

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF TANGA
AT TANGA

LAND APPEAL NO 01 OF 2020

(Originating from the District Land and Housing Tribunal of Korogwe at Korogwe in Land Application no 03 of 2019)

RAJABU KIMWERI..... 1st APPELLANT
BAKARI GUGU..... 2nd APPELLANT
HOSSEIN SALEHE 3rd APPELLANT
IBRAHIMU MUHITA..... 4th APPELLANT

VERSUS

LUGENDO SELEMANI..... 1st RESPONDENT
AWADHI BAKARI..... 2nd RESPONDENT
SEFU SAIDI CHANKANDA..... 3rd RESPONDENT
MUDI SEFU..... 4th RESPONDENT
ZAKIA BAKARI..... 5th RESPONDENT
ZAHORO CHANKANDA..... 6th RESPONDENT
LALAHU..... 7th RESPONDENT
ZUBERI CHANKANDA..... 8th RESPONDENT

J U D G E M E N T

DATE OF JUDGEMENT- 07th March, 2022

MANSOOR J:

This appeal arises from the Ruling of the District Land and Housing Tribunal for Korogwe in Land Application No 03 of 2019 dated 15th November 2019. The Ruling was regarding THE preliminary objection raised at the tribunal by the



respondents. The objection was pegged on two points, **One**, that the application was res judicata and **Two**, that the application was incompetent for suing a wrong person. The tribunal upheld the first point of objection and proceeded to dismiss the matter for being Res judicata. This decision displeased the appellants herein and they have instituted this appeal with a single ground that; -

The trial Chairman erred in law and fact to hold that this matter was res judicata to Application No 34 of 2013 while it was not.

In this appeal, the appellant was represented by Mr. Mathias Nkingwa learned advocate while the eight respondents fended for themselves. For the interest of justice this matter was scheduled to be determined by way of written submissions.

In their written submission in support of the appeal, the appellants stated that there has never been a case with these same parties concerning the same suit land at Misima Ward Tribunal. They equally stated that it is not true that Case no 34 of 2013 ever existed. No appellant is aware of any case in that regard. Mr. Nkingwa blamed the tribunal for deciding that

Land Application No 03 of 2019 was res judicata without confirming the existence of the alleged previous case which is said to have been heard at Misima Ward Tribunal to its finality. To buttress his point, he cited the case of *Gerald Chuchuba vs Rector, Itaga Seminary* (2002) TRL at page 213. The appellants therefore prayed that their appeal be allowed with costs.

In response to the appellants' submission, the respondents first of all pointed out that the submission was filed beyond the scheduled order. They submitted that the court ordered for written submissions by the appellants to be submitted on or before 22nd April 2021 however it was presented for filing on the next day that is 23rd April. They therefore urged this court by using the case of **Monica Dickson vs. Hussein Wasuma**, Pc Civil Appeal No 04 of 2019 to resolve that the appellants failed to prosecute their appeal hence the matter be dismissed with costs for want of prosecution.

Arguing on the appeal itself, the respondents began by citing the provisions of Section 09 of the Civil Procedure Code, Cap 33 R.E 2019.

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or 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."

Their stand was that this dispute was already finally determined in land Dispute No 22 of 2006 at Misima Ward Tribunal, followed by its execution effected by Fax Auction Mart. They further cited the cases of **NORTH WEST WATER LTD vs BANNIER PARTMER** (1990) All ER Vol 3, Kerr LJ, **KAMUNYE AND OTHERS vs THE PIONEER GENERAL ASSURANCE SOCIETY LTD** (1971) EA 263 and **PENIEL LOTTA vs GABRIEL TANAKI AND OTHERS** (2003) CA TLR at page 312 to drive their point home.

Explaining the res judicata element in this case, the respondents elaborated that there was a Land dispute No. 22 of 2006 before Misima Ward Tribunal which was determined in

their favour and that decision has never been appealed against nor reversed hence remains binding to parties. They added that that same dispute was against these same parties namely Abdallah Sufiani, Rajabu Kimweri, Bakari Gugu and 11 others vs Sefu Chankanda and others and they were litigating for the same title.

Concerning non awareness of the appellants on the existence of Land Dispute No 34 of 2013, the respondents aver that the same is misconstrued by the appellants since the ruling by the chairperson stated that Land Case No 34 of 2013 before the District Land and Housing Tribunal was dismissed on 11/03/2014 for being res judicata to Land Dispute No 22 of 2006 of Misima Ward Tribunal, nevertheless the appellants filed yet another suit vide Application No 03 of 2019, dismissal of which is a subject of this appeal. With that elaboration, the respondents prayed that the appeal against them be dismissed for want of merit.

