

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA
AT BABATI**

LAND APPEAL NO. 11 OF 2023

*(Arising from the decision of the District Land and Housing Tribunal for Babati at Babati
in Land Application No. 14 of 2020)*

MLALE SOQWEDA.....APPELLANT

VERSUS

MARTHA GICHUWAL.....RESPONDENT

RULING

21st & 21st June, 2023

Kahyoza, J.

Mlale Soqweda was declared a trespasser in Land Application No. 14 of 2020 before the District Land Housing Tribunal (DHLT), which was instituted by Martha Gichuwal.

Aggrieved, Mlale Soqweda instructed Mr. Kim, leaned advocate, to appeal. Mr. Kim lodged Land Appeal No. 23/ 2022. Later, Mlale Soqweda instituted another appeal, which the Court registry baptized as land Appeal No. 11 of 2023. Mlale Soqweda lodged to this Court a petition of Appeal without any supporting document as required by Order XXXIX rule 1 of the **Civil Procedure Code**, [Cap. 33 R. E. 2019] (the **CPC**). Rule 1 of Order

XXXIX rule 1 of the **CPC** provides that the memorandum of appeal must be supported by a decree and a copy of the judgment appealed against, unless the Court orders otherwise.

While reviewing Land Appeal No. 11 of 2023, it came to my attention that there was another Land Appeal involving the same parties and originating from the same proceedings, which was Application No. 14 of 2020 before Babati District Land and Housing Tribunal. That appeal was Land Appeal No. 23 of 2022, which the Court dismissed for want of prosecution on 14/3/2023.

I summoned the parties' advocates to address the court on the propriety of Land Appeal No. 11 of 2023 originating from the same proceedings with Land Appeal No. 23 of 2022, and involving the same parties. Not only that but also, the appellant being the same person, Mlale Soqweda in both appeals.

Mr. Kim, who was Mlale Soqweda's advocate in Land Appeal No. 23 of 2022, submitted that the appeal was not properly before the court. He contended that Mlale Soqweda instructed him to appeal against the decision of the land and housing tribunal. He lodged Land Appeal No. 23 of 2022. Later, Mlale Soqweda, without notifying or consulting him (Mr. Kim), lodged

another appeal. He prayed the appeal to be dismissed and the court to wave costs.

Mr. Julius who advocated for Martha Gichuwal in Land Appeal No. 23 of 2022, joined Mr. Kim advocate's submission. He added that the appeal was *res-judicata*.

I will begin by stating the obvious that *res judicata* is a fundamental legal doctrine that there must be an end to litigation. The objective is to bar multiplicity of suits and guarantees finality of litigation. In **Blacks Law Dictionary** (Ninth) Edition *res judicata* is defined as follows:

"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."

Having heard the submissions from the parties' advocates, it is beyond dispute that Mlale Soqweda instituted two distinct appeals from Land Application No. 14 of 2020 before Babati District Land and Housing Tribunal. The first appeal was instituted by Mlale Soqweda's advocate on 29.12.2022 and the second appeal was instituted on 13.01.2023 by Mlale Soqweda,

himself. Land appeal No. 23 of 2022 was entertained by this Court and dismissed for want of prosecution. It was determined. Hence, this court having heard and determined Land Appeal No. 23 of 2022, the instant appeal, which is Land Appeal No. 11 of 2023, originating from the same proceedings and involving the same parties cannot stand. It is *res-judicata*. For that reason, I concur with my learned advocates that this appeal has no legal ground to stand on. Consequently, I dismiss the appeal and make no order as to costs.

It is ordered accordingly.

Dated at Babati this 21st day of June, 2023.



**John R. Kahyoza,
Judge**

Court: Ruling delivered in virtual presence of Mr. Kim advocate for appellant and Mr. Julius Advocate for the respondent. B/C Mr. Shadrack present.

John R. Kahyoza, J.

21/6/2023