

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

LAND CASE NO. 120 OF 2021

JUNACO (T) LIMITED.....PLAINTIFF

VERSUS

EQUITY BANK (TANZANIA) LIMITED.....1ST RESPONDENT

COPS AUCTION MART &

COURT BROKERS LIMITED.....2ND RESPONDENT

Date of Last Order: 26.01.2022
Date of Ruling: 14.02.2022

RULING

V.L. MAKANI, J

This ruling is in respect of the preliminary objections on points of law raised by the defendants:

- (a) The suit is bad in law in that it offends provision of section 38(1) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**).*
- (b) The suit is glaringly an abuse of the court process.*

The parties were represented by Mr. Seni Malimi for the defendants and Mr. Byamungu for the plaintiff. With leave of the court the objections were argued by way of written submissions.

However, before the delivery of the ruling on the preliminary objection raised, the court ordered the parties to submit on the issue whether this suit is res judicata of Land Case No. 19 of 2019.

Mr. Byamungu was of opinion that the present suit is not res judicata. He said he is aware that the concern by the court arises from the suit in Land Case No.19 of 2019 in which the 1st defendant was granted certain reliefs arising from the Deed of Settlement negotiated and recorded by the Court. He however, pointed out that the cause of action in this suit arises from unilateral action by the 1st defendant through the 2nd defendant intending to sell the suit property. He said the said action is independent of Land Case No.19 of 2019. That the action does not arise from the decree and it is not initiated through or raised by the court that issued the decree, that is Land Case No.19 of 2019. Counsel added that the first impression it would make sense to think that this suit could be res judicata in light of the decree in Land Case No 19 of 2019 but the controversy was settled by Kalegeya J (as he then was) in **CRDB Bank Ltd vs Rukaya Butchery & General Supplies Ltd & 3 Others, Commercial Case No.34 of 2001 (HC-Commercial Division)**. He said in that case there was a decree in favour of CRDB Bank against respondent in which CRDB

Bank was awarded certain reliefs against respondent of which there was an order for sale of one of respondents' property (Hse No.654, Sinza B, Kinondoni, CT 25951). That CRDB Bank without going through the execution process (going to court) went on its own unilaterally and appointed an auctioneer who in turn auctioned the property. One of respondents who was interested in the property filed an application under **CRDB Bank Ltd vs Rukaya Butchery and General Supplies Ltd** (supra) to challenge the sale. Counsel continued to submit that he is aware that the applicant in this decision filed a suit and it is the basis of filing this suit to challenge the out of court execution and it was the only way to challenge execution. Counsel observed that the suit is properly before the court and it is not res judicata.

On his side, Mr. Malimi for defendants said that this suit intends to litigate issues under Land Case No.19 of 2019 that the same is fortified by looking at the present plaint vis a viz the plaint in Land Case No.19 of 2019. That the claims reflected in paragraph 4 of the current suit and paragraph 3 of Land Case No.19 of 2019 are the same. He said the plaint in Land Case No.19 of 2019 is one of the annexures in the current suit. That the reliefs in the current suit are

substantially the same as in Land Case No.19 of 2019. That paragraph 17 in the plaint in Land Case No.19/2019 is substantially dealing with the same issues as in paragraph 12 and 13 of the current suit. That there is no way the court can deal with the issues in the present suit without touching on the issues in Land Case No.19 of 2019. He said that the principle of res judicata under section 9 of the CPC bars multiplicity of suit that once a matter has been adjudicated it is not supposed to be litigated. He said that one key condition of the principle is that the former suit should be between the same parties and the matter is directly and substantially the same with the current suit. He relied on the case of **Daniel Lotta vs Tamaki & Others [2003] TLR 312**. Counsel further said that the plaint shows that there are payments made and many other issues. He said that re-hearing this suit is re-opening Land case No.19 of 2019 in which there is a Consent Judgement. He said that in **CRDB Bank Ltd vs Rukaya Butchery and General Supplies Ltd** case cited by learned Counsel Mr. Byamungu is distinguishable from this suit in that it was a default judgment (summary suit, the defendant failed to get leave to defend). He said that in this present suit it is a Consent Judgment with terms of settlement. That **CRDB Bank Ltd vs Rukaya Butchery and General Supplies Ltd** case cannot be applied in this case.

Secondly, he said the applicants in **CRDB Bank Ltd vs Rukaya Butchery and General Supplies Ltd** (supra) were complaining that no order for execution had been issued. He said that in this case there is a consent between the parties that in case of default the other party can dispose the suit property and that the parties have agreed if there is a default then the security can be realized. Mr. Malimi said further that the plaintiff and the 1st defendant in Land Case No.19 of 2019 created their judgment through a Deed of Settlement and the plaintiff herein is shifting goal posts. He said nothing can be done without going back to Land Case No.19 of 2019 which will be re-litigating the matter and is contrary to res judicata. Counsel added that in **CRDB Bank Ltd vs Rukaya Butchery and General Supplies Ltd** the court termed it "out of court execution but in Land Case No.19 of 2019 there was an agreement between the parties on execution as agreed by the parties according to the Deed of Settlement. Counsel added that in **CRDB Bank Ltd vs Rukaya Butchery and General Supplies Ltd** no such arrangement was made but there was a normal default judgment. He said the case of CRDB is not applicable to the circumstances of this matter. He said that substantially this case wants to re-open Land Case No.19 of 2019 which practice offends section 9 of the CPC on res judicata.

Making a clarification to the court, Mr. Byamungu said when a part enters a consent judgment then it is a decree of the court capable of being executed. Any out of court execution is not proper and it is subject to be challenged by fresh suit. That it was prudent for the plaintiff to plead Land Case No.19 of 2019 in this present case to bring the court to perspective of what transpired in the past. But this did not touch on the present cause of action which is – the defendant wants to sell the suit property illegally and this was a new event. That the plaintiff acted when the defendant intimated to sell the property illegally so there is no res judicata because the facts and circumstances giving rise to this new cause of action are different.

