

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DODOMA DISTRICT REGISTRY)  
AT DODOMA**

**LAND CASE NO. 1 OF 2019**

BETWEEN

**K.M. HOLDINGS LIMITED ..... PLAINTIFF**

**VERSUS**

**1. CRISOSTOM ALFRED KABOKO**

**2. ELIZABETH PAUL MALLYA**

(As Administratrix of estates of the late  
**PAULO ALEX MALLYA)**

**3. AUGUSTINO PAULO MALLYA**

**4. DEOGRATIUS PAULO MALLYA**

**5. THE CITY COUNCIL OF DODOMA**

**6. THE ATTORNEY GENERAL**

**..... DEFENDANTS**

*19/9/2022 & 22/9/2022*

**RULING**

**MASAJU, J**

The Plaintiff, K.M. Holdings Ltd, sues the Defendants, Crisostom Alfred Koboko, Elizabeth Paul Malya (as Administratrix of the estate of the late Paul Alex Malya), Augustino Paul Malya, Deogratius Paulo Malya, the City Council of Dodoma and the Attorney General (the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants respectively) for ownership of the Plots of Land No. 66 & 67 Block 91, Mlimwa West (Area C) within Dodoma City. The Defendants severally and jointly contest the suit for want of merit. The learned counsel,

Elias Machibya and Ms. Catherine Wambura have been advocating for the Plaintiff while the learned counsel, Godfrey Wasonga has been defending the 1<sup>st</sup> -4<sup>th</sup> Defendants. The learned Senior State Attorneys, Jenipher Kaaya and Camilius Ruhinda and Ms. Flora Sagire, the learned State Attorney, have been defending the 5<sup>th</sup> and 6<sup>th</sup> Defendants.

On the 3<sup>rd</sup> day of June, 2022 when the suit was called on for hearing, of the Civil Procedure Code, the Court invoked Order X Rule 1 of Civil Procedure Code, [Cap 33 RE 2019] to ascertain from them as to whether or not they admit that the suitland had been declared by the District Land and Housing Tribunal for Dodoma vide Application No. 125 of 2009 that it lawfully belonged to one Paul Alex Mallya, the 2<sup>nd</sup> Defendant who has since died and there is the Administratrix of his estate. The Plaintiff denied that factual allegation. The Court adjourned the trial so as to afford the parties with the opportunity to consider as to whether or not there could be factual allegations they admit or deny pursuant to Order X Rule 1 of the Civil Procedure Code, [Cap 33 RE 2019]. The 5<sup>th</sup> and 6<sup>th</sup> Defendants there upon on the 30<sup>th</sup> day of June, 2022 filed in the Court a Notice of preliminary point of law that "*The Court has no jurisdiction- to try the suit for being Res judicata*"

The preliminary point of law was heard in the Court on 29<sup>th</sup> day of July, 2022 in the presence of the parties and their learned counsels, Elias Machibya and Ms. Catherine Wambura, for the Plaintiff, Godfrey Wasonga for the 1<sup>st</sup> -4<sup>th</sup> Defendants and Mr. Camilius Ruhinda, the learned Senior State Attorney, and Ms. Flora Sagire, the learned State Attorney, for the 5<sup>th</sup> and 6<sup>th</sup> Defendants.

The 5<sup>th</sup> and 6<sup>th</sup> Defendants, argued that on the 13<sup>th</sup> day of June, 2017 vide Application No. 125 of 2009 between Paul Alex Mallya (Applicant) versus Koku Mutalemwa, Sara Adam James, Neema David, Subira Mwenga Aludo,

Anna Michael, Simon Michael, Jasmin Sangiri, John Sharuhi, Emma Kulatha Lushakuzi Shauri, Amina Azizi, Edna Job Shome, Christer Paul Lukuwi, Frank Mhoja Marashi, Ariko, Moana, Rose and Mariam Razaro Mhembano (the 1<sup>st</sup> -17<sup>th</sup> Respondents) respectively, the District Land and Housing Tribunal for Dodoma at Dodoma decided and declared Paul Alex Mallya (the Applicant) the lawful owner the suit premises on Plots No. 66 and 67 Block 91 Mlimwa West within Dodoma Municipality then. That, ownership of the said plots of land is subject matter of the instant suit between the Plaintiff and the Defendants, the said Paul Alex Mallya who has since died is being sued through the Administratrix of his estate, Elizabeth Paul Mallya, the 2<sup>nd</sup> Defendant. The said land has since devolved to the 3<sup>rd</sup> and 4<sup>th</sup> Defendants who are biological issues of the late Paul Alex Mallya. That, though the Plaintiff was not part to the said suit (Application) before the District Land and Housing Tribunal, for Dodoma, the instant suit was indeed *res judicata* to the former suit pursuant to section 9 of the Civil Procedure Code, [Cap 33 RE 2019] specifically on the last alternative in the section. The section reads, thus;

*"9. No Court shall try any suit or issue in which the matter directly substantially in issue has been directly and substantially in issue in a former suit between the same parties or suit between parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court."*

That, the decision by the District land and Housing Tribunal for Dodoma has not been vacated by any court of competent jurisdiction. That, the suit should therefore be dismissed with costs for being *res judicata*.

The 1<sup>st</sup> - 4<sup>th</sup> Defendants joined hands with the 5<sup>th</sup> and 6<sup>th</sup> Defendants that the suit was *res judicata*. The remedies available to the Plaintiff was to challenge the decision and the decree thereof before the court of competent jurisdiction but not to institute another suit on the same land which had already been declared by District land and Housing Tribunal for Dodoma that it lawfully belonged to the 2<sup>nd</sup> Defendant.

