

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

**LAND REVISION NO. 17 OF 2022**  
*(Arising from Land Case No. 369 of 2015)*

**TUMBO GEORGE KIMERY .....APPLICANT**

**VERSUS**

**MOSES MALAKI SEWANDO.....1<sup>ST</sup> RESPONDENT**

**EDITH ADOLPH.....2<sup>ND</sup> RESPONDENT**

**MUSSA MWINYI .....3<sup>RD</sup> RESPONDENT**

**SHOMARI RAMADHAN .....4<sup>TH</sup> RESPONDENT**

**R U L I N G**

*Date of last Order:*

*Date of Ruling:13/10/2022*

**T. N. MWENEGOHA, J.**

This ruling arises from the preliminary objection raised by the advocate of the 1<sup>st</sup> respondent that

- i. This application is subjudice with land application NO.253/2022 at the District Land and Housing Tribunal at Ilala.**
- ii. This Application is abuse of court process.**

In determining these two objections I will begin with the second objection to ascertain if it has merits or not, then I will proceed with the other point of preliminary objection.

In support of the preliminary objection, advocate Florence Ernest representing the 1<sup>st</sup> respondent submitted that the applicant is misusing her rights to be heard and to present her suit in Court. That on 5<sup>th</sup> October 2021 the applicant filed his application at District and Housing Land Tribunal for Ilala and seven months later the applicant filed the present application whereby in both matters the parties and the suit land are the same. She argued that the applicant is forum shopping which is contrary to Court procedures. She cited different authorities to backup her argument and prayed that this suit to be dismissed with costs.

In reply Advocate Andrew Kasaizi representing the applicant contested to the objection raised for three main reasons. That the objection has no leg to stand as there was no law that has been cited. That the objection requires proof of the application alleged to be filed, also that there is no Revision filed anywhere. He therefore prayed this objection be dismissed with cost and his application be held on merits.

Now the issue before me is whether the objection raised has merit or not, and in determining that I will have to answer whether this application is an abuse of court process.

The applicant argued that this application requires proof to prove that the said application at the tribunal exist. This Court takes judicial notice on the attachment attached at the counter affidavit of the 1<sup>st</sup> respondent and the fact that they were not contested.

Going through the arguments of both counsel I have to say I am convinced with second objection raised for the reason that there is application No. 253 of 2021 at the Tribunal where the parties, the subject matter and the intended reliefs are all the same with the current application. Indeed, that is an abuse of court process. If there are two matters at different jurisdictions and the parties are the same, the proper way is for the parties to proceed with one matter only. Having two matters at the same time as the case at hand is as good as riding two horses in a similar course but in distinct jurisdictions as held on a case of **The Registered Trustees of Kanisa la Pentecoste Mbeya vs. Lamson Sikazwe and others**, Civil Appeal No.2010 of 2020.

I have noted Mr. Kasaizi argued that the Counsel did not cite provisions of law to justify her objection, thus he has been taken by surprised. In my opinion this point is baseless.

Having said that I find this preliminary objection has merits. I therefore do not see any necessity in laboring on the remaining objection.

The suit is hereby struck out with cost.

Order accordingly.



  
**T. N. MWENEGOHA**

**JUDGE**

**13/10/2022**