

**IN THE HIGH COURT OF THE UNITED REPUBLIC
OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM
COMMERCIAL CASE. NO. 56 OF 2021**

FARIDA SEIF PLAINTIFF

VERSUS

EQUITY BANK TANZANIA LIMITED..... DEFENDANT

Date of Last Order: 12/11/2021

Date of Judgment: 23/11/2021

RULING

NANGELA, J.:

This is a brief ruling in respect of an issue which cropped out of submissions made by the parties herein. By way of a background, this case was filed by the Plaintiff praying for judgment and decree against the Defendant as follows:

1. A declaration that the State Oil Tanzania Limited who is not a party to the suit herein, has fully paid and satisfied the banking facilities dated 22nd March 2017, 30th June 2017 and 16th October 2017, to which the Plaintiff

mortgaged **Plot No. 261, EX-DAYA Estate, Title No.186205/38**, located at Ilala Municipality, in Dar-es-Salaam.

2. A declaration that, the Defendant has breached a mortgage deed by failure to discharge and release title deed on Plot No.126, Ex-Daya Estate, Title No.186205/38, located at Ilala Municipality, in Dar-es-Salaam, as the borrower State Oil Tanzania Ltd has fully paid and satisfied the banking facilities dated 22nd March 2017, 30th June 2017 and 16th October 2017 which the Plaintiff was the guarantor.

3. An order to the Defendant to discharge and release title deed on **Plot No.126 EX-DAYA ESTATE**, Title No.186205/38, located at Ilala Municipality, in Dar-es-Salaam.

4. General damages to be assessed by this honorable Court;
5. Costs of this suit and
6. Any other relief the Court deems fit to grant.

The case went through the pre-hearing stages up to mediation. However, the mediator found it

impracticable to proceed with the mediation and, accordingly, reverted back the case file to the trial judge under rule 36 of the High Court (Commercial Division) Procedure Rules, G.N. No.250 of 2012 as amended by GN.No.107 of 2019.

On the 1st of November 2021, Mr.Edwin Nkalani, learned advocate appeared for the Plaintiff while Mr Dilip Kesaria appeared for the Defendant. Mr Nkalani prayed for a short adjournment to find out whether the decision of this Court issued in Commercial Case No.105 of 2020 (Hon. S.M Magoiga, J.) had any implication on the present suit, and, if so, to address the Court appropriately.

For his part, Mr Kesaria supported the prayer. He submitted that, he did appear as a legal counsel for the Defendant in the said Commercial Case No.105 of 2020, and the Court has already passed a judgment requiring the discharge and release the title deed of the Plaintiff's property which is the subject matter of this suit as well.

On the basis of the above developments, I granted the prayer for adjournment and set this suit for orders on 12th day of November 2021 at 9.00am. On the material date, Mr Nkalani appeared for the Plaintiff while Mr Zacharia Daudi appeared for the Defendant.

Mr Nkalani told this Court that, upon perusal and reading of the judgment of this Court in Commercial

Case No.105 of 2020, the Plaintiff was of the view that, this matter before me should proceed to its final determination. He thus prayed to proceed to its final pre-trial conference.

For his part, however, Mr Zacharia was of a different view. He contended that, the matter is either res-judicata or res-subjudice. He held that view on the basis of the fact that, the orders sought in the Plaint were already dealt with by this Court in Commercial Case No.105 of 2020.

He submitted, therefore, that, this Court cannot seat twice and adjudge on the same issues already determined in Commercial Case No.105 of 2020. In the alternative, he prayed that, either the matter should be stayed as the Defendants in the said Commercial Case No.105 of 2020, intend to appeal to the Court of Appeal or that, this suit be dismissed with costs for being *res-judicata*.

He contended further that, even before its institution, the Plaintiff's advocate was readily made aware of the pendency of the said Commercial Case No.105 of 2020, and the similarities of the case he was intending to file, which is the case at hand. He referred to this Court paragraph 11 of the Plaint and its annexes.

Having heard from the parties, I reserved my ruling to this date, so that, I may also go through the

judgment of this Court in Commercial Case No.105 of 2020. I have had time to read the judgment of this Court in Commercial Case No.105 of 2020.

