

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF DAR-ES-SALAAM

AT DAR-ES-SALAAM

MISC. CIVIL. APPLICATION. NO. 207 OF 2020

**(ARISING FROM THE DECISION OF THE DISTRICT LAND AND HOUSING
TRIBUNAL OF TEMEKE DISTRICT AT TEMEKE IN LAND APPEAL NO 103 OF
2007)**

BETWEEN

AZIZA MNYUNGO (Acting attorney of Omar Mnyungo) APPLICANT

VERSUS

AMANI GUMBO RESPONDENT

RULING

MRUMA J,

The Applicant Aziza Mnyungo (who is an acting attorney of one Mohammed Omar Mnyungo) filed this application for extension of time within which she could appeal against the decision of the District Land

and Housing Tribunal for Temeke in Land Appeal No. 103 of 2007 delivered on 15th May 2008.

Upon being served the Respondent raised preliminary objections on points of law that:

- (1) The Application is frivolous, vexatious and an abuse of Court process.
- (2) The Applicant has no cause of action against the Respondent.
- (3) The said application is res judicata

He prayed for the Application to be struck out with costs.

At the hearing of this preliminary objection the Applicant enjoyed the service of advocate Nicko Ngatunga while, the Respondent appeared in person. The objection was urged by way of written submissions.

In support of the first preliminary objection counsel for the Respondent submitted that in the year 2007 the Applicant instituted Land Case at Mbagala Ward tribunal and the ruling was delivered on 18th October, 2007 in favour of Respondent whereupon the Applicant filed appeal No. 103 of 2007 in the District Tribunal which was dismissed on 15th May, 2008. It is the Respondent's submission that the present application is untenable because upon the dismissal of the Applicant's

appeal way back in 2008, the applicant didn't take any action till April 2020 when she filed this application.

Further to that is the Respondent's contention that the delay in filing this application and the fact that the Respondent's appeal was dismissed for want of both cause of action and merits makes the present application vexatious and abuse of court processes. He said that the Applicant had no cause of action against him.

In his response, the Applicant filed written submission opposing the objection raised by Respondent. She submitted that the 1st ground of objection has failed to explain as to why this application is vexatious, frivolous and abuse of Court process.

As regards to the second ground of objection that the Applicant has no cause of action against her is the matter of facts which need to be proved by evidence during the trial that Applicant sued the same parties therefore, this objection stands to be unjustified. He stated that the principle of res-judicata cannot apply in the appeals as appeal is considered to be the appropriate manner to challenge any judgment.

The Applicant cited the case of; **Satyadhyan Ghosal vs Deorji Debi [AIR 1960 SC 941]** it was held that;

".....,when a matter, whether on a question of fact or law, 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"

The Applicant alleged that the preliminary objection raised has no merit because she had never instituted any application for extension of time apart from this one. He prays this Court to dismiss the objection with costs.

I have carefully studied the records of the lower courts and the respective submissions of the parties. My view is that any disputed matters must come to an end. It is principle of the law that when a matter, whether on a question of fact or law, 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. This matter was concluded way back in 2008.

Re-opening it in 2020 without any plausible is an abuse of court processes which will not be condoned by this court.

That said I proceed to sustain the preliminary objection raised by the Respondent and consequently dismiss the application with costs




A.R MRUMA,

Judge.

Dated 13th December 2022.