

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

AT BUKOBA

LAND APPEAL NO. 27 OF 2022

(Arising from the District Land and Housing Tribunal for Muleba at Muleba in Land Application No. 3 of 2021)

GEOFFREY RWEIKIZA APPELLANT

VERSUS

JULIAN SINDANO RESPONDENT

JUDGMENT

Date of Judgment: 17.02.2023

A.Y. Mwenda J,

Before the District Land and Housing Tribunal for Muleba at Muleba Mr.Geoffrey Rweikiza filed an Application No.3 of 2021 claiming ownership of the suit land located at Nyarubanja "A" Hamlet Kimbugu Village at Katoke Ward within Muleba District. When the respondent was served with the application, he filed a reply with preliminary point of objection in that the application is bad in law for being res judicata in Land Case No. 6 of 2020 before Katoke Ward Tribunal. After the hearing of the said preliminary objection, the Tribunal held that and I quote;

"Pingamizi limekubaliwa, Maombi haya yanafutwa kwa gharama"

Being aggrieved by the said decision the appellant filed the present appeal with two (2) grounds. When this appeal was scheduled for hearing both parties appeared in person without legal representation.

During his submission in chief the appellant submitted that, what has been recorded on the tribunal's record is quite different from what he stated during trial. He submitted that before the tribunal he stated that the case against the respondent was on the destruction of crops and he wanted to produce the evidence but the chairman refused to admit them. He thus prayed this appeal to be allowed.

In reply to the appellant's submissions the respondent submitted that the Hon. Chairman was justified to rule out that the appellant's application was res judicata and he thus prayed this appeal to be dismissed.

Having gone through tribunal records as well as the parties submissions the issue for determination before this court is whether or not this appeal is meritorious.

Going through the tribunal's records, it is clear that before the tribunal the appellant (the then applicant) conceded to the preliminary objection raised. He was quoted stating that;

*"Ni kweli tulishtakiana katika baraza la kata katoke,
lakini Baraza la kata halikuzingatia maelezo yangu, ile
kesi ya kata ilikuwa ya kushtukiza na walitoa hukumu
ghafila"*

Following the admission as a result the said application was dismissed for being res judicata.

In the present appeal, the appellant is denying what has been recorded by the trial tribunal as his. He alleges that he never stated that they had a same determined matter before Katoke Ward Tribunal. He said before the tribunal he instituted the claim against the respondent for destroying his property and the tribunal refused to receive his evidence. In a bid to satisfy itself regarding the appellant claim this court went through the tribunal's proceedings and found out that the appellant, on 9th November 2021 through oath, stated that they had a similar case before the Ward Tribunal but the tribunal did not consider his evidence. That being the case this court is of the view that the appellant is not telling the truth. It is important to note that court records is serious document and it should not be impeached lightly. This position has been stated in the case of HALFANI SUDI VS. ABIEZA CHICHILI [1998] TLR 526, 529 where it was held inter alia that;

*"We entirely agree with our learned brother, MNZAVAS, J.A. and the authorities he relied on which are loud and clear that 'A court record is a serious document. It should not be lightly impeached:'. and that **'There is always the presumption that a court record accurately represents what happened....'**"*

That being the legal position this court is of the view that once a person on his declaration made a person to believe an information to be true and made that person to act on that information then such a person is estopped to deny the

truth of such information as it has been stipulated under section 123 of the Evidence Act CAP 6 R.E 2022 the section reads as follows;

"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed, in any suit or proceedings between himself and that person or his representative, to deny the truth of that thing".

Guided by the above principle this court is of firm view that what appears at page 7 of the proceedings before the District Land and Housing Tribunal came from the appellant. Since he confirmed that the suit before the Hon. Chairman is res judicata he thus, at this juncture, estopped from alleging the same was not his.

On this basis, this court is of the view that what the appellant have raised in his argument before this court is nothing but an afterthought and this appeal lacks merits and it hereby dismissed with costs.


It is so ordered.


A.Y. Mwenda

Judge

17.02.2023

Judgment delivered in chamber under the seal of this court in the presence of Mr. Geoffrey Rweikiza the Appellant and in the presence of Mr. Julian Sindano the respondent.


A.Y. Mwenda
Judge

17.02.2023