

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

**LAND REVISION NO. 24 OF 2022
(Arising from the Land Application No. 153 of 2020 of Temeke District Land
and Housing Tribunal)**

SIMON M. MEREREAPPLICANT

VERSUS

BERTHOLD NKALIAMUNU1ST RESPONDENT

HUSSEIN R. RUHEBA2ND RESPONDENT

KABANGO GENERAL BUSINESS LTD

TRIBUNAL BROKER.....3RD RESPONDENT

R U L I N G

Date of last Order:26/09/2022

Date of Ruling:04/10/2022

K. D. MHINA, J.

By a chamber summons filed under Section 43(1)(b) of the Land Disputes Courts Act, Cap. 216 [R. E. 2019] (the LDCA), the Applicant Simon Merere is mobbing this Court to revise the decision of the District Land and Housing Tribunal (DHLT) for Temeke in Land Application No. 153 of 2020.

The Applicant's Affidavit supports the Application, and the grounds expounded in the Affidavit to support the Application are contained in paragraph 8 as follows: -

- i. The trial Tribunal erred in Law to sustain the Preliminary Objection on the ground that the case was res-judicata while the Applicant was not a part in the case at the Ward Tribunal;**
- ii. The trial Tribunal erred in Law to sustain the Preliminary Objection on the ground that the case was res-judicata while the subject matter was not the same.**

A brief background of this Application is necessary to understand better what triggered the filing of this Application.

In Case No. 18 of 2016 at Buza Ward Tribunal, the second respondent sued the first respondent over a parcel of land he purchased on 08/11/2009. The purchase price was Tshs. 2,000,000/=. The dispute at the Ward Tribunal was the failure of the first Respondent to hand over that parcel of land to the second Respondent.

On 31/05/2016, the Ward Tribunal declared the second respondent as the lawful owner of that parcel of land. It further ordered the first respondent to hand over the land to the 2nd Respondent within ten (10 days).

In pursuit of the execution of the decision of the Ward Tribunal, the second respondent approached the District Land and Housing Tribunal for Temeke.

On 06/12/2019, the DLHT issued an eviction and demolition order. The order appointed the 3rd Respondent to evict the 1st Respondent from the disputed land and demolish the building constructed on the disputed land. On 11/05/2020, the third respondent successfully executed the order.

On 17/07/2020, the applicant filed Land Application No. 153 of 2020 at the DLHT for Temeke. In that application, the applicant sued the same three respondents as in this application and sought for the following reliefs:

- i. To declare the Applicant as the lawful owner of the disputed land;**
- ii. That, if this Honorable Tribunal decided in favour of the 2nd Respondent, let the 1st Respondent refund the purchasing amount of the Applicant with interest from the date of demolition;**
- iii. The Respondents be ordered to compensate the Applicant amount of Tsh. 36,000,000/= for specific damages following the money which was lost during the demolition;**
- iv.**
- v.**
- vi.**
- vii.**
- viii.**

The second Respondent raised the Preliminary Objection that the matter was res-judicata because it was already decided by the Buza Ward Tribunal, which declared him as the lawful owner of the suit land.

In its decision dated 19/11/2021, the DLHT dismissed the Application for being res-judicata.

At the hearing of this application, the Applicant was represented by Ms. Martha M. Mohamed, Advocate, while the first and second Respondent appeared in person, unrepresented. The third Respondent was absent, and the Application proceeded in his absence because on 19/09/2022, when the Application was scheduled for hearing, he was present. Therefore, he was aware of the date of the hearing.

In her submission, Ms. Mohamed argued that the Tribunal erred when it sustained the preliminary objection raised by the 2nd respondent and held that the matter before it was a res-judicata while the applicant was not a party to the case at the Ward Tribunal.

She further argued that, before the Ward Tribunal, the parties were the first and second Respondents. The proceedings at the Ward Tribunal commenced in 2016, while the applicant purchased the disputed land in 2010.

Therefore, she argued that the matter was not res-judicata because of the import of Section 9 of the CPC and because parties before the Ward Tribunal were not the same as parties at DLHT.

On the second ground, Ms. Mohamed argued that the subject matter, i.e., the land in dispute, was not the same. The land at the DLHT differs from the land at the Ward Tribunal. She said that in the Ward Tribunal's decision, as reflected at page 12, the second Respondent's claim was the portion of land, i.e., a garden within the first respondent's land.

Therefore, the parcel of land owned by the Applicant differed from the parcel of land owned by the second respondent.

In response, the first respondent submitted that the portion of land claimed by the second respondent differed from the land owned by the Applicant, where his house was demolished.

On his part, the second Respondent submitted that the plot in dispute was the same. He further argued that at the Ward Tribunal, witnesses testified that the Plot was the same and he was the one who purchased it. Therefore, he was the lawful owner.

When given her right to rejoin, Ms. Mohamed informed the Court that she had nothing to rejoin.

I now turn to the issue raised on the ground of the Application. But for convenience, I find it necessary to reproduce the provision of section 9 of the CPC, which is relevant in analyzing the principle of res-judicata. The section reads;

"No court shall try any suit for an issue which the matter 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 in which such issue has been subsequently raised and has been heard and finally divided by such Court."

Looking at the provision of law, it is quite clear that its object is to bar multiplicity of suits and makes conclusive final Judgment between the same parties or their privies on the same issue by the Court of competent jurisdiction in the subject matter of the suit.

