

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REVISION NO. 58 OF 2021**

(Originating from the decision of the District Land and Housing Tribunal for Kinondoni District at Mwananyamala in Land Application No. 29 of 2014 dated 29.8.2016)

**AJENE DONATILA RUAMBO.....APPLICANT**

**VERSUS**

**EVANS BENSON.....1<sup>ST</sup> RESPONDENT**

**RAMADHANI ABDALLAH MDULU.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

*Date of last Order: 27 September 2022*

*Date of Ruling: 4 November 2022*

**K. D. MHINA, J.**

This Application is brought under the chamber summons made under Section 43 (1) (b) of the Land Disputes Courts Act, Cap 216 [RE 2019] (“the LDCA”).

The orders being prayed are for this Court to;

- (i) Call for the proceedings of the District land Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 29 of 2014 dated 29 august 2016 to revise the same and ordered re-trial of the case involving the applicant as a party
- (ii) Costs of the application.
- (iii) Any other relief (s) the Court may deem fit and just to grant.

The application is supported by the affidavit disposed of by Ajene Donatila Ruambo, the applicant.

The first respondent confronted the application with two grounds of preliminary objection to thus;

- (i) The application for revision is res-judicata
- (ii) The application for revision is pure abuse of the Court process.

The preliminary objection was argued by way of oral submissions. The applicant was represented by Mr. Francis Mgare, a learned advocate, while the first respondent by, Mr. Frank Mtuta, also a learned advocate. On behalf of the second respondent appeared Ms. Tuli Danford Mwakasisi, who holds a special power of Attorney.

At the hearing, Mr. Mtuta, in support of the application, briefly gave his side of the background of the matter by submitting that the applicant in this application, in the year 2010, filed a Land Case no. 22 of 2010 against the first and second respondents. The dispute was about the ownership of plot no 347, block 46, located at Kijitonyama area. That land case was dismissed on 28 July, 20217 for the reason that it was a re-judicata due to the already previous matter, i.e., Land Application No 29 of 2014 at the District Land and Housing Tribunal for Kinondoni, which was decided on 29 August 2016, in favour of the first respondent.

He further informed this Court that the applicant had filed this application seeking to revise Land Application No 29 of 2014.

Therefore, he submitted that the matter was already decided in land Case No. 22 of 2010 by this Court.

In connection with the first limb of the preliminary objection, Mr. Mtuta submitted that there was no dispute that the applicant was the one who filed Land case No. 22 of 2010, the matter which was decided into its finality on 28 June 2017. Therefore, this application is contrary to section 9 of the Civil Procedure Code.

To substantiate his submission, he cited **Salum Said Matunda Vs. Eco Bank (T) Limited and Another**, Civil Case No. 148 of 2015 (HC-DSM) at page 2, where it was held that;

*"The doctrine of res-judicata was recognized much earlier....*

*rests on the principle that one should not be vexed twice for the same cause and that there should be finality of litigation"*

He concluded by submitting that this application is a res-judicata.

On the second limb of preliminary objection, Mr. Mtuta submitted that because Land Application No. 29 of 2014 was already held res judicata in Land Case No. 22 of 2010, bringing the current application was an abuse of the Court process. He substantiated his agreement by citing **Tourism Promotion Service (T) Limited Vs. Gabriel Stephen and Another**, Misc. Civil Appeal No. 3 of 2013 (HC Arusha).

He concluded by submitting that an act of the applicant to lodge this application while it was already decided in Land Case No. 22 of 2010 amounts to an abuse of the Court Process.

In reply, Mr. Mgare started with his side of the factual background of the matter by submitting that it was true that the applicant lodged Land Case No. 22 of 2010, and it was between the applicant against the second respondent and another person by the name of Agnes Kituta. Later the first respondent joined in that suit as the third defendant, and after that, he filed the written statement of defence.

When the case was pending before this Court, the first respondent quietly filed the Land Application No. 29 of 2014 at the DLHT for Kinondoni against the second respondent. When the hearing of Land Case No. 22 of 2010 was about to commence in 2017, the applicant was served with an additional list of documents to be relied upon. One of the documents was the decision of the DLHT for Kinondoni.

After that, the counsel for the first respondent raised a preliminary objection that the subject matter in Land Case No. 22 of 2010 was already decided in Land Application No. 29 of 2014 by the DLHT. Then this Court held that Land Case No 22 of 2010 was res-judicata.

After that, the applicant decided to file this application for revision against Land application No. 29 of 2014.

On the first limb of preliminary objection, he submitted that Section 9 of the CPC stipulates what Res-judicata is, and briefly, he mentioned two conditions under section 9;

One, the subject matter must be the same.

Two, a case must be decided on merits, directly and substantially determined.

He further submitted that the subject matter in Land Case no. 22 of 2010 was on declaratory orders while the subject matter in this application is revision. Therefore, the claims are not the same.

Further, he submitted that parties in the Land Case No. 22 of 2010 were the applicant against the respondents jointly with one Agnes Kituta. In Land Application No 29 of 2014, the parties were the first respondent against the second respondent.

Therefore, the parties were not the same.

He submitted that Land Case No. 22 of 2010 was not on merit, therefore, it was not substantially determined.

In conclusion, he submitted that the cited case of **Matunda** (Supra) was irrelevant and distinguishable because the material facts differ from the application at hand.

On the second limb of the objection, he replied that the application was filed properly before this Court because the subject matter and parties in Land Application No. 29 of 2014 were not the same as in this matter.

