

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

**LAND CASE NO. 6 OF 2022**

**MSAFIRI ABDALLAH MWALONGO** }  
(Administrator of estate of the } ..... **PLAINTIFF**  
late Ramadhani Mwalongo)

**VERSUS**

**ANASTASIUS MBOGOLO** ..... **1<sup>ST</sup> DEFENDANT**  
**ZUBERI MWALONGO** ..... **2<sup>ND</sup> DEFENDANT**  
**FATUMA ABDALLAH MWALONGO** }  
(Administrator of estate of the } ..... **3<sup>RD</sup> DEFENDANT**  
late Abdallah Mwalongo)

**RULING**

27<sup>th</sup> January & 22<sup>nd</sup> February, 2023

**I. C. MUGETA, J:**

According to paragraph 7 of the plaint, the suit land in this case is the same land which involved a litigation between the 1<sup>st</sup> defend on the one hand and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants on the other hand. In that litigation which proceeded exparte, the 1<sup>st</sup> defendant won the case and was declared owner of that land. The plaintiff was not a party to those proceedings. The District Land and Housing Tribunal (the DLHT) at Iringa



which so declared in Application No. 104 of 2018 handed that land over to the 1<sup>st</sup> defendant through execution process.

Being aware of what transpired in the DLHT, the plaintiff has filed this suit claiming the same land because, according to him, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants who were sued by the first defendant are not owners of the dispute land. The first defendant has raised two points of preliminary objections:

- i). That, this case is wrongly filed before this Honourable court.
- ii). That, the plaintiffs locus stand in this case is questionable and hopelessly time barred.

Before the objections were determinate, the Court, Utamwa, J (as he then was) *suo motu*, required the parties to address him on the issue whether it was proper for the plaintiff to file this suit being aware that the DLHT had declared the dispute land property of the 1<sup>st</sup> defendant. Then, my Lord Justice Utamwa ordered the objections and the issue raised by the court to be argued by way of filing written submissions. The parties complied with the schedule but Justice Utamwa passed on before deciding on the objections. While the plaintiff is represented by Shaba A. Mtung'e, learned advocate, the 1<sup>st</sup> defendant is served by Joyce Francis, learned counsel.

*Mgeta*

In this decision, I shall not reproduce all arguments the learned counsel made except as the same shall be relevant to the point being determined. I shall start with the issue raised by the court *suo motu* which shall be determined together with the first objection as they have similar import.

Counsel for the plaintiff has argued that since the decision of the District Land and Housing Tribunal (the DLHT) has been executed, the plaintiff's right to file objection proceedings has been overtaken by events. I agree with the learned counsel on this argument. However, I do not agree with him or the submission that under the circumstances, the remaining remedy is to file a fresh suit. I understand the objection proceedings can be taken under order XXI rule 57 of the Civil Procedure Code. Regarding filing a fresh suit, the learned counsel did not state the source of law for that remedy. I am also aware of none under the circumstances of this nature.

On his part, counsel for the 1<sup>st</sup> defendant has suggested that the remedy was to challenge the decision of the DLHT, as he attempted, by filing an application for extension of time to challenge the ex parte decision of the DLHT which application was rejected or to appeal against the rejection. Indeed, the plaintiff attempted this course vide Misc. Land Application No.

*M. J. G. S.*

130 of 2021 praying for extension of time to apply for orders to set aside the ex parte judgment. However, I do not agree with counsel for the 1<sup>st</sup> defendant on his line of argument.

In my view, since the plaintiff was not a party to the case at the DLHT which was decided ex parte, he cannot challenge that decision by applying to set aside the ex parte judgment. In terms of Order IX rule 13(1) of the Civil Procedure Code, setting aside a decree ex parte is a remedy to a party to the case not a third party. In this case, in my opinion, the remedy to the plaintiff, who claims ownership of the dispute property, was to file objection proceedings under order XXI rule 57(1) of the Civil Procedure Code or to apply for revision to a higher court. Since objection proceedings have been overtaken by events, he might have attempted revision.

To sum it up, I hold that a party who claims ownership of a property which a court has already declared to belong to another person in a case to which he was not a party, cannot file a fresh suit except where his objection under Order XXI rule 57 has been dismissed. In the alternative he can file revision proceedings. Counsel for the plaintiff has argued that revision has been barred by the decisions in the cases cited hereunder. However, the facts of the cited cases of **Sauda Mlimakifi v. Yunus**

*Pigeto*

**Adam Mgova & 3 Others**, Land Revision No. 1 of 2016, High Court of Iringa (unreported) and **NHC v. Peter Kassid & 4 Others**, Civil Application No. 294/16 of 2017, Court of Appeal – Dar es Salaam (unreported) which counsel for the plaintiff relied on are distinguishable. The NHC case (supra) directed that there is no right of appeal where objection proceedings has been dismissed. In this case objection proceedings has not been attempted. In Sauda Mlimakifu's case (supra) the court found that the applicant was aware of the proceedings she sought the court to revise when the same was pending at the trial court but she did nothing, hence, revision is not a right remedy for her. In this case, there is no proof that the plaintiff was aware of the proceedings at the tribunal when the case was pending. Both situations, therefore, do not apply to this case. This suit, I hold, is improperly before this court.

Consequently, if the suit is improperly before this court, it does not matter whether the plaintiff has *locus standi*. As such, I find no reason to discuss this limb of the second objection. The question of time limitation implied in the second objection has not been discussed by any party. As it is not clear in purpose, there is no way I can address it too. I, therefore, find no reason to consider the second objection of the first defendant.



Consequently, I hold that there is merits in the first objection and the issue raised by the court. I strike out the suit with costs.



  
**I.C. MUGETA**

**JUDGE**

**27/01/2023**

**Court:** Ruling delivered in the presence of the plaintiff in person and Ms. Joyce Francis, learned advocate for the first defendant. Mr. Godfrey Mpogole (Cleck) also present.

**Sgd: M. A. MALEWO**

**DEPUTY REGISTRAR**

  
**24/01/2023**