

**THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT
(MUSOMA SUB REGISTRY)**

AT MUSOMA

ORIGINAL JURISDICTION

LAND CASE No. 12 OF 2023

ANTONIA ZACHARIA COMPANY LIMITED PLAINTIFF

Versus

- 1. CHACHA SAGATI MBANDA**
- 2. KINYARA NYANKOBA WAMBURA**
- 3. ALOYCE OMONDI ONGERE**
- 4. MOHAMED HAJI SIMBA**
- 5. KIBITI MUNIKO NYANGI &**
- 6. KYOMA MWITA WEISIKO**

..... DEFENDANTS

RULING

29.08.2023 & 05.09.2023

Mtulya, J.:

This court was invited on 17th October 2019 to resolve **Civil Case No. 36 of 2016** between the **Chacha Sagati Mbanda, Kinyara Nyankoba Wambura, Aloyce Omondi Ongere, Mohamedi Haji Simba** and **Kibiti Muniko Nyangi** (the original plaintiffs) on one hand, and **Liquidator, Mara Cooperative Union Ltd (1984)** (the original defendant) on the other. After consideration and scrutiny of all relevant materials registered during the hearing of the case, this court had resolved in favor of the original plaintiffs and declared them as lawful owners of the land located at Industrial Area, Nyamwaga Road, Tarime Urban titled No. 5273 Plot No. 6 Block C.

The reasoning of this court in the case is found at page 5 and 13 of the judgment that the original plaintiffs lived on the disputed land in more than twelve (12) years without any disturbance, prior to the making of the title deed of the original defendant, who had obtained a title deed in 1991. In order to justify its holding, this court had cited the authority in Paragraph 22 of Part I of the Schedule to the **Law of Limitation Act [Cap. 89 R.E. 2019]** (the Law of Limitation Act) and precedents in **Registered Trustees of Holy Spirit Sisters Tanzania v. Janary Kamili & 136 Other**, Civil Appeal No. 193 of 2016, **Nitin Coffee Ltd v. Limited Engineering Works Ltd** [1988] TLR 203 and **Abualy Aziz v. Bhati Brothers Ltd** [2000] TLR 288.

Following the delivery of the judgment, the original plaintiffs had preferred **Civil Execution No. 31 of 2022** against the original defendant in this court and were granted **Eviction Order** on 15th September 2022. However, during the execution of the order, the executor and original plaintiffs noted a fault on Block Number hence rushed to this court again and lodged **Misc. Civil Application No. 141 of 2022** praying for rectification of the Block Number. This court heard the parties and finally on 23rd February 2023, resolved that: *the eviction order issued pursuant to **Civil Case No. 31 of 2022** originating from **Civil Case No. 36 of 2016** be rectified by deleting **Plot No. 6 Block C** and substituting for **Plot No. 6 Block L**.*

During the execution of the new order, **Antonia Zacharia Company Limited** (the present plaintiff) was disturbed by the process hence rushed to this court and lodged **Misc. Application No. 114 of 2022**, praying for a declaration to be pronounced as a rightful owner of the disputed land, located at Industrial Area, Nyamwaga Road, Tarime Urban titled No. 5273 Plot No. 6 Block L, as against the original plaintiffs, the original defendant and **Mr. Cleoplace Wahindi**. However, during this time, this court had already substituted **Plot No. 6 Block C** in favor of **Plot No. 6 Block L**, making the original owners the rightful owners of the land prayed by the present plaintiff.

This court noting there is legal fault in **Misc. Application No. 114 of 2022**, had moved *suo moto* to invite the parties to explain the status of the application and jurisdiction of this court in a situation where this court had already determined the ownership of the disputed land in **Civil Case No. 36 of 2016** and rectified in **Misc. Civil Application No. 141 of 2022**. In the **Misc. Application No. 114 of 2022**, **Mr. Juma David Mwita**, learned counsel for the present plaintiff and **Mr. Boniphace Sariro**, learned counsel for the original plaintiffs had registered relevant materials for and against the application, respectively.

This court after digestion of the materials had decided that the application was misconceived and struck it out with costs. However,

this court had pronounced that the parties have the right to prefer an appeal to the final court of authority, the Court of Appeal (the Court). The present plaintiff had declined moving forward to contest the decision at the Court and did not take any legal steps in filing fresh and proper objection application in accordance to the law to protest the execution.

