

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TABORA

AT TABORA

LAND APPEAL NO. 27 OF 2021

(Arising from Land Application No. 8/2019 of the District Land and Housing Tribunal for Nzega)

JULIUS PONDO.....APPELLANT

VERSUS

HARUNA MWANAMBWA.....1ST RESPONDENT

FATUMA SUPO.....2ND RESPONDENT

JUDGEMENT

Date of Last Order: 25/05/2023

Date of Judgment Delivery: 25/05/2023

MATUMA, J.

The appellant Julius Pondo lodged this appeal against the ruling of the District Land and Housing Tribunal for Nzega in Land Application No. 8/2019 delivered on 25/12/2020.

A brief background to the matter can be summarized as follows; The appellant Julius Pondo instituted a land case against the respondents in the District Land and Housing Tribunal for Nzega (Land Application no. 08 of 2019) for a declaration that he is the lawful owner of the suit land. The trial tribunal raised the issue of res-judicata suo moto, invited the parties to

address it, and finally dismissed the suit for what the learned trial chairman considered that the suit before him was res judicata.

As to why the trial tribunal decided to take the course it took, it is because initially, the 2nd Respondent sued her brother Petro Supo at Igoweke Ward Tribunal for claim of land. She successfully proved her claims and Petro Supo was adjudged the loser. Petro Supo unsuccessfully appealed to the District Land and Housing Tribunal. The 2nd Respondent thus applied for execution of the Decree and it is when the appellant together with some other people filed objection proceedings. The objection proceedings were not successful which prompted the appellant to start a fresh suit as herein above stated.

It is from this background the learned trial chairman considered that since the Ward Tribunal ordered the 1st Respondent and all other trespassers to the suit land to give vacant possession and the fact that the appellant was part of the objection proceedings, the suit he instituted was res-judicata intended to abuse the court process.

Dissatisfied with the decision of the trial tribunal as herein above highlighted, the appellant is now in this court on appeal on the grounds that:

- 1. The trial chairman erred in law and fact to rule that there was a res judicata while the record did not support the same.*
- 2. The trial chairman erred in law and fact by failure to distinguish between the name of Julius Pondo and Gajuli Mpendo and Kajuli and ruling out that is the same name without any evidence.*

3. The trial chairman erred in law and fact to rule out that the appellant was a party in land dispute No. 01/2012 before Igoweke Ward Tribunal while no record in supporting the same, and the appellant had never had a case before Igoweke Ward Tribunal against the respondent.

At the hearing of this appeal, the appellant was represented by Ms. Flavia Francis learned advocate while the 1st Respondent was absent without any notice. The 2nd respondent appeared in person.

In support of the appeal, the learned advocate for the appellant submitted generally that the matter before the trial tribunal was not res judicata because the records do not show any evidence that the appellant had ever litigated against the Respondents on the subject matter at hand. She also faulted the learned trial chairman to have treated the name Gajuli as representing the appellant Julius Pondo without any evidence or affidavit to show that Gajuli is the same as Julius Pondo.

On her part, the 2nd respondent contended substantially and admitted that at the Ward tribunal, the parties were herself and her brother Petro Supo. On the issue of names, she submitted that it was the appellant himself who stated that he was Julius, Gajuli, and also Juli.

I have considered the submissions made by the parties for and against this appeal and cross-checked the records of the lower tribunals. Having done so, I find that the issue for the better end of this appeal is whether Land Application No. 08/2019 in the District Land and Housing Tribunal for Nzega at Nzega by the appellant against the respondents was res judicata.

For better determination of this issue I find it pertinent to reproduce the relevant part of the impugned ruling which resulted into the Appellant's suit being struck out;

"the applicant came before this tribunal with the new case also with the new name Julius Pondo claiming that he has bought the land from one Haruna Mwanambwa.....to me this case is res judicata.."

