

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 174 OF 2021**

**MARIAM SEIF MATAMBO .....APPLICANT**

**VERSUS**

**MANJIT GURMUKH SINGH.....1<sup>ST</sup> RESPONDENT**  
**MOHINDER GURMUKH SINGH.....2<sup>ND</sup> RESPONDENT**

Date of Last Order: 22.11.2021  
Date of Ruling: 16.12.2021

**RULING**

**V.L. MAKANI, J.**

The applicant MARIAM SEIF MATAMBO is applying for review of the order of this court (Hon. G. Ndika, J as he then was) which was delivered on 25/11/2016 in Land Case No. No.323 of 2015. In her Memorandum of Review, the applicant has set out two grounds that:

- 1. Having been misdirected by Counsel for respondents namely Joseph Ishengoma Rutabingwa, and Ida Alex Rugakingira both from RUTABINGWA & CO ADVOCATE, the Learned Judge erred in Law by delivered judgment declaring respondent herein lawful owner of disputed landed property without knowing that the land case No.323 of 2015 at High Court Land Division was res judicata.*

*2. The Honourable trial Judge erred in law and not finding and holding that there is a decision of Majohe Ward Tribunal to wit Land Case No.BR/AR/MJ/MSP/IL/144/2015 between parties herein which on 22/10/2015 the applicant was declared lawful owner of the disputed property which decision has not been appealed against.*

It was the court's order that the application be argued by way of written submissions. Mr. Victor Kessy, Advocate drew and filed submissions on behalf of the applicant, while Mr. Joseph Rutabingwa drew and filed submission in reply on behalf of the respondent.

Mr. Kessy for the applicant gave a brief background of the matter and added that, the dispute between the parties was first referred to Majohe Ward Tribunal and Mr. Rutabingwa, Advocate of RUTABINGWA & CO ADVOCATES entered appearance at the Ward Tribunal. But the Tribunal denied his appearance for want of *locus standi*. He said the applicant won the case at the Tribunal on 22/10/2015. He said on 11/12/2015 the applicant hasted Application No.165 of 2015 pinning the granted decretal reliefs. He said during execution proceedings, Ms. Rugakingira and Mr. Thomas Brash, Advocates who were representing the respondents informed the Tribunal that they have also filed Land Case No.323 of 2015 at the

High Court. The Chairman adjourned the proceedings for execution pending hearing of Land Case No. 323 of 2015. That to date there is a pending application for execution.

Counsel further said the advocates from the same law firm, RUTABINGWA AND CO. ADVOCATES did not opt to appeal against the decision of Majohe Ward Tribunal. That they instead filed a new matter, that is, Land Case No.323 of 2015 at the High Court Land Division in respect of the same parties and the same property. That they did so despite of the knowledge that there were proceedings of the same nature at the Ward Tribunal and application for execution pending at the District Tribunal. That as a result there are two judgments regarding the same parties and the same subject matter; one by the Ward Tribunal vide BR/AR/MJ/MSP/IL/114/2015 and the other in Land Case No.323 of 2015 in this court. He said the 1<sup>st</sup> respondent who was **PW1** in Land Case No.323 of 2015 was fully aware of the prior proceedings at the Ward Tribunal. That at page 9 of the proceedings in Land Case No.323 of 2015, the 1<sup>st</sup> respondent informed the court that the applicant herein went to the Ward Tribunal. Counsel said that, the proceedings in Land case No.323 of 2015 were ex-parte but the applicant herein who was the defendant

in that suit was not notified of the judgment date and that was contrary to the procedure.

Mr. Kessy went on saying that while Land Case No.323 of 2015 was pending, the same advocates from RUTABINGWA & CO. ADVOCATES filed Misc. Application No. 38 of 2016 and Application No.165 of 2016 at the District Tribunal for Ilala. The former being an application for extension of time to appeal against the decision of the Ward Tribunal and the latter being an application for extension of time to stay the decision of the Ward Tribunal and stay of execution pending determination of the intended appeal. That nine months later they obtained the judgment in Land Case No.323 of 2015 and the applications that were filed on 25/02/2016 were left pending without being dismissed and the applicant was summoned to appear three years later. Counsel submitted further that it was contrary to Rule 15 (a) of the Disputes Courts (Land and Housing Tribunal) Regulations, 2002. Counsel insisted that Land Case No. 323 of 2015 at the High Court was Res Judicata with the decision of the Ward Tribunal of which both parties are aware. That the decision of the Ward Tribunal was not challenged by the parties in any way. Counsel relied on section 9 of the Civil Procedure Code, CAP 33 RE 2019 (the **CPC**) and

the case of **Karshee vs. Uganda Transport Co. (1967) E.A 774.**

He prayed for the application to be granted with costs.

