

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

**LAND APPEAL NO. 37 OF 2020**

*(From the Ruling of the District Land and Housing Tribunal of Kinondoni District at Mwananyamala in Land Application No.397 of 2018, dated 24<sup>th</sup> August, 2018)*

**DEOGRATIAS ROY MITALA.....APPELLANT  
VERSUS**

**JUMA MGENDWA.....1<sup>ST</sup> RESPONDENT  
JUSTINA NGALA.....2<sup>ND</sup> RESPONDENT**

**J U D G M E N T**

*Date of Last Order: 26.05.2022*

*Date of Judgment: 31. 05.2022*

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

The appellants are aggrieved by the decision of the Kinondoni District Land and Housing Tribunal, hereinafter called the trial tribunal, vide Land Application No. 516 of 2017 and has lodged his appeal based on the following grounds; -

- 1. That, the trial tribunal erred in law and fact for holding that the case was res judicata.**
- 2. That, the trial tribunal erred in law and fact for failure to take into consideration that Shauri No. 11 of 2014 before Sinza Ward tribunal was withdrawn by the appellants and was never decided on merit.**

- 3. That, the trial Chairperson erred in fact for by saying that the parties entered into a consent judgment before the Sinza Ward Tribunal.**
- 4. That, the trial Chairman erred in law by failure to properly evaluate the whole evidence of the appelland and apply the law properly.**
- 5. That, the trial Chairperson erred in law by failure to properly evaluate the whole evidence of the applicant and apply the law properly.**
- 6. That, the trial tribunal erred in law and fact by ordering that the case is res judicata.**

The appeal was by way of written submissions. The appellant was represented by Advocate Salha Ramadhani Hamis, while the respondents enjoyed the legal services of Advocate Mwinyimvua.

In her submissions for the appeal, the appellant's counsel consolidated grounds the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> grounds and argued them together. She insisted that, the matter before the trial tribunal was not a res judicata case. That, the said case has never been heard by any court of competent authority. What the appelland did before the Ward Tribunal of Sinza was to withdraw the case he instituted before it.

It came after learning from his lawyer that, the said Tribunal lacks the jurisdiction to entertain his claim. That, the value of the land in question to be above the pecuniary jurisdiction of the Sinza Ward Tribunal. Therefore, the Ward Tribunal of Sinza was not supposed to try the matter as they did without giving the appelland his right to be heard.

The appellant submitted that the judgment delivered by the Ward Tribunal of Sinza on the 8<sup>th</sup> of August, 2014 was made without affording the appellant the right to be heard. The counsel for the appellant cited section 9 of the Civil Procedure Code, Cap 33 R. E. 2019 and the case of **Gerald Chuchuba vs. Rector, Itaga Seminary (2002) TLR**, where the conditions for res judicata have been provided.

On the 4<sup>th</sup> and 5<sup>th</sup> ground, it was argued that, the Trial Tribunal failed to evaluate properly the evidence before deciding the case before it. That, the Ward Tribunal was not a competent authority to try the matter and above all it was not properly constituted when it gave its decision. This is contrary to the decision of Court in **Nuru Kassim Swai vs. Rashid Nuru Mbata, Misc. Land Appeal No. 9 of 2019, High Court of Tanzania (unreported)**.

In reply, the counsel for the respondents maintained on the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> grounds that, the trial tribunal was correct to hold that the case before its res judicata. He relied on Section 13 (1) of the Land Dispute Courts Act, Cap 216 R. E. 2019 which has emphasized that, the primary function of the Ward Tribunal is to secure peace and harmony in the area to which it is established through mediation. That, the existence of a consent judgment made by Sinza Ward Tribunal vide Shauri Na. 11 of 2011, marked the end of the dispute between the parties. The appellant cannot reopen the said dispute as the law does not allow that. This has also been insisted by the Civil Procedure Code, Cap 33 R. E. 2019, under Section 10.

He argued that, the cases cited by the appellant's counsel in her submissions are distinguishable to the matter at hand. He went on to insist on the 5<sup>th</sup> and 6<sup>th</sup> grounds also are devoid of merits as the Trial Tribunal evaluated the whole evidence properly and arrived to a just conclusion.

In rejoinder, the appellant's counsel reiterated her submissions in chief.

I have gone through the submissions of parties as well as the records available from the Trial Tribunal. In this appeal, the source of contention is whether the case at the Trial Tribunal vide Land Application No. 516 of 2017, was a res judicata case as held by the District Land and Housing Tribunal, as contended in the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> grounds of appeal.

It has been strongly contended by the respondents that, there was a consent judgment made in respect of the suit property in 21<sup>st</sup> August, 2014. The same was in respect of Shauri Na. 11 of 2011, which involved the same parties who litigated over the same subject matter as the current case. The appellant on the other hand doesn't dispute the existence of the former case by Sinza Ward Tribunal. What he has instead through his learned counsel is the fact that, there was no consent judgment which was entered in respect of the said case. Rather, he withdrew the case after being told by his Advocate that, the same is before a Tribunal with no authority over the matter. Above all, the said consent judgment was made without giving him the opportunity to be heard.

I examined the said decision by the Ward Tribunal of Sinza and found that, the appellant expressed his consent by signing to the agreement between him and the respondents on the material date when the decision was entered.

The appellant has claimed not to be aware of the existence of a consent decision between him and the respondents and that if it exists, then the same was made *Suo Motto* by the Sinza Ward Tribunal, without hearing his part of the story.

However, I note that the said consent agreement has not been contested against. Hence it still stands.

I am therefore forced to align with the findings of the Trial Tribunal that this matter is res judicata owing to the decision made by Sinza Ward Tribunal on the 21<sup>st</sup> August 2014, in Shauri Na. 11 of 2011.

As there is uncontested consent Judgment then the Appellant is estopped in law from denying its existence. The law of Evidence Act, Cap 6 R. E. 2002, under section 123 states that:-

*"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or his representative shall be allowed, in any suit or proceedings between himself and that person or his representative, to deny the truth of that thing".*

The same rule was emphasized in the case of **East African Development Bank vs. Blueline Enterprises Ltd, Civil Appeal no. 110 of 2009, Court of Appeal of Tanzania at Dar Es Salaam (unreported)**, that.....

*"...estoppel, as we understand, is meant to preclude a party from contending the contrary of any precise point which having been distinctly put in issue, has been solemnly and with certainty determined against him".*

By signing into the agreement, the appellant made the respondents believe that the dispute is over, he can not return back to the doors of another court to seek the same reliefs over the same claim against the same persons involved in the former settlement.

Therefore, the rules of res judicata applies in this case, see section 9 of the Civil procedure Code, Cap 33 R. E. 2019. That being the case, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> grounds of appeal are devoid of merits. So are the 5<sup>th</sup> and 6<sup>th</sup> grounds which are based on the evaluation of evidence on part of the trial tribunal. If grounds have been affirmatively found that this case is res judicata, it means that the trial tribunal evaluated properly the whole evidence of the parties and arrived to the correct conclusion.

In the end, this appeal is dismissed with costs.

Right of Appeal explained.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**31/05/2022**