

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

LAND CASE NO. 214 OF 2022

TUMAINI TWEVE..... PLAINTIFF

VERSUS

VENERANDA CHOCHO BACHUNYA.....1ST DEFENDANT

TITO ONIA NGAJILO2ND DEFENDANT

R U L I N G

Date of last Order:17/10/2022

Date of Ruling: 20/10/2022

T. N. MWENEGOHA, J.

This ruling originated from the preliminary objection raised by Godwin Mussa Mwapongo, Advocate upon filing written statement of defence for the first defendant, the said objections are;

- i. That the suit is bad in law for non-existing of the other remedies**
- ii. That the suit is an abuse of the court process as the plaintiff had filed in this court another land case No. 155 of 2016 and Misc. Land Application No. 406 of 2016 on the same cause of action.**

On 12.9.2022 Jerry Msamanga Advocate who appeared for Plaintiff prayed that this application be heard by way of written submission. The proposition that was not objected by the other side, I granted the prayer and parties filed their submission as scheduled.

In my determination I will begin with the second objection, and then I will proceed with the second one.

In his submission Mr. Mwapongo contended that the plaintiff had filed land case No.155 of 2016 and Misc. Land Application No. 406 of 2016. However, the plaintiff withdrew her claim and the second defendant started to repay the amount claimed but later on he defaulted. The first defendant instituted Execution No.74 of 2021 for recovery of unpaid amount.

The plaintiff again filed Land Application No. 58 of 2022 and Maombi madogo Na. 156 of 2022 in Kinondoni District Land and Housing Tribunal which were struck out. He added that again the Plaintiff filed this case along with Misc. Land Application No. 500 of 2022 which was struck out on 12/09/2022.

He argued further that the fact that plaintiff having filed land case No.155 of 2016 and Misc. Land Application No. 406 of 2016 cannot come again before this Court with another matter on the same ground. He insisted that the plaintiff's action is an abuse of court process and prayed that the suit be dismissed with cost for that reason.

In reply Jerry Kassian Msamanga Advocate for the plaintiff argued that this objection requires the Court to go through the pleadings in Land Case No. 155 of 2016 and Misc. Land Application No. 406 of 2016 and the status of the cases.

He also added that those two cases do not exist. He contended that the counsel ought to have informed this Court the verdict of those cases before alleging that filing of the present case is an abuse of court process.

On the other hand, he acknowledged on the existence of those two cases i.e Land Case No. 155 of 2016 and Misc. Land Application No. 406 of 2016 but to him they were not determined on merit. He prayed this objection be overruled with costs.

Having gone through the argument of both parties the question to be determine is whether the filing of this suit is an abuse of court process.

From submission of both counsels, it is clear that there were two cases filed by the plaintiff in this case that is Land Case No.155 of 2016 and Misc. Land Application No. 406 of 2016. I took judicial notice to go through Misc. Land Application No. 406 of 2016 it is evidenced that the applicant thereon was the plaintiff in this case and the respondents are the defendant in this suit. In that application on the proceedings dated 4/7/2016 before Mugaya, J. the Applicant stated that:-

"I have agreed to withdraw the Application No. 406 of 2016 and the main suit No.155 of 2016 and the same be marked set withdraw subject to the above terms".

One of the conditions that was presented before the Court was that the applicant and the first respondent shall jointly pay the second respondent the outstanding amount without fail. Those conditions were reduced in a Court Decree.

From what is stated above the act of the plaintiff to file the current suit while she withdrew her previous suit is an abuse of court process and it cannot be overlooked.

Moreover, I am in disagreement with the defence raised by Mr. Msamanga that this objection attract evidence. This is for the simple reason that those two cases has been pleaded in first defendant's Written Statement of Defence in paragraph 5 and I have taken judicial note and went through those cases so as to satisfy myself on the competent of this suit.

I therefore find this objection to have merit and I find no need to labour much on the first objection since the second one has the effect of dismissing the entire suit.

The suit is dismissed with cost.

It is so Ordered.




T.N. MWENEGOHA
JUDGE
20/10/2022