

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB - REGISTRY OF SHINYANGA
AT SHINYANGA

LAND APPEAL NO. 7 OF 2023

(Arising from the District Land and Housing Tribunal of Kahama in the Land Application No. 2 of 2023, Origin Misc. Land Application No. 62 of 2022)

CRDB BANK PLCAPPELLANT

VERSUS

JOHARI IDDY KIBANDANI..... 1st RESPONDENT

EVELYN SIMWANGA 2nd RESPONDENT

**DEVELOPMENT AND RELIEF
ASSOCIATION (DERILA)..... 3rd RESPONDENT**

DEUSDERICK KAHENDAGUZA 4th RESPONDENT

NYANGE AUCTION MART CO. LTD 5th RESPONDENT

JUDGMENT

16th October, 2023 & 22nd February, 2024.

S.M. KULITA, J.

This is an appeal from the District Land and Housing Tribunal (hereinafter referred to as DLHT) for Kahama. In this appeal, the Appellant, CRDB PLC,

raised the grounds that the Appellant's right to be heard at the trial tribunal was infringed, and that the tribunal had no reasonable justification to reject summarily the Misc. Application No. 2 of 2023.

The appeal was argued through written submissions. While the Applicant is represented by Mr. Godfrey Daniel Goyayi, Advocate, the only Respondent who made a reply to it, Johari Iddy Kibandani (1st Respondent) is represented by Mr. Geoffrey Tuli, Advocate.

In his submission in chief, the Appellant's counsel, Mr. Godfrey Daniel Goyayi, Advocate, submitted that the trial Chairman was wrong for rejecting summarily and hence dismissed the application without according the parties' right to be heard. He said that the Chairman did so *suo motto* without noticing that he was violating the appellant's constitutional right to be heard under article 13(6) of the Constitutional of the United Republic of Tanzania of 1977 as amended from time to time.

The Counsel also challenged that there were no justifiable reasons advanced by the tribunal for the said appeal to be dismissed. He thus prayed for the order/ruling of the tribunal in the said Misc. Land Application No. 2 of 2023 to be quashed and the matter be determined on merit.

In the reply thereto, Advocate for the 1st Respondent, Mr. Geoffrey Tuli, submitted in respect of all two grounds of appeal collectively as follows; that before the institution of the Misc. Land Application No. 62 of 2022 which was followed by the Misc. Land Application No. 2 of 2023 upon dismissal of the earlier application, it was the order of this court that the parties had to revert to their own position, as it was before the decision in Misc. Land Application No. 142 of 2021 being delivered. He said that the status before the tribunal's order in the said Application No. 142 of 2021 was that the suit house had been declared to be owned by Rayida Rweikiza who had lawfully purchased it from Johari Iddy Kibandani (1st Respondent).

The counsel further submitted that the Chairman dismissed the application No. 2 of 2023 summarily after noticing that the same had been restricted, hence forwarded the said case file to the Hon. Judge In-charge for his instructions. However, before that being done the Appellant herein lodged this appeal at High Court. In that situation Mr. Tuli was of the views that, for what the Chairman had done, there was no infringement of the right to be heard against the Appellant.

Mr. Tuli continued to argue that, under Regulation 5(c) of the Land Dispute Court (The District Land and Housing Tribunal) Regulations, 2003, GN. No.

174 of 2003, the Chairman for the DLHT has powers to reject the application and dismiss it summarily. Thus, what the Chairman had done was within his powers.

The Counsel concluded by praying for the appeal to be dismissed with costs for having no merits.

In rejoinder, the Appellant reiterated what he had stated in his submission in chief.

Before analyzing the grounds of appeal let me provide a brief history of the matter at hand, as per the available records.

The gist of this appeal in a nutshell is that, the Appellant herein was aggrieved with the summary dismissal decision of the Tribunal in the Misc. Land Application No. 2 of 2023 done on 31st January, 2023. The records transpire that the Appellant had lodged the said application seeking for restoration of the Misc. Land Application No. 62 of 2022 which had been dismissed by the said Tribunal on 1st December, 2022 for abusing the court process. It was alleged by the trial Chairman of the Tribunal that the matter in question that the Appellant was intending to challenge there at the DLHT had already been determined by the High Court through the Land Appeal

Case No. 31 of 2021 on 20th April, 2022. In that said appeal at High Court, decision was for Johari Iddy Kibandani (1st Respondent) and Rayida Rweikiza who were the Appellants in the said Land Appeal Case No. 31 of 2021 High Court. In its decision the High Court declared the two as the lawful seller and lawful purchaser respectively, for the suit house located on Plot No. 247, Block "C" Nyasubi, Kahama, which was previously owned by Deusderick Kahendaguza (4th Respondent herein) before it was auctioned to the 1st Respondent who then sold it to Rayida Rweikiza, the current owner.

