

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

**LAND APPEAL NO. 125 OF 2021**

(Arising from the decision of Kinondoni Land & Housing Tribunal at Mwananyamala  
in Land Application No. 526 of 2019)

**TATU ABDALLAH.....APPELLANT**

**VERSUS**

**NYASSO KASANGA.....RESPONDENT**

Date of Last Order: 01.07.2022  
Date of Ruling: 30.08.2022

**JUDGMENT**

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

This is an appeal by TATU ABDALLAH. She is appealing against the decision of Kinondoni Land and Housing Tribunal at Mwananyamala (the **Tribunal**) in Land Application No. 526 of 2019 (Hon. S.H. Wambili).

The appellant was not satisfied with the decision of the Tribunal hence this appeal with the following grounds:

- 1. That the trial honourable Chairperson erred in law and fact for ruling that the Land Application No. 526 of 2019 is Res Judicata to Land Case No. 29 of 2016 before Kimara Ward Tribunal while the parties were different.*

2. *That the trial honourable Chairperson erred in law and fact for failure to take into cognizance that, the same Tribunal had earlier entertained the Land Appeal No. 78 of 2016 emanated from Land Case No. 29 of 2016 and during its decision directed that, the case was supposed to be instituted against the Appellant and not her husband.*

The appeal proceeded by way of written submissions. The respondent did not file his submissions despite that his advocate was present when the order to file the submissions was made. As no submissions were filed and there was no information whatsoever, the court confined itself to the submissions by the appellant as failure to file submissions as ordered by the court is tantamount to failure to appear in court on the date of hearing and I hold as such. See the case of **Godfrey Kimbe vs. Peter Ngonyani, Civil Appeal No.41 of 2014 (CAT-DSM)** the Court observed:

*"The applicant did not file submission on due date as ordered. Naturally, the Court could not be made impotent by a party's inaction. It had to act...it is trite law that failure to file submission(s) is tantamount to failure to prosecute one's case."*

The submissions by the appellant were drawn gratis by Glory Sandewa, Advocate of Legal Aid, Tanzania Women Lawyers' Association (**TAWLA**) and filed by the appellant herself. Ms. Sandewa

gave a brief background of the matter that the appellant is owner of the land which she bought in 30/10/2007 to the tune of TZS 1,300,000/=. She said the appellant started to develop the suit land and built a house of two rooms. She found beacons in the said suit land and upon making enquiries she discovered that those beacons were erected by the respondent herein. She said upon the appellant confronting the respondent he said the said beacons were wrongly erected, but the said respondent later denied this fact. Ms. Sandewa said the appellant reported the matter to the local authority at Mavurunza who decided in favour of the appellant but later the respondent sued the appellant's husband in Kimara Ward Tribunal in Land Case No. 29 of 2016 and the Ward Tribunal decided in favour of the respondent. The appellant's husband appealed to the Tribunal in Land Appeal No. 78 of 2016 and he lost on the ground that he was not the owner of the suit land. She said the appellant then decided to file Land Application No. 526 of 2021 but her case was dismissed on account of being *res judicata* for involving the same cause of action as in Land Case No. 29 of 2016.

In arguing the first ground of appeal Ms. Sandewa said that the Chairman erred in law and fact to rule that the matter at the Tribunal

was *res judicata*. She said that the Land Application No. 526 of 2021 and land Case No. 29 of 2016 did not fit the principle in section 9 of the Civil Procedure Code CAP 33 RE 2019 governing *res judicata*. She said despite similar issues and subject matter, the applicant was neither a party nor a witness in the previous cases. In the previous cases the parties were Yahaya Ally and Nyaso Kassanga and in the latter matter it was Tatu Abdallah and Nyasso Kasanga.

As for the second ground Ms. Sandewa said the court should take cognizance that the same Tribunal had earlier entertained Land Appeal No. 78 of 2016 emanating from Land Case 29 of 2016 and during its decision directed that the case was supposed to be instituted by the appellant and not the husband who did not have *locus standi*. She said both the Ward and District Tribunal said Yahya Ally was not the one who signed the Sale Agreement but the appellant who they declared had a cause of action. She concluded that the Tribunals erred in declaring the matter to be *res judicata* and prayed for the appeal to be allowed and the decision and orders of the Tribunal in Land Application No. 526 of 2019 be quashed and set aside.

I have gone through the submissions by the learned Counsel Ms. Sandewa on behalf of the appellant, and the main issue is whether this appeal is meritorious.

The Land Application No. 526 of 2019 filed by the appellant was dismissed for being *res judicata* in that it involved the same subject matter as was in Land Appeal No. 78 of 2016 by the same Tribunal. The main claim by the appellant is that the suit cannot be *res judicata* because the parties are different and secondly that the Tribunal had said that the appellant therein Yahaya Ally had no *locus standi* so the Tribunal directed the appellant herein to file the appeal and not the husband.

*Res judicata* is governed by Section 9 of the Civil Procedure Code CAP 33 RE 2019 which 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 on which such issue has been subsequently raised and has been heard and finally decided by such court."*

The rationale behind the doctrine of *res judicata* is to ensure finality

in litigation (see **Gerard Chuchuba vs. Rector, Itaga Seminary [2002] TLR 213**).

The records show that the parties in Land Application No. 78 of 2016 in Land Application No. 526 of 2019 (the subject of the appeal) are different. That is, Yahaya Ally vs. Nyasso Kasanga and Tatu Abdallah vs. Nyasso Kasanga respectively. However, it is not in dispute that the subject matter is the same as it relates to the boundaries and land in Mavurunza, Kimara. The matter was adjudicated and conclusively determined by the Ward Tribunal in Land Case No. 28 of 2016 and the District Tribunal in Land Appeal No. 78 of 2016. I agree with the Chairperson of the Tribunal that the matter was caught in the net of *res judicata*, and according to the case of **Umoja Garage vs. NBC Limited, Civil Appeal No. 63 of 2003 (CAT)** (unreported) "*res judicata is not confined to same parties but it covers the same subject matter of the proceedings.*" In the cited case the Court of Appeal was referring to Explanation IV of the CPC and quoted the **Commentaries of Mulla in Indian Code of the Civil Procedure**. As pointed out above, the subject matter is the same in all the cases, so in my considered view *res judicata* was apparent as such the Chairman was correct in his decision.

In her submissions Ms. Sandewa further said in its decision the District Tribunal in Land Appeal No. 78 of 2016 directed that the case be instituted by the appellant and not the husband who did not have *locus standi*. But I have gone through the decision, the Chairman only said the husband had no *locus standi* he did not give any directions of what to be done. In my considered view, the assumptions by Counsel are misdirected.

In the result, I find no fault in the decision of the Tribunal. The appeal is therefore dismissed for want of merit. There is no order as to costs considering that the matter is under Legal Aid of TAWLA.

It is so ordered.



  
**V.L. MAKANI**  
**JUDGE**  
**30/08/2022**