

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IRINGA SUB REGISTRY)  
AT IRINGA**

**LAND APPEAL CASE NO. 21 OF 2022**

*(Originating from Application No. 53/2020 of the District Land and Housing Tribunal of  
Njombe before Hon. G. F. Ng'humba, Chairperson.)*

**DAIMA MAHENG** ..... **APPELLANT**

**VERSUS**

**MATESO MICHAEL NGAJIRO**

**@ MATESO M. NGAJIRO**

(Administrator of the estate of

the late **Michael Merimeri Ngajiro**) ..... **RESPONDENT**

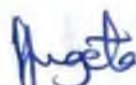
**JUDGMENT**

*2<sup>nd</sup> March & 27<sup>th</sup> April, 2023*

**I.C MUGETA, J:**

The appellant was aggrieved by the decision of the District Land and Housing Tribunal (DLHT). He now appeals to this court based on three grounds, namely:

- 1. That, the trial District Tribunal misdirected itself as to the interpretation and proper application of the doctrine of res judicata thereby arriving at an erroneous decision.*
- 2. That, the trial District Tribunal erred in fact and in law in failing to critically evaluate evidence on record.*
- 3. That, the trial District Tribunal erred in law and fact in failing to interpret and properly apply the law.*



The appeal was argued by way of filing written submissions. The appellant enjoyed the legal representation of Mr. Frank Ngafumika, learned advocate. The respondent was represented by Mr. Silius Msolansimbi, learned advocate.

Briefly, the facts of the case are that the respondent sued the appellant in the DLHT for, among other orders, a declaration that the suit land belongs to the estate of the late Michael Merimeri Ngajiro and a permanent order restraining the respondent from trespassing the suit land. Upon hearing, the DLHT decided in favor of the respondent and held that the suit land belongs to the estate of the late Michael Merimeri Ngajiro, hence, this appeal.

The appellant's counsel started to argue the 3<sup>rd</sup> ground of appeal. He submitted that the respondent did not tender in evidence a letter of his appointment as the administrator of the estate of the late Michael Merimeri Ngajiro without which he had no legal capacity to sue. To buttress his submission, he cited the cases of **Zanzibar Telecommunication Limited v. Ali Hamad Ali & 105 Others**, Civil Appeal No. 295 of 2019, Court of Appeal of Tanzania (CAT) at Zanzibar (unreported) and **Japan International Cooperation Agency (JICA) v. Khaki Complex Limited**, Civil Appeal No. 107 of 2004, CAT at Dar es Salaam (unreported).



Arguing on the 1<sup>st</sup> ground of appeal, the appellant's advocate submitted that the matter was *res judicata* as the respondent in his personal capacity had sued the appellant in a previous matter. The learned counsel submitted further that the respondent's witnesses did not prove the case to the required standard. He argued that there were inconsistencies in the testimonies of the respondent's witnesses as to the ownership of the suit land. He cited the case of **Emmanuel Abraham Nanyaro v. Peniel Ole Saitabau (1987) TLR 47** which provides that unreliability of witnesses, conflicts, inconsistencies in the evidence entitle a judge to reject evidence. To substantiate his argument, the learned counsel submitted that while two witnesses (without mentioning them) testified that the land belongs to Mateso Ngajiro, Rozina Mpalala said it belongs to her. That, contrary to this evidence the DLHT held that the land belongs to the late Michael Merimeri Ngairo.

The respondent's counsel opposed the appeal in a similar order starting with the 3<sup>rd</sup> ground of appeal. He contended that paragraph 6 (a)(i) of the application in the DLHT showed that the respondent was suing in the capacity of an administrator. He added that the respondent also annexed certified copies of letters of administration in the said application and, the appellant noted that fact in his written statement of defence. He submitted

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further that the appellant cannot raise this issue at an appeal stage as it was not raised during trial. To support his argument, he cited the cases of **Alois Mahema v. Alesia Makinda**, Land Appeal No. 11 of 2020, High Court of Tanzania (HCT) at Iringa (unreported). In the alternative, he is of the view that the irregularity, if any is cured by section 45 of the Land Disputes Court Act, [Cap. 216 R.E 2019] which urges courts to deal with substantive justice.

On the 1<sup>st</sup> ground of appeal, the learned advocate submitted that the trial tribunal properly interpreted the ingredients of *res judicata*. He argued that the complained of matter, Land Case No. 1 of 2017 originated from Kitulo Ward Tribunal where the respondent won but lost on appeal, appeal No. 45/2017 of the DLHT of Njombe District, where it was held he had no *locus standi*, for suing in personal capacity. He filed an appeal to the High Court, Misc. Land Appeal No. 07 of 2018, which was also stuck out for being filed in the wrong court. The respondent then obtained letter of administration and instituted the application which has led to this case. Therefore, in his view, *res judicata* principle cannot apply. On the ingredients of *res judicata* principle he cited the case of **Abdul Ismail Bayumi v. Ursula Christos Mitropolous**, PC Civil Appeal No. 5 of 2020, HCT at Moshi (unreported).