The records before me are very clear that the respondents were the only parties to the Ward Tribunal of Igoweke in land dispute No. 01/2012. The Appellant was not a party thereto or a witness. In its decision the ward tribunal ordered;

"Kwa wale waliovamia eneo hilo na kukaa humo/shughuli za kilimo bila idhini wao wanaamriwa kuondoka (1) Kajuli (2) Juli na wengineo waliosahaulika katika orodha hii"

The learned chairman of the District Land and Housing Tribunal considered that order as including the appellant in the instant matter and thus ruled out;

"The one Kajuli who is now the Applicant Julius Pondo challenged not the decision of the Ward Tribunal for Igoweke who ordered him and other people to vacate from the land as their entrance to the land was problematic"

That finding was very wrong because as rightly argued by Flavia Francis learned advocate, we have no record or evidence suggesting that Kajuli who was named in the decision of the ward tribunal was the current

appellant. The trial tribunal did not express clearly Kajuli or Juli it referred to. It seems it made a decision against everyone alleged to have trespassed into the suit land and that is why it included "***na wengineo waliosahaulika katika orodha hii***". The principles of natural justice do not endorse and decision reached in violation of one's right to be heard.

In that respect the learned trial chairman of the District Land and Housing Tribunal ought not to close his eyes against justice. Even though as I have said there is no evidence to prove that Kajuli featuring in decision of the Ward tribunal was the Appellant herein.

On the other side, the learned chairman found that the matter before him was res judicata because the appellant was one of the objectors in the objection proceedings and that their objection failed on the ground of time limitation. It is when the appellant decided to start the suit afresh. This, to the learned chairman, was an abuse of court process.

With due respect to the learned chairman, a person aggrieved with an order rejecting objection proceedings has no any other remedy under the law than to start a fresh suit. That is the dictate of the law under Order XXI Rule 62 of the Civil Procedure Code.

In the case of ***Amour Habib Versus Hussein Bafagi, Civil Application No 76 /2010*** (Unreported) the Court of Appeal held that:

"The law is quite clear. An order which is given in determination of objection proceeding is conclusive. A party who is aggrieved thereby and intends to pursue the matter further has no right to

appeal. The course that is open to him or her is to file the suit to establish the right he/she claims to the property"

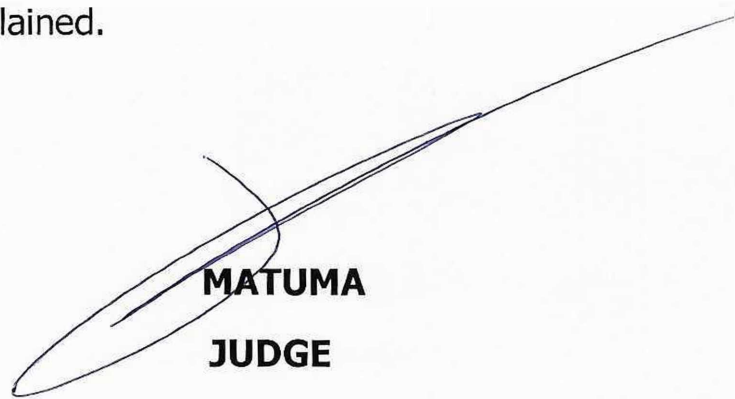
From the above demonstration, it is clear that, even if it would have been true that the appellant herein was also a party to an application for objection proceeding vide Misc. Land Application No. 323/2017, which was struck out for being filed out of time, the appellant was right to institute a fresh suit in the District Land and Housing Tribunal for Nzega as he did.

In this regard, be it as it may, the suit before the trial tribunal was not res judicata when construed properly under the dictates of S.9 of the Civil Procedure Code supra.

In the upshot, I allow the appeal and quash the ruling thereof and subsequently set aside the drawn order issued against the appellant. I do hereby restore the appellant's suit; Land Application No. 08/2019 in the trial tribunal as if it was not struck out and direct that the same be heard and determined accordingly. I make no orders as to costs because none of the parties is to fault for the decision reached by the trial tribunal.

Right of appeal is explained.

It is so ordered

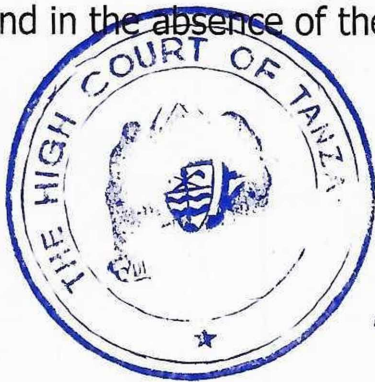


MATUMA
JUDGE

25/05/2023

ORDER.

Judgment delivered in the presence of the 2nd respondent in person,
and in the absence of the appellant and the 1st respondent.



MATUMA
JUDGE

25/05/2023