Upon going through the records that led to the institution of this appeal, I came to note that, after the High Court had determined to the finality, the said Land Appeal Case No. 31 of 2021 on the 20th day of April, 2022, it was decided for the said Johari Iddy Kibandani (1st Respondent) and Rayida Rweikiza. Johari Iddy Kibandani was the first to be regarded the righteous owner of the property as she had emerged the highest bidder in the auction done by the 5th Defendant herein, Nyange Auction Mart Co. Ltd. Thereafter, ownership was transferred to Rayida Rweikiza. She was the *bonafide* purchaser of it from Johari Iddy Kibandani.

Litigations on execution in respect of the suit house that came thereafter, at the DLHT, ended up at High Court in the said Land Appeal Case No. 31 of 2021 which was fully determined on the 20th day of April, 2022.

Among the directions that the High Court had made in the said Land Appeal No. 31 of 2021 was the following; I hereby quote it from page 15 of the judgment;

"It is therefore ordered that the parties have to revert to their own position before the decision in Misc. Land Application No. 142 of 2021 was delivered"

The said position as per the said High Court judgment was to the effect that Rayida Rweikiza was to continue to hold the suit house, as she had lawfully purchased it from Johari Iddy Kibandani in the public auction. As narrated herein before that the said house was previously owned by Deusderick Kahendaguza (4th Respondent) who is the husband of Evelyn Simwanga (2nd Respondent).

A strange thing that this court has met with, particularly through this appeal, is that, the same case that had been fully determined by this court through Land Appeal No. 31 of 2021 was then lodged at the DLHT by the CRDB PLC

(the appellant herein), subsequently to the delivery of the High Court Judgment. This later case was Misc. Land Application No. 62 of 2022 which involved the same landed property and the same litigants, save for Rayida Rweikiza and Mkasiwa Auction Mart Court Broker. The appellant herein, CRDB PLC was also the appellant at the DLHT.

The records transpire that, this new appeal case at High Court involves matters which had already been determined by the same court (High Court) on 20th April, 2022, that is, ownership status of the same house with the same litigants, save for the two mentioned above. However, as narrated herein before that, it was then refiled at the DLHT by the Appellant herein.

It is vivid in the records that, ***after determination of the High Court Land Appeal Case No. 31 of 2021 on 20th April, 2022, the Appellant herein (CRDB PLC) went back to the DLHT on 21st July, 2022 and lodged the said Misc. Land Application No. 62 of 2022 seeking for extension of time for her to file application for setting aside a sale order for the suit house, delivered by the DLHT on 16th July, 2015 through Misc. Land Application No. 83 of 2015.***

It is through the ruling of that said case (Misc. Land Application No. 62 of 2022) the trial Chairman for the Tribunal rightly found that, what has been done by the CRDB PLC was just a conspiracy with Deusderick Kahendaguza (4th Respondent herein) and his wife, Evelyn Simwanga (2nd Respondent herein) to ***abuse the court's processes***. That was a reason for him to dismiss the said application.

The records further reveal that having been dissatisfied with the said order, the appellant herein lodged before the same tribunal, a Misc. Land Application No. 2 of 2023, being the application for restoration of the said Misc. Land Application No. 62 of 2022, in vein. The Chairman dismissed this later application summarily for the same reason that, it was in abuse of the courts' processes, as the issue of ownership of the suit house had finally been determined by the High Court on favor of Johari Iddy Kibandani (1st Respondent) and Rayida Rweikiza who had purchased the suit house from the said 1st Respondent herein (Johari).

In his appeal before this court, Advocate for the Appellant (CRDB PLC), Mr. Godfrey Daniel Goyayi raised the grounds that the Appellant's right to be heard at the trial tribunal was infringed, and that the tribunal had no reasonable justification to reject the application summarily.

The issue is *whether the presiding Chairman was wrong to dismiss the appeal summarily, that is without according the appellant herein right to be heard, and that, there was no justification.*

Starting with the issue of **summary dismissal** whether the Trial Chairman wrongly applied it; As narrated herein before, the records transpire that this matter had actually been fully determined by the High Court in the Land Appeal No. 31 of 2021. In the Misc. Land Application No. 62 of 2022 the Appellant herein pretended to show the DLHT that, it was a new issue/case with no relation to the Land Appeal No. 31 of 2021, but in real sense not. It is the same matter that was determined by the High Court in the Land Appeal No. 31 of 2021.