The court of Appeal of Tanzania in **Peniel Lotta vs. Gabriel Tanaki and Others [2003] TLR 312** explained the applicability of Section 9 of the

CPC; it pointed out five conditions, which, when co-exist, will bar a subsequent suit. The condition. The conditions are:-

- i. The matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit;*
- ii. The former suit must have been between the **same parties or privies** claiming under them;*
- iii. The parties must have litigated under the **same title** in the former suit;*
- iv. The Court which decided the former suit must have been competent to try the subsequent suit.*
- v. The **matter in issue** must have been **heard and finally decided** in the former suit [**Emphasis added**]*

In the present application, the Applicant alleged that the matter at the tribunal was not res-judicata based on the following;

The subject matter, i.e., the land in dispute, differs from the Land Case at the ward tribunal and the Land Application at the District Land and Housing Tribunal.

The parties in the two suits also differ as the Applicant was not a party to the land case at the ward tribunal.

Starting with the first allegation, I let the record speak for itself on what was the cause of actions constituting the claims and the relief sought in land Application No. 153 of 2020 at the DHLT for Temeke.

Cause of action

- i. That the Applicant is a lawful owner of the disputed land purchased from the first respondent on 17th February 2010 for Tshs. 2,000,000/=;*
- ii. That on 11th May 2020, while the Applicant was in his daily activities, he was shocked to be informed through a phone call by his neighbors that there were people who were demolishing his house.*
- iii. The Applicant took the initiative and efforts to report the matter before the Local Government Authority, where he was informed that they had received an execution order from the Tribunal arising from Misc. Land Application No. 208 of 2016 originating from Shauri No. 18 of 2016 of the Buza Ward, which was decided in favour of the second respondent.”*

Reliefs

- i. That this Honorable Tribunal declares the Applicant as the Lawfully owner of the disputed land;*

- ii. If this Honorable Tribunal decided in favour of the 2nd Respondent, let the 1st Respondent refund the purchasing amount of the Applicant with interest from the date of demolition;***
- iii. The Respondents be ordered to compensate the Applicant amount of Tsh. 36,000,000/= for specific damages following the money which was lost during the demolition;***

From the above extract, it is clear that the applicant in land application No. 153 of 2020 at the DLHT for Temeke was claiming the same disputed land, which was declared to be owned by the 2nd Respondent by the Ward Tribunal for Buza.

The simple question is why the applicant filed a Land Application No. 153 of 2020 at the DLHT claiming the same piece of land for which the second respondent was declared the lawful owner by the Ward Tribunal Buza if the land were not the same.

Further, in the reliefs he sought, he prayed for the tribunal to declare him as a lawful owner or, if the tribunal found the second respondent as the lawful owner, to order the first respondent to refund him the money he paid when purchasing the plot.

The answer is quite clear from the above: the land in dispute at the DLHT for Temeke and the ward Tribunal for Buza is the same.

In this first issue, I hold the argument by Ms. Mohamed that the subject matter in Land Application No. 153 of 2020 at DLHT for Temeke differs from the subject matter in Case No. 18 of 2016 at the Ward Tribunal for Buza was misleading.

The second issue was whether the parties were the same in both suits. I have the following observation; the record indicates that Simon Merere, the Applicant at the DLHT for Temeke, was not a party or involved in the previous suit at the Ward Tribunal. The facts of the case at the Ward Tribunal, as alluded to earlier, indicated that the second respondent purchased the plot in dispute in 2009, and the Ward Tribunal declared him a lawful owner on 21/05/2016

On the other hand, the applicant alleged that he purchased the land in dispute in 2010 and lodged his application at the DLHT in 2020. The 1st Respondent was the one who sold the plot to both the applicant and the 2nd respondent.

Therefore, since it was the first respondent who sold the land in dispute in 2009 to the second respondent, and later he passed the ownership by selling again to the Applicant, in my opinion, they share a common interest in that land in dispute, and hence they are privies.

In **Bandugu Ginning Co. Ltd vs. CRDB Bank and 2 Others**, Civil Appeal No. 265 of 2019 (Tanzlii), the Court of Appeal, when elaborating the privy relationship, it, held that; At page 23;

"Regarding the second condition that the former and subsequent suits parties litigating must have been the same or privies claiming under them; the Black's Land Dictionary 8th Edition 2004, at page 3798 defines the term privy to mean:-

"A person having legal interest of privity in any action matter or property; a person who is in privity with another."

At page 25, it further held that:

"In Mulla (Supra), at page 77, circumstances under which a person becomes privy are clearly underscored as follows:-

*To make a person privy he must have **acquired an interest** in the subject matter of action by **inheritance, succession or purchase** subsequently to the action."*

In our application at hand, and as I indicated earlier, the disputed land was a subject matter at the Ward Tribunal (former suit). The first respondent sold it to the second respondent. Since the Applicant was a purchaser of that disputed land, he has an interest in the subject matter and is, therefore, privy.

Therefore, although the Applicant was not a party to the original case at the ward Tribunal, the subject matter in the two suits is the same, and the parties are privies litigating under the same title.

In conclusion, it should be noted that the decision of the Ward Tribunal for Buza was never appealed. Therefore, the decision is still valid.

Having narrated as above, I hold that the Land Application No. 153 of 2020 at the District Land and Housing Tribunal was a res-judicata, and the Tribunal was right to so hold.

Consequently, this application for revision is unmerited. I dismiss it with costs.

It is so ordered.



K. D. MHINA

JUDGE

04/10/2022