

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**THE SUB - REGISTRY OF MWANZA**

**AT MWANZA**

**LAND APPEAL NO. 85 OF 2022**

*(Arising from District Land and Housing Tribunal of Ukerewe in Misc. Application No. 30 of 2020 and Original Ward Tribunal of Namilembe Ward in Application No. 09 of 2020)*

**ANANIA NDAU-----APPELLANT**

**VERSUS**

**TATU CHIBUGA-----RESPONDENT**

**JUDGEMENT**

*Feb. 20<sup>th</sup> & 22<sup>nd</sup>, 2023*

**Morris, J**

This appeal is against the order of District Land and Housing Tribunal of Ukerewe (the Tribunal) in Miscellaneous Application No. 30 of 2020. The appellant was aggrieved by the Tribunal's order dismissing the application for execution on the basis of being *res judicata*. His appeal is based on the following grounds;

1. The district tribunal erred in law and fact by deciding that application No. 9/2020 was *res judicata* to application No. 40/2006 without any proof.

2. The district tribunal erred in law and by favoring the respondent and referring to application No. 40/2006 which was not tendered before the tribunal.
3. That the district tribunal was biased and favorable to the respondent.

When the matter was fixed for hearing, the respondent was served and notified of the appeal but opted not to appear. Consequently, I ordered hearing of the appeal to proceed in her absence. On his part, the appellant had nothing substantial to submit on the grounds of appeal. He simply prayed to adopt them as part of his submissions. Surely, he maintained that the appeal has adequate merit.

In this connection, I find it pertinent to summarize the background of the dispute between the parties. Through application no. 40/2006, the appellant herein unsuccessfully sued the respondent and 4 others before Namilembe Ward Tribunal. After losing, the appellant later sued the respondent alone and excluded the other (4) previously-sued parties. This time, he was successful. The latter proceedings proceeded as application no. 9/2020 before the same Ward Tribunal.



Being the decree holder in application no. 9/2020, the appellant applied for execution before the District Land and Housing Tribunal. His application was dismissed for having arisen from *res judicata* proceedings. It is against the said dismissal, the appellant is before this Court.

With regard to the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal, the appellant is faulting the order of the tribunal dismissing the application for execution on the basis of having been emanated from application no. 9/2020 which was found to be *res judicata*. He argues that the decision of the tribunal was without proof (of judgement in application no.9/2006) being tendered before it. However, reading the proceedings of the tribunal on 23/6/2022, the honorable Chairperson was notified of the existence of previous case between the parties over the same subject land. Accordingly, the tribunal adjourned the matter in order to make follow up on the same allegations.

With the foregoing follow up, it turned out to the tribunal that indeed two contradictory cases involving similar parties over the same subject matter had been determined by the ward tribunal. The following day, parties were afforded the right to address the tribunal regarding the propriety on the co-existence of two judgements on the same subject

matter. Then, the Chairperson made an order dismissing the execution for having cropped from *res judicata* proceedings.

This Court finds that, it was not fatal for the executing tribunal to take cognizance of the decisions of Ward Tribunal. According to section 59 (1) (d) of ***the Evidence Act***, Cap 6 R.E. 2022; the court is duty bound to take **judicial notice** of the seal of the court. Further, pursuant to section 58 of ***the Evidence Act*** (*supra*) matters of judicial notice need not be proved. Therefore, so long as the ward tribunal's judgement in application no. 40/2006 was a matter of judicial notice, there was no need of proving it before the District Land and Housing Tribunal. Hence, I find the 1<sup>st</sup> and 2<sup>nd</sup> grounds of appeal to be of no merit. I dismiss them.

However, the District Land and Housing Tribunal was enjoined to use its revisional power conferred to it by section 36 (1) and (2) of ***the Land Disputes Courts Act***, Cap 216 R.E. 2019 to nullify proceedings, judgement and decree from application no. 9 of 2020 for being *res judicata* against application no. 40/2006 which was between the same parties. It failed to do so. I hereby fault it accordingly. In consequence, after determining the remaining ground of appeal, I will address this irregularity.

Under the last ground of appeal, the appellant is of the view that the District tribunal was biased in favour of the respondent. However, examining the records of the said tribunal the Court finds no biasness. The executing tribunal correctly directed itself to make follow-up of the previous application No. 40/2006. Further, it afforded parties the right of being heard regarding the issue of two contradicting decisions of the same ward tribunal.

Before dismissing this very last ground of appeal, I seek comfort from ***Kulwa Daje v R***, Court of Appeal (Mbeya) Criminal Appeal No. 345 of 2018 (unreported); where it was insisted that parties should avoid twisting the situation on an anticipation that they can easily deceive judicial minds working on previous records. In the court's wise words, it was put on record that:

*"So, as we move on to determine this appeal, It behoves us at this point in time, to remind the appellant and any one of his type and inclination that, the pens and papers we use, keep records. Therefore, before any litigant tries to spin lies in a court of law, he better knows what is on the court record."*

Accordingly, the 3<sup>rd</sup> ground of appeal is also devoid of merit and it is accordingly dismissed.

As I pen off, I will not leave the illegal proceedings and judgements of the ward tribunal in application no. 9/2020 to escape the wrath of nullification. From what is stated earlier, parties addressed the District Land and Housing Tribunal regarding this issue but the tribunal failed to nullify the impugned application No. 9/2020. Therefore, for it was *res judicata* against application No. 40/2006; I hereby nullify all proceedings and judgement on application No. 9/2020 under power vested to this court by section 43 (1) (b) of **Cap. 216** (*supra*).

In the final conclusion; the appeal is consequently dismissed for want of merit. Further, the proceedings, judgement and decree of the Namilembe Ward Tribunal in application no. 9/2020 are hereby quashed and orders therefrom set aside. In the circumstances of this case, I make no order as to costs.

It so ordered.

Right of appeal fully explained.





**C.K.K. Morris**  
**Judge**

**February 22<sup>nd</sup>, 2023**

**Judgement** delivered this 22<sup>nd</sup> day of February 2023 in the presence of the appellant in absence of the respondent.

**C.K.K. Morris**  
**Judge**

**February 22<sup>nd</sup>, 2023**