The Appellants opted to rejoin their submission in chief after having being served with the respondent's reply. In it they made it clear that their submission in chief was filed on the

next date due to network problems in electronic filing of documents. They also reiterated that they have never had any case with the respondents, be it case no 34 of 2013 or 22 of 2006.

That marked the end of parties' submissions. The Respondents have brought up a complaint that written submission by the appellants was submitted late by one day. On their side the appellants stated that the same was due to network problems in the process of electronic filing of cases. By practice, this defense was to be supported by an affidavit of a Record Management Assistant, deponing on the veracity of that assertion. But for the purpose of seeking substantial justice, section 45 of the Land Disputes Courts Act, Cap 216 R.E 2019 would save the anomaly on the basis of overriding needs for attaining the substantive justice. (See the case of **YAKOBO MAGOIGA GICHERE vs PENINAH YUSUPH**, CIVIL APPEAL NO. 55 OF 2017(unreported)).

Now moving to determination of the appeal, this appeal hinges on the principle of Res Judicata. This principle has been expounded exhaustively by the Court of Appeal sitting at

Zanzibar in the case of **ESTERIGNAS LUAMBANO vs ADRIANO GEDAM KIPALILE**, CIVIL APPEAL NO. 91 OF 2014. The court at page 5 of this case sought definition of the term in In **Blacks Law Dictionary** (Ninth) Edition Res judicata is defined as

"An affirmative defence barring the same parties from litigating a second law suit in the same claim, or any other claim arising from the same transaction or series of transactions and that could have been raised but was not raised in the first suit. "

The conditions for a matter to be termed res judicata, and hence bar a subsequent suit as provided for under Section 9 of the Civil Procedure Code, Cap 33 R.E 2019 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 tittle 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 heard and finally decided in the former suit

The only thing to find out from record is whether there was a previous case with the above-named criteria. The ruling of Land Application No 03 of 2019 by Korogwe District Land and Housing Tribunal which is the subject of this appeal has the following wording at its fourth page

*"For that matter, I adopt and agrees (sic) with the raised p/o by the respondent that this application is **Res-Judicata to Application No 34/2013 of Misima Ward Tribunal.**"*

In their submissions, the appellants through Mr. Mathias Nkingwa stated vigorously that there has never been an Application No. 34 of 2013 at Misima Ward Tribunal. The Respondents in reply sought to rectify the ruling by the DLHT by stating as follows; -

"I think the appellants misconstrued the ruling of the honourable Chairman in application No 03 of 2019 as the

proceedings reveal that, the appellants filed the application No 34 of 2013 before Korogwe District Land and Housing Tribunal which the same was dismissed on 11/03/2014 for being res judicata to dispute number 22 of 2006 at Misima Ward Tribunal..”

On my part, guided by the Ruling appealed against in this appeal, I have perused the record and discovered that there has never been any cause namely “Application No 34/2013 at Misima Ward Tribunal”. Instead, there is Land Application No 34/2013 of The District Land and Housing Tribunal of Korogwe at Korogwe which was dismissed for being Res Judicata. I took trouble to dig further into the record accompanying this appeal only to find out that there also had never been any dispute between these parties at Misima Ward Tribunal registered as No 22/2006. All I could find is a very faint photocopy of what seems to be a letter dated 12/01/2006, addressed to Baraza la Ardhi na Nyumba la Wilaya, S.L.P 5058 Tanga. This document in my view cannot be safely regarded as ward tribunal proceedings. No wonder the appellants in rejoinder refuted knowledge of any of the mentioned disputes


with confidence. I am certain that had there been any competent cause, the respondents in this case would have attached it in the pleadings.

In the circumstances, since the ruling appealed against (Land Application No 03 of 2019 referred to a non-existing matter which cannot possibly meet the conditions set out under Section 09 of the Civil Procedure Code, Cap 33 R.E 2019; the appeal is hereby allowed. In addition, given the deficits exhibited in the record of this dispute, I proceed to quash all the proceedings and orders emanating from the dispute between the parties herein with regard to the subject matter of this appeal. Thus, Application No. 3 of 2019, shall be determined on merits by different Chairperson of the District Land and Hosing Tribunal for Korogwe.

No costs.

**DATED AND DELIVERED AT TANGA, THIS 07TH DAY OF
MARCH, 2022**




L. MANSOOR, J
HIGH COURT
TANGA