In reply, Mr. Rutabingwa, said that the two grounds of review by the applicant are connected in that they are all basing on a point that the judgment sought to be reviewed is res judicata. He said that the chamber summons and the supporting affidavit were expunged from the records. He said that written submissions by the applicant contain documents which offend the procedure of filing written submissions. Counsel relied on the case of **Mathias John Mwimbilizye & 3 Others vs. M/S M. Dewji & Company (HC-Labour Division)** (unreported). He said submissions by the applicant should not be accorded weight as there is no specific name of an advocate from RUTABINGWA & CO. ADVOCATES as alleged by the applicant. He added further that the date on which the said advocate is alleged to have appeared in the Ward Tribunal has not been revealed by the applicant. He pointed out that advocate for the applicant cannot confirm matters of fact under written submissions while he was not present at the Ward Tribunal.

Submitting on the issues of res judicata, Mr. Rutabingwa said that, the judgment subject of review was filed in the High Court on

13/10/2015 and the applicant herein was served with the plaint on 22/10/2015, that she did not sign, and she was served by substituted service. He said that the High Court did not know the existence of the decision of the Ward Tribunal. Counsel admitted that section 9 of the CPC provides for *res judicata*. However, he said that in MULLA: The Code of Civil Procedure 16<sup>th</sup> Edition Volume 1 at page 173 provides for five conditions on *res judicata*. He said that the 4<sup>th</sup> condition provides that the former suit must have been in a court competent to try the subsequent suit or the suit in which such issue has been subsequently raised. That reading it with explanation II under the said section, the condition presupposes concurrent jurisdiction of courts. Concurrent as to the subject matter and pecuniary limit and determination of competence of the former court.

Mr Rutabingwa went on saying that the Ward Tribunal did not establish the value of the land so as to know whether it had pecuniary jurisdiction. That the value of the subject matter was not stated. He said in the judgment of this court there is valuation report showing that the suit property is valued at TZS 70,000,000/=. That seemingly even during trial at the Ward Tribunal the value of the suit property was TZS 70,000,000/=. Counsel said that section 15 of the Land



Disputes Courts Act No. 02 of 2002 provides for jurisdiction of the Ward Tribunal. That the limit of the value of the subject matter is TZS 3,000,000/=. He pointed out that even if the Ward Tribunal properly conducted the proceedings still it had no pecuniary jurisdiction and therefore its decision cannot operate as res judicata. Counsel further added that the judgment of the Ward Tribunal at the 1<sup>st</sup> page presupposes the issue of inheritance which is not the matter to be decided by the Tribunal but by ordinary courts. Counsel insisted that the decision of the Ward Tribunal cannot therefore operate as res judicata to the judgment of this court. He said the present application has no merit. He further insisted that the issue of the decision of the Ward Tribunal was not brought to the attention of the trial Judge. He said even if the same was brought in to attention of the trial Judge, still the Ward Tribunal had no pecuniary jurisdiction to entertain the matter. Mr. Rutabingwa concluded that this application has no merit and it subject to be dismissed with costs.

In rejoinder, Mr. Kessy reiterated his main submissions and added that attaching courts precedents does not offend practice and procedure of filing written submission of any known law. That the essence of attaching the judgment, proceedings and decree was for

the purpose of easy reference. He added that Mr. Rutabingwa did not address the issue of other advocates who participated in the pending application for execution of the decision at the Ilala District Tribunal.