The present plaintiff surfaced again in this court on 8th May 2023 and lodged **Land Case No. 12 of 2023**, against the original plaintiffs and added **Mr. Kyoma Mwita Waisiko**. Reading the third paragraph and first prayer in the plaint, the present plaintiff is praying for this court to declare her as a rightful owner of the land, located at Industrial Area, Nyamwaga Road, Tarime Urban titled No. 5273 Plot No. 6 Block L.

The case was scheduled in this court for necessary orders on 1st August 2023, but was protested by Mr. Sariro who had appeared for the first, second, third and sixth defendants. According to him, the present case was taken by event and the present plaintiff has no cause of action against the first, second, third and sixth defendants. When Mr. Sariro was summoned to appear and explain his point in this court on 29th August 2023, he submitted that the dispute registered by the present plaintiff was already determined to the finality by this court in **Civil Case No. 36 of 2016**, involving all the parties, except the sixth defendant.

In the opinion of Mr. Sariro, the disputed land is the same and to escape the applicability of the *principle of res judicata*, the present plaintiff had decided to add the sixth defendant, and changed the original plaintiff to be defendants in the present case.

According to Mr. Sariro, the practice of deciding the same dispute which was already decided to the finality in the same court is discouraged by the Court in the precedents of **Maria Chrysostom Lwekamwa v. Placid Lwaikamwa & Another**, Civil Application No. 549/17 of 2019 and **Bibi Kisoko Medard v. Minister for Land, Housing & Urban Development & Another** [1993] TLR 250. Finally, Mr. Sariro submitted that this case is in error and this court cannot produce another decision on the same land while the initial decision is still intact.

In replying the submission, the present plaintiff had invited **Mr. Emmanuel Werema**, learned counsel to argue the protest. According to him, the plaintiff was not a party in the proceedings conducted in **Civil Case No. 36 of 2016** and **Misc. Civil Application No. 141 of 2022**, and in any case, **Civil Case No. 36 of 2016** resolved the land located at Industrial Area, Nyamwaga Road, Tarime Urban titled No. 5273 Plot No. 6 Block C, and not Block L. Regarding the alterations brought by **Misc. Civil Application No. 141 of 2022**, Mr. Werema contended that the application declined the law regulating procedures of rectification of documents in courts

enacted in Order XLII Rule 2 of the **Civil Procedure Code [Cap. 33 R.E. 2019]** (the Code).

in the opinion of Mr. Werema, the present plaintiff was aware of the dispute determined in **Civil Case No. 36 of 2016** during the execution stage, where the original plaintiffs had trespassed onto her land. According to Mr. Werema, the present plaintiff had protested the execution in **Misc. Civil Application No. 114 of 2022**, but was struck out for want of the law hence she may prefer another suit in the same court as it was stated in the decision of **Yahya Khamis v. Hamida Haji Idd**, Civil Appeal No. 225 of 2018. In the opinion of Mr. Werema, **Misc. Civil Application No. 114 of 2022**, was a mere application whereas the present case is a suit and complied with provision of Order XXI Rule 62 of the Code.

In a brief rejoinder, Mr. Sariro submitted that the present case is related and prays the same land located at Industrial Area, Nyamwaga Road, Tarime Urban titled No. 5273 Plot No. 6 Block L. According to him, there was wrong citation of the Block C, and it was legally rectified to read Block L in **Misc. Civil Application No. 141 of 2022**. According to Mr. Sariro, the present plaintiff was aware of what was taking course in **Civil Case No. 36 of 2016** and **Misc. Civil Application No. 141 of 2022**, that is why she filed a protest in **Misc. Civil Application No. 114 of 2022**. Mr. Sariro submitted further that the present plaintiff is disguising this court by

changing the parties and adding some more to confuse this court to resolve dispute of the disputed land, which was already resolved. According to him, if there are faults in previous decisions of this court, the appropriate available remedies is to face the Court by following necessary procedures, and not this court.

