by the High Court so the decision of the Ward Tribunal remained undisturbed.

It is a well-established principle that when a matter has been decided between two parties in one suit and the decision is final, either because no appeal was taken to the higher court or no appeal lies in such case, neither party will be allowed in the future suit between the same parties to canvass the matter again.

As rightly submitted by the counsel for the respondent, the plaintiff being a personal legal representative of Sudi Hamadi is barred by law from instituting again on a matter that had earlier been conclusively determined by the Ward Tribunal against the respondent, Fundikira Mussa.

That being said, the plaintiff's suit is an abuse of the Court process for being *res judicata*, therefore, the objection raised by the defendant is sustained with costs.

Order accordingly.

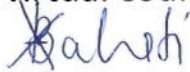


A. BAHATI SALEMA

JUDGE

22/07/2022

Ruling delivered in chamber on this 22nd July, 2022 in the presence of the plaintiff only via virtual court link.

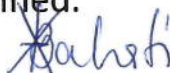


A. BAHATI SALEMA

JUDGE

22/07/2022

Right of Appeal fully explained.



A. BAHATI SALEMA

JUDGE

22/07/2022