Having considered submissions from both parties, the main issue for consideration is whether this application for review has merit. According to Order XLII Rule 1 of the CPC, a person may apply for review of a decision in the following circumstances:

- (a) On discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made; or*
- (b) On account of some mistake or error apparent on the face of the record; or*
- (c) For any other sufficient reason."*

In this application, the applicant has preferred two grounds of review. However, as correctly opined by Mr. Rutabingwa, the grounds are essentially based on the single ground that the decision of Majohe Ward Tribunal in Land application No.BR/AR/MJ/MSP/IL/144/2015 operates as res judicata to the decision of this Court in Land Case No.323 of 2015. There have been various arguments by the parties herein concerning the raised issue of res judicata. Before considering



the validity of each party's argument, I wish to revisit section 9 of the CPC which provides for res judicata. The said section states:

*"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"*

Both parties in this application are at one with the ingredients of the above provision, save that Mr. Rutabingwa is of the opinion that, Majohe Ward Tribunal had no pecuniary jurisdiction in conducting proceedings over the suit property and even if the decision of the Ward Tribunal were to be brought to the attention of the Judge at the High Court still there would not have been any difference.

Mr. Kessy's argument, is that the issue of jurisdiction should have been raised at the Ward Tribunal and not at this stage of review. I agree with Mr. Kessy's argument and I shall add that this issue if it had value it would have been raised in an appeal if one would have been preferred at the District Tribunal. The respondents would not have waited for these proceedings to raise the issue of jurisdiction of the Ward Tribunal while knowing that the decision of the Ward Tribunal

is still in existence and still valid. Arguments by Mr. Rutabingwa are clearly an afterthought and therefore without merit.

Section 9 of the CPC essentially requires that, the parties in the former and subsequent suit must be the same, the subject matter subject of litigation should be the same and that the same issue has been previously heard and finally determined by the former Court (see the case of **The Registered Trustees Of Chama Cha Mapinduzi Vs. Mohamed Ibrahim Versi & Sons and Alimohamed Mohamed Versi, Civil Appeal No. 16 Of 2008 (CAT- Zanzibar) (unreported)**). The rationale behind the doctrine of res judicata is to ensure finality in litigation (see **Umoja Garage vs. National Bank of Commerce Holding Corporation, Civil Appeal No. 3 of 2001 (CAT)** (unreported)). It is also meant to protect an individual from a multiplicity of litigation.

The record shows that the decision of Majohe Ward was not challenged in any court. That being the case and taking into consideration that Ward Tribunals are mandated to adjudicate land conflicts, their decisions, therefore, are binding unless challenged. In that regard, it is without doubt that the decision of Majohe Ward

Tribunal in Land Application No.BR/AR/MJ/IL/144/2015 operates as res judicata to the decision of this court in Land Case No.323 of 2015. And I am quite sure if the learned Judge had the knowledge of what transpired in the Ward Tribunal, then his decision would have been different.

I have noted in the submissions by the parties that, they have consumed much of their time on the issue of whether Advocates from Rutabingwa & Company Advocates appeared at the Ward Tribunal. In my view these arguments are only relevant to the background of the matter and not the fundamental issues of this application.

On the issue raised by Mr. Rutabingwa that the decision of the Ward Tribunal and of this court have unprocedurally being attached to the applicant in her submissions, I agree with Mr. Kessy that the same is just for easy reference and not for evidential purposes, besides, the issue of whether there was a decision of Majohe Ward Tribunal prior to that of the High Court is not disputed by the parties. That alone even without annexing the said decisions is sufficient to establish res judicata.

Mr. Rutabingwa also submitted that the conflict over the suit property was mainly on inheritance and therefore it should not have been adjudicated by the Ward Tribunal, rather a normal Court with powers to deal with inheritance issues. As correctly submitted by Mr. Kessy, this is an afterthought. The respondents should have raised such objection at the Ward Tribunal's and not at this stage. At this stage the respondents are estopped from challenging the jurisdiction of Ward Tribunal since they did not raise the same at the Ward Tribunal neither did, they prefer an appeal to that effect.

Basing on the above analysis, this application has merit. The decision of Majohe Ward Tribunal in Application No. BR/AR/MJ/MSP/IL/144/2015 operates as res judicata of Land Case No. 323 of 2015 of this court. In that respect the judgment of this court in Land Case No 323 of 2015 is hereby set aside. The applicant will have her costs.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**16/12/2021**

