

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

AT MWANZA

MISC. LAND APPEAL NO. 24 OF 2023

(Originating from the DLHT for Ukerewe in Land Application No. 01/2020)

MKWAYA MGETA ----- APPELLANT

VERSUS

SAID YAKOBO ----- RESPONDENT

JUDGMENT

25/9/2023 & 23/10/2023

ROBERT, J:-

This appeal arises from the Ruling of the District Land and Housing Tribunal (DLHT) for Ukerewe in Misc. Application No. 01 of 2020, wherein the appellant, Mkwaya Mgeta, challenges the decision of the DLHT to sustain the respondent's preliminary objection, resulting in the dismissal of the said application and Land Case No. 35 of 2018.

The genesis of the dispute traces back to Land Application No. 35 of 2018, initiated by the appellant against the respondent before the DLHT for

Ukerewe, claiming ownership of twenty parcels of land approximating six acres in total, allegedly invaded by the respondent. The respondent raised a preliminary objection against the said application on points of law, contending that: (i) the application is res judicata in terms of section 9 of the Civil Procedure Code, Cap. 33 R.E. 2002, as the matter was already decided by the Ward Tribunal of Bukungu in Land Complaint No. 4/2017, and (ii) the applicant has no cause of action against the respondent.

The DLHT, in its wisdom, decided that the Dispute in Complaint No. 4/2017 was related to a parcel of land leased to the respondent by the applicant, contrary to Land Application No. 35 of 2018, where the applicant sued the respondent claiming 21 different parcels of land in different areas, and the parcel of land in Complaint No. 4/2017 is not part of that land. Consequently, the objections were dismissed with costs, and the DLHT ordered that Land Application No. 35 of 2018 to proceed on merit.

Thereafter, the appellant filed Misc. Application No. 1 of 2020 for the execution of costs in respect of Land Complaint No. 4 of 2017. The respondent, Saidi Yakobo, raised a preliminary objection against the application for execution on two points of law: (i) that the application is res judicata, and (ii) that the Decree Holder has no cause of action against the

Judgment Debtor. The DLHT sustained the objection and dismissed Misc. Application No. 1 of 2020, as well as Land Case No. 35 of 2018 filed at the DLHT.

Aggrieved by the DLHT's ruling, the appellant filed this appeal on two grounds: **First**, that the trial Tribunal erred in law and in fact by hearing the matter while it had no jurisdiction to do so; and **secondly**, that the trial Tribunal erred in law and fact by upholding the Respondent's objection while the same was determined by the same tribunal via application No. 35 of 2018.

At the hearing of this appeal, the Appellant was represented by Mr. Musa Nyamwelo, Learned Counsel, whereas the Respondent was present in person without a legal representative.

Mr. Musa Nyamwelo, in support of the appeal, argued that while both Land Case No. 4/2017 and Land Case No. 35/2018 involved the same parties, the disputed lands were different. The DLHT previously dismissed the objection in Land Case No. 35/2018, stating that the land in dispute differed from that in Land Complaint No. 4/2017.

He further contended that the DLHT, in considering Misc. Application No. 1 of 2020 for execution, erred by upholding the respondent's objection on grounds of res judicata. He argued that the DLHT, having already decided the objection in Land Case No. 35/2018, was functionally concluded on this matter, citing the principle of functus officio as established in the case of **Bibi Chiku Matesa vs Board of Trustees of the National Security Fund (NSSF)**.

In response, the respondent simplified his argument, stating that the land in dispute across both applications was the same and urged the court not to overturn the DLHT's decision, emphasizing the knowledge and competence of the DLHT's chairman.

After careful consideration of the submissions and the record before this court, the Court finds merit in the appellant's arguments. The first ground of appeal asserts that the trial Tribunal erred in law and fact by hearing the matter without jurisdiction. The court, in reviewing the proceedings, found merit in this argument. It is crucial to emphasize that jurisdiction is a fundamental aspect of any legal proceeding. In this case, the DLHT, having previously decided on the objections in Land Case No.

35/2018, seemingly overstepped its jurisdiction by re-evaluating the same objections in Misc. Application No. 1 of 2020.

The court, drawing on established legal principles, emphasizes the importance of preserving the finality of decisions, particularly when the same issues have been previously addressed by the tribunal. The concept of *functus officio*, as cited in the case of **Bibi Chiku Matesa vs Board of Trustees of the National Security Fund (NSSF)**, Labour Revision No. 170 of 2022 is relevant. *Functus officio* dictates that a tribunal or decision-maker, having completed its task and rendered a final decision, is *functus officio* and lacks the authority to revisit or alter that decision.

By invoking this principle, the court underscores that the DLHT should have recognized its functional limitations and refrain from revisiting matters already conclusively determined in Land Case No. 35/2018. The failure to do so constituted a jurisdictional error.

The second ground of appeal argued that the trial Tribunal erred in law and fact by upholding the respondent's objection, which was previously determined in Land Case No. 35/2018. The court meticulously examined the

DLHT's earlier ruling and compared it to the decision in Misc. Application No. 1 of 2020.

In Land Case No. 35/2018, the DLHT had dismissed the objections raised by the respondent, stating that the land in dispute differed from that in Land Complaint No. 4/2017. The court, in its analysis, noted the inconsistency in the DLHT's decisions. It is noted that the same objections were reconsidered and upheld in Misc. Application No. 1 of 2020, contrary to the earlier ruling.

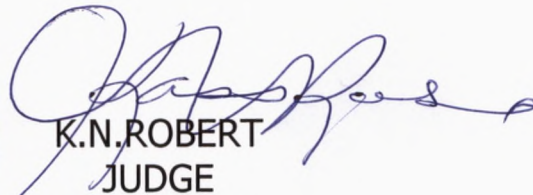
The court emphasizes the importance of consistency in judicial decisions, especially when dealing with similar issues involving the same parties. Inconsistency in decisions not only undermines the integrity of the judicial process but also creates confusion and uncertainty. The DLHT's decision to uphold the respondent's objection in Misc. Application No. 1 of 2020 is inconsistent with its earlier ruling in Land Case No. 35/2018, where the objection was dismissed. I therefore find merit in this ground of appeal.

In light of the foregoing, the appeal is allowed with costs, and the Ruling of the DLHT for Ukerewe in Misc. Application No. 01 of 2020 is quashed and set aside. The decision of the DLHT in Application No. 35/2018 is restored.

The matter is remitted back to the DLHT for Ukerewe to proceed with the hearing of Misc. Application No. 01 of 2020 on merit.

It is so ordered.




K.N. ROBERT
JUDGE
23/10/2023