It was therefore wrong for the Appellant herein to reinstitute the same matter seeking for the same relief, that is determination of the rightful owner of the suit house, just by hiding herself under the umbrella of absence of the name of Rayida Rweikiza, the current holder of the house who was among the parties (2nd Appellant) in the said High Court Appeal case. The fact that everything, to wit, subject matter in question, relief claimed and the parties save for removal of the name of Rayida Rweikiza who was one of the parties involved in the prior case, the matter is still regarded to be the same which

had already been fully determined up to the High Court level. Hence, reinstating the same is nothing but ***Res Judicata***.

That being the case, the Appellant herein was precluded to lodge the said Misc. Land Application No. 62 of 2022 and subsequently Misc. Land Application No. 2 of 2023 at the DLHT. Thus, the tribunal was right to dismiss them.

The doctrine of ***Res Judicata*** has been provided under **Section 9 of the Civil Procedure Code [Cap. 33 RE 2019]** which reads;

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court."

The above legal position has been affirmed in **Greenhalgh V. Mallard [1947] 2 All ER 255** where the court observed;

*"Res judicata for this purpose is not confined to issues which the Court is actually asked to decide but that it covers issues or facts which are so clearly part of the subject matter of litigation and clearly could be raised that **it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them**" [emphasis is mine]*

From the above provision of the law and the cited authority, this court is of the views that the essence of having this doctrine is to ensure that there must be an end to litigation and to bar multiplicity of suits from the same party or parties who may have a common interest. In the case of **Peniel Lotta Vs. Gabriel Tanaki and two others, Civil Appeal No. 61 of 1999, CAT at Arusha** which was cited in the case of **Ester Ignas Luambano Vs. Adriano Gedam Kipalile, Civil Appeal No. 91 of 2014, CAT at Zanzibar**, it was stated that the scheme of **Section 9 of the Civil Procedure Code** therefore contemplates five conditions which when co-existent, will bar a subsequent suit. The said conditions are;

i) The matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit.

- ii) The former suit must have been between the same parties or privies claiming under them.
- iii) The parties must have litigated under the same tittle in the former suit.
- iv) The court which decided the former suit must have been competent to try the subsequent suit.
- v) The matter in issue must have heard and finally decided in the former suit.

In the current case of **Badugu Ginning Co. Ltd V. CRDB Bank PLC and 2 others, Civil Appeal No. 65 of 2019, CAT at Mwanza**, condition no.

(ii) was interpreted to meet the concept of the doctrine, in which the said court held;

*"It is our finding that parties were the same **even if those two did not appear in the former suit, still the doctrine of Res judicata would apply in the circumstances"***
[emphasis is mine]

In our present, it is clear in the records that the appellant herein wanted to re-institute the matter at the DLHT while the same had already been determined by that said tribunal, then appealed at High Court. Under this

situation, though Rayida Rweikiza and Mkasiwa Auction Mart Court Broker their names were removed in the applications, the Appellant is still precluded, not only to refile the matter but also seeking for extension of time to do so. Thus, it was illegal for the Appellant herein to file the Misc. Land Application No. 62 of 2022 seeking for extension of time to set aside the Sale Order made in the Misc. Application No. 83 of 2015 DLHT. As well it was illegal for the Appellant to subsequent file the Misc. Land Application No. 2 of 2023 seeking for restoration of the said Application No. 62 of 2022.

The Appellant's Counsel also challenged that the trial Chairman was wrong to dismiss the Applications No. 62 of 2022 and 2 of 2023 summarily for having no genuine reasons in doing so, and that he did infringe the Appellant's constitutional right to be heard. My respond on this argument is that, under **Regulation 5(c) of the Land Dispute Court (The District Land and Housing Tribunal) Regulations, GN. No. 174 of 2003**, the Chairman for the DLHT has powers to dismiss the application summarily. Thus, what he has done was in accordance with the law.

It is my further finding that, contrary to the Appellant's allegations, according to the records, the Chairman advanced the reasons before he had summarily dismissed the said application No. 62 of 2022 which was for extension of

time to apply for setting aside the sale order made in the Misc. Land Application No. 83 of 2015. He also gave reasons while dismissing summarily the Misc. Land Application No. 2 of 2023 which was lodged before the same tribunal seeking for restoration of the Application No. 62 of 2022.