Mr. Byamungu went on to submit that there are winding up proceedings commenced in the Commercial Court - Misc. Commercial Cause No.50 of 2021 by the 1st defendant against the plaintiff. And Counsel referred this court to section 283 of the Companies Act and the case of **North Mara Gold Mine Ltd vs. Diamond Motors Ltd, Civil Appeal No.29 of 2017**. On this issue of winding up, Mr. Malimi invited the court to note that section 283 of the Companies Act is essentially in respect of the actions against the companies.

I have listened to the rival submissions to Counsel for the parties. The doctrine of res judicata is provided under section 9 of the Civil Procedure Code, CAP 33 R.E 2019 (the **CPC**). The said section provides:

“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 provision simply states that once a court of competent jurisdiction conclusively decides a matter, neither of the parties can question the matter when brought in another court if the proceedings are between the same parties or parties claiming directly under them. The rationale behind this doctrine ensure that litigation comes to an end and not go on forever. Further, the doctrine prevents a party from being tried twice on the same point or matter. Lastly the doctrine is intended to protect the credibility and integrity of the courts to avoid conflicting decisions.

Under section 9 of the CPC there are four major requirements for the doctrine of res-judicata to apply:

- (i) That the matter which is directly and substantially in issue in the present case must also have been directly and substantially in issue in the former case.
- (ii) That the previous suit must have been finally and conclusively determined.
- (iii) That the former suit and the subsequent suit must be shown to be between the same parties or parties claiming under the same title or must be between parties who have a right under the title of the original parties.
- (iv) That the previous suit must have been determined by a court of competent jurisdiction.

See the case of **Badugu Ginning Co. Limited vs CRDB Plc & Others, Civil Appeal No. 265 of 2019 (CAT-Mwanza)** (unreported) which had similar circumstances as this present case.

Now, applying the above principles to the present case can it be said, that the suit is res judicata?

I have gone through the copy of the Consent Judgment and the decree of the High Court in Land case No.19 of 2019 which was between the plaintiff herein against the 1st respondent and others. It is without doubt that it involved the same parties as in the present suit. The consent judgment arose from the plaintiff's claim as contained in the paragraph (a) of the Deed of Settlement that:

*"A declaration that the defendants' action and attempts to sell the properties on Plot No.43 Regent Estate, Msasani, Dar es Salaam held under CT No.186150/22 and on plot No.279 with CT No.1861/50/60 (**the suit property**) are purported ones invalid, wrongful and illegal"*

Similarly in the plaint in the present Land Case No.120 of 2021 at paragraph 4 it is stated:

"The plaintiffs claim in this suit against the defendants' is for declaration that the intended sale on 7th august 2021 of the plaintiff's property on plot No.43 Regent Estate Msasani Area comprises in certificate of title No.186/150/60 Land office No.2523 is unlawful and for permanent injunction restraining the 1st defendant and or its agents from selling or making any further attempt to dispose of the property aforesaid. The plaintiff further claims for general damages and costs."

It is clear therefore that the matter in Land Case No.19 of 2019 is directly and substantially the same with the matter in the instant case. In both cases, the plaintiff is seeking for the order of the court to declare that any sale or attempt to sell the suit property is illegal.

It is the principle of the law that a consent judgment is as valid as any other judgment of the court. Both parties to the present suit are not at issue that Land Case No.19 of 2019 was concluded by a Consent Judgment following the parties' agreement through a Deed of Settlement. Simply stated, the Consent Judgment remains as the final and conclusive decision on the suit property between the parties.

On the issue of parties, as stated above, the parties in Land Case No.19 of 2019 were JUNACO (T) LTD against EQUITY BANK (T) LTD and Others. Likewise, parties in this present case are JUNACO (T) LTD against EQUITY BANK (T) LTD and Another. It is therefore without doubt that the parties are the same.

Lastly it is on record that Land case No.19 of 2019 was tried and concluded by The High Court of Tanzania (Dar es Salaam Registry). Its competence is obvious and undisputed. It is fully vested with jurisdiction over the land cases. And this on my view accomplish the fourth requirement that the previous suit was determined by a court of competent jurisdiction.

From the foregoing this present case, namely, Land Case No.120 of 2021 is res judicata to the Land Case No.19 of 2019. The present suit is therefore improperly before this Court (see **Badugu Ginning Co. Limited** (supra).

Having established that the suit is res judicata, it would not be necessary to dwell with delivery of the ruling on the other preliminary objections raised the issue of res judicata has disposed of the whole case. In the result this suit is hereby dismissed with costs.

It is so ordered.


V.L. MAKANI
JUDGE
14/02/2022



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

MISC. LAND APPLICATION NO. 384 OF 2021

JUNACO (T) LIMITED.....APPLICANT

VERSUS

**EQUITY BANK (TANZANIA) LIMITED
COPS AUCTION MART &.....1ST RESPONDENT
COURT BROKERS LIMITED.....2ND RESPONDENT**

14/02/2022

Coram: Hon. V. L. Makani, J.

For Applicant- Ms. Shiza Ahmed, Adv. h/b of Mr. Byamungu, Adv.

For 1st Respondent- }

For 2nd Respondent- } Ms. Christabla Madembwe, Adv.

RMA. Mseke

Court:

This application was pending the decision of the preliminary objections raised in the main suit. And since the preliminary objections have been sustained (Ruling dated 14/02/2022) this application has no legs to stand on. I order as follows:

ORDER:

The application is dismissed with costs.

V. L. Makani
**V. L. MAKANI
JUDGE
14/02/2022**