The plaintiff contested the preliminary point of law. He cited **Peniel Lotta v. Gabriel Tanaki & others [2003] TLR 312, Pravin Girdhar Chavda V. Yasmia Nurdin Yusufali (CAT) Civil Appeal No. 165 of 2019, Dar es salaam Registry and Mija Maganga V. Mohamed Mrisho Mlanga (HC) Land Division Misc. Land Appeal No. 225 of 2021 Dar es salaam Registry** in support of the reasoning that the conditions for *res judicata* as stated section 9 of the Civil Procedure Code, [Cap 33 RE 2019] have not been met in the instant suit to the former suit, hence the suit was not *res judicata*. In **Peniel Lotta V. Gabriel Tanaki & others (Supra)**, the Court of Appeal of the United Republic of Tanzania held on what constitutes *res judicata*, thus, as it gave five conditions that should exist in order for a case to qualify, for a *res judicata* status, thus;

- "1. *The matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit.*
2. *The former suit must have been between the same parties or privies claiming under them.*
3. *The parties must have been litigated under the same title in the former suit.*
4. *The Court which decided the former suit must have been competent to try the subsequent suit.*

5. *The matter in issue must have been heard and finally decided in the former suit.*”

The Plaintiff argued that these conditions for *res judicata* were not met because save for the 2<sup>nd</sup> Defendant, the parties were different. The District Land and Housing Tribunal for Dodoma lacked pecuniary jurisdiction to try the former suit. That, the parties were not litigating on the same capacities. That the former suit was about tenancy whilst the instant suit was about fraud. The Plaintiff prayed the Court to overrule the preliminary point of law with costs accordingly.

The 5<sup>th</sup> and 6<sup>th</sup> Defendants, in rejoinder argued that, since the Court was not sitting as appellate court to consider the decision of the District land and Housing Tribunal for Dodoma in Application No. 125 of 2009 between the 2<sup>nd</sup> Defendant and Koku Mtalemwa & 16 others, the argument that the said tribunal lacked jurisdiction should not be raised and considered by the Court. That, it was not true that the former suit was about tenancy. The tribunal did declare the 2<sup>nd</sup> Defendant to be the lawful owner of the suitland. They maintained their submissions in chief that by virtue of the last part alternative in section 9 of the Civil procedure Code [Cap 33] this suit qualified for *res judicata* to the former suit in the District Land and Housing tribunal for Dodoma even when all the parties must have been not the same.

The suit was adjourned for Ruling on the 24<sup>th</sup> day of August 2022, but in the course of composing the ruling the Court learned that there also have been **Paul Malya V. KM. Holdings Ltd** (HC) Civil Case No. 17 of 1998, Dodoma Registry. **Paul Malya Hardware & Auto parts V. K.M. Holdings Ltd (HC)** Misc. Civil Application No. ...2004 (Arising from Civil Case No. 17 of 1998), Dodoma Registry **Ivan Kaboko V. Crisostom Alfred Koboko & Paul Alex Malya** (HC) Civil



Case No. 2 of 2005, Dodoma Registry and **Ivan Kaboko George Kaboko, Abbela Kaboko, Kokwenda Kaboko, Julieth kaboko, Adam Mzengi, Christa kaboko & Leonard kaboko V. Crisostom Alfred & Kaboko, Chris Mkanja Ikande, Julius kaboko Mutalemwa, Deogratius kaboko & Paul Alex Malya** (HC) Land Case No. 3 of 2006, Dodoma Registry on the ownership of the same land (Plots No. 66 & 67 Block 91 Mlimwa West, Dodoma Municipality). So, the Plaintiff and some other persons on one hand and the 1<sup>st</sup> and the 2<sup>nd</sup> Defendant on another hand have been severally and jointly litigating against each other on the ownership of the suit land in the Court as well.

Therefore, on the 31<sup>st</sup> day of August, I advised the Plaintiff and other parties who have been privy to the former suits on the ownership of the suitland, to supply the Court with the copies of decisions (judgments & Ruling) thereof by the 14<sup>th</sup> day of September, 2022 for the Court's appraisal for the intended well informed Ruling of the Court on the preliminary point of law on the 19<sup>th</sup> day of September, 2022. By that date, the parties have not shared with the Court the said decisions. Even by today, the 22<sup>nd</sup> day of September, 2022 when the Court delivers the Ruling, there has been no any decision on the highlighted Suits and Application by or against the parties themselves that has been made available to the Court. This leaves much to be desired as to whether or not the decisions on the said suits and application would have been as well the reasons for this suit to qualify for *res judicata* as so rightly raised and argued by the 5<sup>th</sup> and 6<sup>th</sup> Defendants in respect of **Paul Alex Malya v. Koku Mutalemwa & 16 others (Supra)**.

That being the case, this suit qualifies for a *res judicata* to the former suits/Applications that have been named herein, for it meets all the conditions for a *res judicata* suit pursuant to section 9 of the Civil Procedure Code, [Cap 33 RE 2019] and **Peniel Lotta V. Gabriel Tanaki & others [2003]** TLR 312.

Thus, the meritorious preliminary point of law is hereby sustained. The *re judicata* suit is hereby dismissed accordingly pursuant to section 9 of the Civil Procedure Code, [Cap 33 RE 2019]. The parties shall bear their own costs.



GEORGE M. MASAJU

**JUDGE**

22/9/2022