

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

AT DAR ES SALAAM

LAND REVISION NO. 18 OF 2019

(Arising from Misc. Land Application No. 462/2019, 491/2018 and Land application No. 317/2014 and 318/2014, of the District Land and Housing Tribunal for Kinondoni at Mwananyamala)

ELLY LAVIES MWALOKO.....1ST APPLICANT

REHEMA SALEHE NDOMONDO.....2ND APPLICANT

VERSUS

RAPHAEL SALEHE SHEMAGHEMBE a.k.a HOZA (Administrator of the estate of the late Ramadhan Salehe).....1ST RESPONDENT

EMANUEL MWABULAMBO.....2ND RESPONDENT

RULING

OPIYO, J.

The 1st respondent here in above raised a preliminary objection on point of law that the application at hand is *res Subjudice*. The applicants are against the objection, hence this ruling. The factual background of the case is that, the two applicants above, Elly Lavies Mwaloko and Rehema Salehe Ndomondo jointly requested this court to call and inspect the records of the District Land and Housing tribunal for Kinondoni District in respect of the following cases; Misc. Land Applications No. 462/2019, 491/2018 and Land application No. 317/2014 and 318/2014. If found any illegality, improprieties, quash them and in place substitute the same with another decision or give directions as it considers necessary in the interest of justice. The respondents, Raphael Salehe Shemaghembe and Emanuel Mwabulambo are

against the application, therefore raised an objection against the same as stated herein earlier.

At the hearing of the objection which was done by written submissions, Advocate Yona L. Habiye appeared for the 1st respondent, while the applicants enjoyed the services of Wilson Moses Mafie, Learned Counsel. Submitting for the objection, Mr. Habiye stated that, the case filed before this court is *res subjudice* due to the fact that, the applicants did file this matter at the District Land and Housing Tribunal for Kinondoni vide Application No. 268 of 2019. The Application was instituted against the same respondents over the same claim, on June 13th, 2019. The preliminary objection against this Application was raised on 26th September, 2019. As of now, the applicants have withdrawn their Application at the District Land and Housing Tribunal for Kinondoni following this objection with the intention of frustrating the present preliminary objection. Their acts are unlawful as they were taken after the current preliminary objection was raised. Therefore this objection should be upheld, he argued.

Wilson Moses Mafie, Learned Counsel for the Applicants opposed the contentions by the Advocate for the 1st respondent. Mr. Wilson maintained that, the application noted by the Counsel for the 1st respondent to have been withdrawn had nothing to do with current application for revision. The former was land application (suit) covered under a different provision, unlike application for revision which is covered under section 79(1) of the Civil Procedure code, Cap 33, R.E 2002. Therefore the principle of *res subjudice* as stated under section 8 of the Civil Procedure code, Cap 33, R.E 2002 cannot apply as the two applications are different. His submissions were

based in the case of **The M & Five B Hotels and Tours Limited versus Exim Bank Tanzania Limited, Commercial Case No. 104 of 2017 (unreported)** where it was observed:-

Quietly frankly I find the two causes of action and issues involved in two cases are quite distinct and a plea that the present suit is Res Subjudice is not legally tenable and has not been established.

Reference is also made to the case of **I & M bank of Tanzania Ltd versus HIBROS Canvas & Another, Commercial Case No. 03 of 2018, High Court Commercial Division of Tanzania (unreported)** where it was observed that; if the factor that the suit must be directly and substantially the same is missing, the principle of res subjudice will not apply. He therefore, urged for the point of objection to be dismissed with costs.

In his rejoinder, Advocate Yona reiterated his submissions in chief and added further that the withdrawn application No. 268 of 2019 and the case at had put together meets the application of the doctrine of *res subjudice*. He argued that, the Applicants were aware of that fact and that is the reason they decided to drop the said suit at the District Land and Housing Tribunal for Kinondoni. He cited the case of **Wengert Windrose Safaris (Tanzania) limited versus The Minister for Natural Resources and Tourism and The Honourable Attorney General to fortify her application**. The two applications have the same parties and the matters in issue were the same which is "Land" (Plot No. 325 BLOCK 47 AND Plot No. 324 Block 47. Above all the said Application No. 268 of 2019 was still pending when the instant case was instituted.

I have considered the submission of both parties. My obligation in the matter at hand is to determine the merit or otherwise of the preliminary objection advanced by the 1st respondent. The question for consideration at this juncture is whether the doctrine of *res subjudice* is applicable in the situation at hand. In section 8 of the Civil Procedure Code cap 33 R.E 2019, Res subjudice is explained as follows:-

"No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in Tanzania having jurisdiction to grant the relief claimed."

The 1st respondent has claimed that there was a pending Application at the District Land and Housing Tribunal for Kinondoni (Application No. 2068/2019). However, the applicants decided to withdraw it after this objection was advanced by the 1st respondent against the instant case based on the said Application that it is *res subjudice*.

I agree with the counsel for the 1st respondent in his argument that the two Applications have the same parties and involves the same subject matter. But going deep into the nature of the applications, the matters in issue and the outcomes are totally different from each other and far from being substantially the same.

In the Application for revision like the instant case, the nature of it lies into the legality, correctness or proprieties of the proceedings and decisions of another already decided or ongoing cases. In other words, revision of a case

comes after the said case is fully determined and not when it is pending. The outcomes of revision may go into nullification or confirmation of the proceedings and decisions of the case so revised. Furthermore, in revision the dispute does not involve the parties per se, but also the court which heard and made the decision to be revised. This is also the spirit of Court as provided in **I & M bank of Tanzania Ltd versus HIBROS Canvas & Another, Commercial Case No. 03 of 2018, High Court Commercial Division of Tanzania (unreported), supra.** Other applications including the withdrawn one, Land Application No. 268/2019 do not have the same ingredients as those attached to Applications for Revision.

Therefore provided that there is no proof that the application at the District Land and Housing Tribunal for Kinondoni (Application No. 2068/2019) was for Revision like the one at hand. If so, I would have held that, the doctrine of *res subjudice* is applicable. If not, as I have been made to believe, then even if it was still pending, let alone being withdrawn as stated by parties in their submissions, the principle of *res subjudice* would not have been applied.

On the spirit of the above reasons, I find this objection to lack merits and therefore it is consequently overruled. No order as to costs.



**M. P. OPIYO,
JUDGE**

19/3/2021