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Regarding the 2<sup>nd</sup> ground of appeal, the respondent's counsel submitted that the evidence adduced by the respondent's witnesses was compatible and well corroborated. That, DW.1 (Hekima Elia Malila) testified that upon the death of Michael Merimeri Ngajiro, the suit land was placed in the hands of Mateso Ngajiro as administrator which evidence was corroborated by DW.3 (Anyawile Daniel Sanga). He contended further that DW.2 (Rosina Mpalala) (the widow of the deceased) testified that the suit land belongs to her and her deceased husband but was placed in the hands of Mateso Ngajiro as administrator.

In rejoinder, the appellant's counsel submitted that *locus standi* is a question of law thus the issue of noting by the appellant does not in any way absolve the respondent's duty to prove a particular fact. Again, on the issue of *res judicata*, he argued that the appeal before the DLHT was determined on merits, hence, filing a new case instead of challenging the decision violates the procedures of law. He argued that the parties were the same, the subject matter the same and the former matter was finally decided by the court having jurisdiction.

I shall determine the appeal starting with the first ground of appeal. It is not in dispute that initially the respondent sued the appellant in his personal capacity before the Kitulo Ward Tribunal. The appellant then



appealed to the DLHT. The DLHT allowed his appeal and held that the respondent had no *locus standi* to sue on the deceased's estate in his personal capacity. The respondent's appeal to this court was struck out on incompetence relating to filing procedures. Since the DLHT nullified the ward tribunal's decision, there is no decision which can bring the *res judicata* principle into play. The argument by counsel for the appellant that the appeal to the DLHT was determined on merits is false. I find the first ground of appeal without merits.

The main complaint in the second ground is that the respondent did not prove his case as there are inconsistencies and contradictions in the testimonies of respondent's witnesses. I have examined the DLHT records, PW.1 (Hekima Elia Malila) testified that the suit land belonged to the respondent's deceased father. After his death the suit land was given to Mateso Ngajilo who is the son of the deceased. PW.2 (Rozina Mpalala), the wife of the deceased, testified that the suit land was given to them by the village authority. She testified further that the one taking care of the suit land is the respondent. PW.3 testified that the ownership of the suit land moved to the respondent after the death of his father the respondent held the suit land as an administrator.





Counsel for the appellant has submitted that the testimony of PW2 as to ownership of the suit land contradicts that of PW1 and PW3. According to him, while PW1 and PW3 said the land belongs to the respondent, PW2 said the land belongs to her. With respect, there is no contradiction. PW2 is the mother of the respondent. She said after death of her husband, the land is hers. On their part, PW1 and PW3 testified that the respondent inherited the land from his father. In my view, if the whole evidence is considered in the context of the concerned dispute, there is no any contradictions or inconsistencies in the said evidence as essentially all witnesses showed that the suit land originally was owned by the deceased and upon his death the same is taken care of by the respondent. The second ground of appeal has no merits.

The main complaint in the third ground is that the respondent did not have *locus standi* as he did not tender his letter of appointment as the administrator of the estate of Michael Merimeri Ngajiro. However, the respondent sued as administrator of the deceased's estate and pleaded so in paragraph 6(a)(i) of the application. In paragraph 2 of the appellant's Written Statement of Defence he noted paragraph 6(a)(i) of the respondent's application. Since the appellant did not dispute such fact, raising it on appeal is an afterthought. I am of the view that, if the

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appellant was in disagreement with such averment by the respondent, he ought to have disputed it in his Written Statement of Defence so as to compel production of evidence to support his contention. I find the case of Zanzibar Telecommunication Limited (supra) cited as requiring that the letters of administration ought to have been tendered distinguishable because that case discussed the importance of tendering annexures to pleadings if they are to be considered as evidence which is not the case here. The third ground of appeal has no merits too.

In the final analysis the appeal is, hereby, dismissed with costs for want of merits. I, consequently, uphold the decision of the DLHT.



  
**I.C MUGETA**  
**JUDGE**  
**27/04/2023**

**Court:** Judgment delivered in chambers in the presence of the appellant in person and Silius Msolansimbi, advocate for the respondent.

**Sgd. I.C MUGETA**  
**JUDGE**  
**27/04/2023**