Without going to its details, even if the Plaintiff herein was not a party to that case, it is clear that, the Plaintiff's mortgaged Property described as **Plot No. 261, Ex-Daya Estate, Title No.186205/38, located at Ilala Municipality, in Dar-es-Salaam**, which is the subject of the declaratory orders, as well as the discharge and release order sought by the Plaintiff herein above, were essentially the same orders sought in respect of the said **Commercial Case No.105 of 2020**.

In particular, in that case, the Plaintiff, **State Oil Tanzania Ltd (as the Plaintiff)**, sought for judgment and decree against the **Equity Bank Tanzania Ltd** and **Equity Kenya Ltd (both as Defendants)** as follows, among others:

- (a) A declaration that the Defendants have breached three banking facilities which Defendants advanced to the Plaintiff, the first one dated 22nd March 2017, the second one dated 30th June, 2017 and the third one dated 16th October, 2017.

(b) A declaration that, the Plaintiff has fully paid and satisfied the three banking facilities dated 22nd March 2017, 30th June, 2017 and 16th October, 2017.

(c) An order to the Defendant to discharge and release title deeds to the Plaintiff for the following collaterals: (i)..., (ii)..., (iii)..., (iv) Plots 4484, **261** and 270

EX-DAY Ilala Dar-es-Salaam.

(Emphasis Added)

(d) to (r) (not applicable).

In the course of hearing and determination of the said **Commercial Case No.105 of 2020**, this Court (Magoiga J.,) gave judgment and decree in favour of the Plaintiff (State Oil Tanzania Ltd) and made orders **(among others)**, a declaration that:

1. The Plaintiff (State Oil), according to exhibits, fully paid and discharged the banking facilities dated 22nd March 2017, and 16th October 2017.

2. As such, the 1st Defendant (Equity Bank Tanzania Ltd) is ordered and directed to discharge mortgages and release title deeds to the Plaintiff of all landed properties

mortgaged to the 1st Defendant.”

From the above excerpts, which are taken from the Judgment of this Court in **Commercial Case No.105 of 2020**, it is clear to me that, the title deed in respect of **Plot No. 261, Ex-Daya Estate**, Title No.186205/38, located at Ilala Municipality, in Dar-es-Salaam, which is the same as the one forming the core of this claim in this suit, was in principle affected by the Orders of the Court issued by Magoiga J., in Commercial Case No.105 of 2020.

Consequently, this case cannot proceed further to its end while an order which affects the very thing that forms its backbone, which is the release of the said title deed, had already been obtained in Commercial Case No.105 of 2020. The Plaintiff herein should, consequently, approach State Oil Tanzania, and obtain from her the said title deed, unless it is contended that the Defendant has refused to discharge and release that particular title deed after the orders of this Court were issued in Commercial Case No.105 of 2020.

In the upshot, I do not agree with Mr. Nkalani that, the decision of this Court in Commercial Case No.105 of 2020 did not have a direct effect on this case. It did as it discharged and released the same subject matter sought to be discharged and released to the

Plaintiff herein, i.e., the title deed in respect of **Plot No. 261, Ex-Daya Estate**, Title No.186205/38, located at Ilala Municipality, in Dar-es-Salaam.

I should also state that the issue is not even whether the suit is *res-judicata* or not, but that, since there has been an effective order that required the release of that same Title Deed to State Oil Tanzania Limited, this same Court cannot give two orders of the same effect on the same property as that is akin to being tautological.

It follows, therefore, that, this suit should be struck out as the orders sought to be granted have been obtained in Commercial Case No.105 of 2020, which include and order requiring the 1st Defendant (who is also the Defendant herein) to discharge and release the title deed in respect of **Plot No. 261, Ex-Daya Estate**, Title No.186205/38, located at Ilala Municipality, in Dar-es-Salaam.

I note, as well, that there was a counterclaim raised by the Defendant herein. However, looking at it, the same cannot as well stand for the same reasons. I will proceed to have it struck out as well.

It follows, therefore, and, for the reasons stated here above, this suit, together with the counter claim raised by the Defendant, is hereby struck out, and,

considering its circumstances, I make no orders as to costs.

It is so Ordered

**DATED at DAR-ES-SALAAM, this 23RD DAY OF
NOVEMBER, 2021**



A handwritten signature in blue ink, appearing to read "Deo John Nangela".

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HON. DEO JOHN NANGELA
JUDGE