In all these cases the reason for summary dismissal stated by the Chairman was that the issue of ownership of the property in dispute, a House located on Plot No. 247, Block "C" Nyasubi, Kahama, had already been determined by the High Court in the Land Appeal No. 31 of 2021 on the 20th day of April, 2022. That is, prior to the institution of these two applications on 21st July, 2022 for the Application No. 62 of 2022 and 5th January, 2023 for No. 2 of 2023.

As for the allegations on the Right to be heard raised by the Appellant in her petition; the Appellant's Counsel claimed for the appellant's ***right to be heard*** at the DLHT being violated, but he has not submitted any reason that could convince this court to agree with him that the Appellant had something meritorious to address the trial tribunal, which can make this court to remit the matter back to the DLHT for trial. Otherwise, for what has been stated by the Chairman in his decision and the submissions by Mr. Tuli – Advocate, as well as what I can see in the record, I find nothing genuine for the

Application case files to be remitted back to the DLHT for the matters to be heard on merit.

Act of the Appellant herein to go back to the Tribunal and institute another case claiming for the same property whose ownership has already been determined by the superior court to it, High Court, is an ***abuse of the court processes***. Hence, the Chairman was right to dismiss the said applications summarily, as I don't expect anything genuine that could have been raised to make the decision in contrary, even if the said application could have been fully determined by the said DLHT.

It is well established principle that, courts are enjoined to ensure that they protect themselves from any possible abuse of its powers or procedures in the conduct of proceedings. They must, as a matter of implicit obligation, guard against actions of unscrupulous parties who turn the Courts into a theatre for endless, repetitive and frivolous litigations. These acts lead an ***"Abuse of Court Processes"***. See the case of **JV Tangerm Construction Co. Limited & Technocombine Construction Limited (A Joint Venture) V. Tanzania Ports Authority & another, Commercial Case No. 117 of 2015, HC Commercial Division, at DSM**. See also **Graham Rioba Songwe & 2 others V. Finca Bank Limited & 2 others, Petition**

No. 82 of 2016 (unreported) the High Court of Kenya (Constitutional & Human Rights Division) inter alia at page 5 the Court observed that;

"The concept of abuse of Court/judicial process is imprecise. It involves circumstances and situation of infinite variety and conditions. It is recognized that the abuse of process may tie in either proper or improper use of the judicial process in litigation. However, the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponents".

On that regard, upon being guided with the principles of the law cited above, I hereby declare that, this case has been lingering in courts' corridors for a long time, before 2015 and the concept that I can get from the scenario is that, Advocate for the Appellant herein, **Mr. Godfrey Daniel Goyayi**, in corporation with **Mr. Deusderick Kahendaguza** (4th Respondent) and his wife **Evelyn Simwanga** (2nd Respondent) have been technically making this matter endless. For the last two unscrupulous applications that was filed at

the DLHT though CRDB PLC, which are subject to the appeal at hand, the implication is that, these three persons still intend to prolong the matter for a long time later, if not to the infinity, so that Rayida Rweikiza may not enjoy ownership of the house that she holds upon purchasing it from Johari. That is nothing but abuse of courts' processes. It is not the purpose of establishment of courts in administration of justice.

My last comment on this matter is that, *Litigations should reach to an end*. That was also stated in **JOHNSON AMIR GARUMA V. THE ATTORNEY GENERAL & 2 OTHERS, Civil Appeal No. 206 of 2018, CAT at DSM**. As stipulated herein above that, this case has been lingering in the court's corridors for a number of years. The records transpire it being in courts before 2015, when an order for "*attachment and sale*" of the suit house was made by the DLHT of Kahama, through the Misc. Application No. 83 of 2015. It means the same matter has been entertained in courts/tribunal from or before that said year, 2015, which is a very long period of time. It is contrary to the current policy of judiciary of quick disposal of cases. Not only that, but the Judiciary of Tanzania is also refraining itself

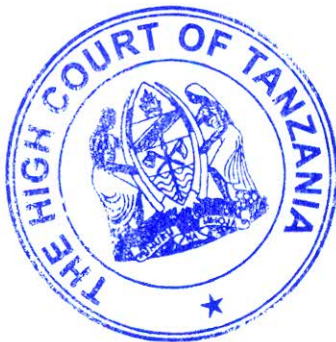
from determining cases on technical basis. It prefers to rely on substantive justice.

In upshot, I find this appeal with no merit and the same intends to further abuse the courts' processes, hence **dismissed with costs.**



**S.M. KULITA
JUDGE
22/02/2024**

DATED at **SHINYANGA** this 22nd day of February, 2024.



**S.M. KULITA
JUDGE
22/02/2024**