

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 361 OF 2017**

**ZUBERI PAUL MSANGI.....PLAINTIFF**

**VERSUS**

**MARY MACHU..... DEFENDANT**

**I. MAIGE, J**

**RULING**


1. The plaintiff has instituted the above suit in his representative capacity as the administrator of the deceased estate of the late **Edward Mbonea Msangi**. He has attached in his plaint a copy of letters of administration purporting to have been granted by the primary court of Buguruni on 14.12. 2009. In essence, the plaintiff claims against the defendant for three substantive reliefs. First, for declaration that he is the lawful owner of property at plot no. 81 Block "B" Part II Tabata, Area, Dar Es Salaam with CT No. 36554 ("the suit property"). Two, for general damages. Three, for permanent injunction.
2. In her written statement of defence, the first defendant questioned the maintainability of the suit on account that it is *resjudicata* to the judgment of the Resident Magistrate Court of Dar Es Salaam in RM Civil Case No. 34 of 1991.
3. When the matter came before me for disposal of the preliminary objection on 26<sup>th</sup> day of August 2019, the plaintiff appeared through Miss. Lucy Nambuo, learned advocate where as the defendant was, for undisclosed reason absent. Since the issue raised in the notice of preliminary objection entails an improper exercise of jurisdiction, I

requested Miss. Lucy to remark on the issue and find out if it has any merit.

4. In her submissions, Miss Lucy contented, relying on the authority in **EASTER IGNAS LUAMBANO VS. ADRIANO GEDAM KIPALILE, CIVIL APPEAL NO. 91 OF 2014** since the parties in the two proceedings are different, the matter is not resjudicata. He thus prayed that the preliminary objection be overruled with costs.
5. I have considered her submissions in line with the pleadings and copies of the decision attached in the written statement of defense. I do not agree with her that for the doctrine to apply, the parties in the two proceedings must be the same. It would suffice, in view of the authority in **EASTER IGNAS LUAMBANO VS. ADRIANO GEDAM KIPALILE**, if the parties in the current suit or either of them are privies to the previous suit.
6. In this matter, the plaintiff is suing as a legal representative of EDWARD SAID MSANGI who was the defendant in Civil Case No. 34/1991 instituted by CAROLLINE MCHUI. The dispute pertained to the same suit property. In the said case, the Court established as a fact that the suit property did not belong to the plaintiff but rather to the said CAROLINE MACHUI.
7. In the written statement of defence, the defendant has also attached the ruling of my brother judge Mohamed in Land Case No. 93 of 2013. The plaintiff was the plaintiff in the said case and ELTON VICTUS MAHENGÉ was the defendant. The plaintiff was claiming ownership of the same property. The defendant though not a party therein, was mentioned at page 2 of the ruling as the administrator of the late Caroline Machui. She was being accused to have, under her administrative capacity, sold the suit property to the said Elton. In her

submissions, Miss Lucy admitted the fact that the defendant is an administrator of the deceased estate of the late Caroline.

8. In his ruling, my learned brother judge Mohamed dismissed the suit for being resjudicata to Civil Case No. 34 of 1991 on account that the defendant therein though not a party to the proceeding before him he was tracing title from the same person.
9. Since in this in this matter, the plaintiff is claiming the suit property against the same defendant whose title on the suit property is traceable from the said Caroline, this suit is resjudicata. In any event, there being a ruling by my brother Mohamed on the same issue, I would constructively been fanctus officio to decide otherwise. It is so ordered.
10. In the final result, the preliminary objection is sustained. The suit is hereby dismissed for being resjudicata. I shall not give an order as to costs in the circumstances.

  
MAIGE.I  
**JUDGE**

**06/09/2019**

Coram: Hon. C. M. Kisongo, DR

For Plaintiff: Ms. Lucy Nambua Advocate

For Defendant: Absent

RMA: Bukuku

**COURT:** Delivered ruling in the presence of Ms. Lucy Nambua Advocate for plaintiff and in absence of the Defendant.

**C. M. Kisongo**  
**DEPUTY REGISTRAR**  
**06/09/2019**