I have heard the submissions of learned counsels of the parties and scanned the record of the instant case. It is certain that there is land in dispute located at Industrial Area, Nyamwaga Road, Tarime Urban titled No. 5273 Plot No. 6 Block L. This court has been consulted in several applications, and considering the totality of the **Civil Case No. 36 of 2016** and all the indicated applications in the record, it is obvious that this court has completed its role with declaration of the rightful owners of the land located at Industrial Area, Nyamwaga Road, Tarime Urban titled No. 5273 Plot No. 6 Block L.

This court cannot come back and pronounce ownership to any of the present parties. Doing that it will be in conflict with the law in section 9 of the Code regulating the *principle of res judicata* and directive of the Court of Appeal in the precedent **Mohamed Enterprises (T) Limited v. Masoud Mohamed Nasser**, Civil Application no. 33 of 2012, on the *principle of functus officio*.

I am aware Mr. Werema has registered several faults in previous decisions of this court, and he may be correct. However, as

I indicated in my ruling, this court is prohibited by the Court to resolve issues which have already been resolved to the finality. The Court has already informed this court in a very strong words in the indicated precedent of **Mohamed Enterprises (T) Limited v. Masoud Mohamed Nasser** (supra), at page 18 of the Ruling, that:

Although there is no statutory law which bars one Judge from setting aside a decision of a fellow Judge of competent jurisdiction, rules of practice, prudence and professional conduct impose such restrictions. A Judge of the High Court in our jurisdiction is or should know and respect that code of conduct. Failure to do so is to open up a pandemonium of unprofessionalism, hitherto unknown to our jurisdiction...the procedure adopted is very much detested. We hope that the High court leadership will see to it that it never happens again, in the interest of judicial system....

This thinking finds support in a bunch of precedents of the Court and this court (see: **Maria Chrysostom Lwekamwa v. Placid Lwaikamwa & Another** (supra); **Bibi Kisoko Medard v. Minister for Land, Housing & Urban Development & Another** (supra); and **North Mara Gold Mine Limited v. Penina Mhere Wangwe & 31 Others**, Misc. Land Application No. 29 of 2023).

Following the indicated precedent, this court cannot venture in the same dispute which has been resolved to the finality in this court. On the same level, this court is bound by its own previous decisions and directives of the Court. It will always follow the directives of the Court and decisions of this court for the want of certainty of the decisions emanating from this court aiming at building confidence to justice stakeholders. On the other hand, this court cannot fall into such a trap pegged by Mr. Werema.

Having said so, I am moved to dismiss the instant case in its entirety with costs. I do so because the plaintiff's learned counsel has put this court into trial by testing the integrity and sanctity of the previously uncontested proceedings of this this court. It is also vivid that the learned counsel has breached the directives of the courts in a large bundle of precedents of **Serikali ya Mapinduzi ya Zanzibar v. Farid Abdallah** [1998] TLR 355, **Mwanaisha Kapera (Adminstratrix of Kapera Katumba) v. Salim Suleiman Hamdu**, Civil Reference No. 8 of 2021 and **Goyal v. Goyaj & Others** [2009] 2 E.A 143.

The Court on the 1st day of June 2023 at page 13 of the decision in the precedent of **Mwanaisha Kapera (Adminstratrix of Kapera Katumba) v. Salim Suleiman Hamdu** (supra) had resolved

that: *it is a trite law that where a decision is not reversed or altered by a higher court, it remains intact.* In the instant case, Mr. Werema was very aware of the decision of this court in **Civil Case No. 36 of 2016** and subsequent applications resolved in favor of the original plaintiffs on the same land, but declined to prefer an appeal to our superior court or any other appropriate legal steps. In such situations, award of costs to the original plaintiffs is necessary.

Before I pen down, I am conversant that Mr. Sariro had registered a bundle of complaints regarding the jurisdiction of this court in the instant case. However, I see no any merit to engage in academic exercise of replying each complaint as I have already dismissed the present case for want of proper application of the indicated laws in statutes and precedents.



It is so ordered.


F.H. Mtulya

Judge

05.09.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of the fourth defendant, **Mr. Mohamed Haji Simba** and in the presence of **Mr. Emmanuel Werema**, learned counsel for the plaintiff, **Antonia Zacharia Company Limited.**


F.H. Mtulya

Judge

05.09.2023