In his further submission, he cited **Blue Star Service Station Vs. Jackson Museti t/a Museti Enterprises (1999) TLR 82**, where it was held that;

*"When the application is dismissed on merits, it will be abuse if the same application will be filed again in the same Court."*

He concluded by distinguishing the cited case of the **Tourism Promotion** (Supra) that its material facts are not the same as the facts of the application.

On her part, the second respondent, Ms. Tuli Mwakasisi, did not have anything to say.

In rejoinder, Mr. Mtuta reiterated what he submitted in his submission in chief. Briefly, he insisted that Land Case No. 10 of 2010 is re-judicata to this application and the proper way was for the applicant to appeal against that decision of the Court. Therefore, filing this application is an abuse of the Court process.

Having heard the submissions from both parties, I now turn to determine preliminary objections by starting with the first limb.

The entry point is section 9 of the CPC, which is relevant in analyzing the principle of Res-judicata. For convenience, it is necessary to reproduce the said section. It 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 are or 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 decided by such court. **(Emphasis provided)***

By looking at the cited provision of law, it is quite clear that the objective of the principle of res-judicata is to bar multiplicity of suits and



makes conclusive final judgment between the same parties 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 Tanali and others** [2003] TLR explained the applicability of Section 9 of the CPC; it pointed five conditions, which, when co-exist, will bar a subsequent suit. 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 and*
- (v) *The matter in issues must have been heard and finally decided in the former suit*

In the present application, the parties contest whether or not this application for revision is res-judicata. The issue which triggered the contest is whether the decision of this Court in Land Case No. 22 of 2020 bars this application.

Canvassing through the records, what I gather regarding the background of this application is as follows. Initially, the applicant lodged a land case in this Court, i.e., Land Case No. 22 of 2010, against the second respondent and another person by the name of Agnes Kituta.

In that suit, briefly, the applicant claimed to be declared a lawful owner after he purchased the suit premise from the second respondent.

The suit premise was the landed property in Plot No. 347, Block 46, Kijitonyama Area. The first respondent requested to be joined as a party in that case, and his prayer was granted on 11 April 2011, and he became the third defendant.

When the suit was still pending, the first respondent lodged an application at the District Land and Housing Tribunal for Kinondoni (Land Application No. 29 of 2014) against the second respondent.

He prayed to be declared as the lawful purchaser for value of the suit premises located at Plot No. 347 Block 46, Kijitonyama area, and a declaration that any subsequent sale of the suit premises after 4/2/2004 to another person inclusive be declared void ab initio.

On 29 August 2016, the DLHT decided the application in favor of the first respondent and declared that;

- (i) The first respondent was a lawful purchaser of the suit premise located at Plot No. 347, Block 46, Kijitonyama area.
- (ii) Any subsequent sale of the suit premise after 4 February 2004 to any other person was null and void ab initio.

At that time, Land Case No. 22 of 2010 before this Court was still pending.

When the hearing started in respect of Land Case No. 22 of 2010, the counsel for the first respondent raised an issue of res-judicata because of the decision of the DLHT for Kinondoni, which declared the first respondent as the lawful purchaser of the suit premise.

This Court's decision dated 28 July 2017 dismissed Land Case No 22 of 2010. It declared that the case was res judicata because the DLHT for Kinondoni in Land Application No. 29 of 2014 had conclusively determined the subject matter

The applicant was dissatisfied with what happened and decided to apply for revision before this Court (Land Revision No 19 of 2017). After hearing that application was struck out for being time-barred on 4 December 2018.

Undaunted, the applicant approached this court again with an application for an extension of time to file revision. That application was granted on 7 December 2021; therefore, the applicant filed this application.

Having prefaced the background, the question is whether this application is res-judicata because of Land Case No 22 of 2010. This issue is not complicated, therefore, should not detain me long.

As it appears, the applicant is seeking to revise the decision of the DLHT in Land Application No. 29 of 2014. The decision declared the first respondent as the lawful purchaser of the suit premise located in Plot No. 347 Block 46 Kijitonyama area.

The argument by Mr. Mtuta advocate was that the revision is res-judicata because of the decision of this Court in Land Case No.22 of 2010.

In my opinion, that argument by Mr. Mtuta is erroneous and misleading. As alluded to before, Land Case No. 22 of 2010 was res-judicata because there was already a decision by the DLHT on the same subject matter. Now the applicant is seeking to challenge that decision of the DLHT, i.e., Land Application No 29 of 2014.

Therefore, it cannot be said that this application seeking to challenge the decision of the DLHT in Land Application No. 29 of 2014 is res-judicata.

The records do not reveal if there was a previous matter, either appeal or revision, lodged to challenge the decision of the DLHT for Kinondoni in Land Application No. 29 of 2014.

This is an application for revision to challenge the lower tribunal's decision, not the new suit with the same subject matter already declared res-judicata in Land Case No 22 of 2010.

Therefore, the imports of section 9 of CPC and the conditions stipulated in **Peniel Lotta (supra)** do not apply in this application.

Given the foregoing position, I find no merit in the first limb of preliminary objection.

On the second limb of preliminary objection, since I hold that the application is not res-judicata, it sufficient to dispose of the second limb of objection.

Therefore, I do not find it useful to address the aspect of abuse of the Court process in filing this application. This is because by holding that the application for revision is not res- judicata, there is no abuse of the Court process by filing the same.

Consequently, I dismiss the two limbs of the preliminary objection raised by the first respondent with costs and order the application to be heard on merits.



  
**K. D. MHINA**  
**JUDGE**  
**4/11/2022**