

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

**LAND APPEAL NO. 230 OF 2021**

(Arising from Ruling and Decree in Land Application No. 470 of 2020, Kinondoni  
District Land and Housing Tribunal at Mwananyamala before Hon. Wambili)

**DASTAN ELIAS KIKWESHA ..... APPELLANT**

**VERSUS**

**ABDALLAH OMARY KUNJA ..... 1<sup>ST</sup> RESPONDENT**

**MOHAMED KINJULYA ..... 2<sup>ND</sup> RESPONDENT**

**SAID ALI UPUNDA ..... 3<sup>RD</sup> RESPONDENT**

**MUSA MATIGITI ..... 4<sup>TH</sup> RESPONDENT**

**JUMA RAMADHANI ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

*31/5/2022 & 14/6/2022*

**A. MSAFIRI, J**

The appellant Dastan Elias Kikwasha lodged Land Application No. 470 of 2020 before the District Land and Housing Tribunal for Kinondoni at Mwananyamala. The application was against the current five respondents namely Abdallah Omary Kunja – 1<sup>st</sup> respondent, Mohamed Kinjulya – 2<sup>nd</sup> respondent, Said Ali Upunda – 3<sup>rd</sup> respondent, Musa Matigiti – 4<sup>th</sup> respondent and Juma Ramadhani – 5<sup>th</sup> respondent. The appellant was claiming among other reliefs to be declared the lawful owner of a piece of land located at Mabwepande area, Kinondoni District, Dar e Salaam (herein as suit premises). *Alle*

While filing their Joint Written Statement of Defence, the respondents also jointly filed a Notice of preliminary objection on two points of law that; first, the application is res-judicata between the applicant and 5<sup>th</sup> respondent as the same subject matter was an issue of contest between them before Mabwepande Ward Tribunal in District No. 0104/2014. Second; the respondents claimed that the District Tribunal lacks jurisdiction to hear and determine the application as it is functus officio for the reason that the matter has already been determined by the same District Tribunal to its finality.

Having heard the preliminary objection which was argued through written submissions, the District Tribunal sustained the preliminary objection and dismissed the application with costs.

The appellant was aggrieved and he lodged the present appeal which is based on four grounds of appeal as follows;

1. The trial Tribunal erred in law and in fact by holding that Land Application No. 470/2020 is Res judicata for involving same parties contrary to the law and without any legal foundation.
2. That the trial Tribunal was grossly (sic) misdirected on the material facts of the case by holding that the said Application has been heard to its finality.
3. That the trial Tribunal erred in law and in fact by failure to hold that the parties involved in Land Application No. 470/2020 and shauri No. 104/2014 differs for their own (sic).
4. The trial Tribunal misdirected (sic) by entertaining matters of fact contrary to the law. *Adlle.*

The applicant prayed for this Court to allow the appeal and to hold that the matter was not res judicata as alleged.

On mutual consent of the parties and leave of the Court, the appeal was argued by way of written submissions. Appellant and the respondents appeared in person, unrepresented.

Having gone through the grounds of appeal and the written submissions by the parties, I have noted that all grounds of appeal are centered on the major issue of whether the Land Application No. 470 of 2020 before the District Tribunal was res judicata to Complaint No.0104 of 2014 before the Ward Tribunal.

In his submission, the appellant vehemently denied that Land Application No. 470 of 2020 is res judicata. He said that, the District Tribunal erred in law and fact by holding that the matter was res judicata going contrary to the provisions of Section 9 of the Civil Procedure Code, Cap 33 R.E 2019.(herein as CPC). The appellant submitted further that in complaint No. 0104/2014 before Mabwepande Ward Tribunal, parties were the appellant and 5<sup>th</sup> respondent only. The rest of the respondents were not parties, hence it was totally wrong for the trial Tribunal to hold that Land Application No. 470 of 2020 is res judicata while the parties were substantially not the same. He argued that, since the position (status) of the parties have changed, the question of res judicata cannot arise.

To buttress his argument, he cited several authorities among them the case of **Nyambanya Warati (Administrator of Estate of late Warati Nyambanya) vs. Charles Kirenge**, Land Appeal No. 39 of 2020. *Alls*

The respondents jointly replied by submitting briefly that this matter is res judicata and functus officio as correctly held by the District Tribunal as the same land dispute over a piece of land located at Mabwepande Street, had already been adjudicated and determined by competent Ward Tribunal in Complaint No. 0104/2014 between appellant and 5<sup>th</sup> respondent. That the parties were litigating the same subject matter and same title. Therefore, it was proper for the District Tribunal to dismiss the application. The respondents also cited the case of **Umoja Garage vs. NBC Limited**, Civil Appeal No. 63 of 2003 to cement their submissions.

Basing on the grounds of appeal and the submissions from both parties, it is my view that the pertinent issue in this matter is whether Application No. 470 of 2020 before Kinondoni District Land and Housing Tribunal (herein as District Tribunal) was res judicata to Complaint No. 0104 of 2014 before Mabwepande Ward Tribunal.

The doctrine of res judicata has been laid down under the provisions of Section 9 of the CPC. The provisions gives six mandatory prohibitions to the Court to entertain the matter if; one, the matter was directly and substantially in issue in the former suit. Two, the issues are between the same parties or between parties under whom or any of them litigating. Three, the parties have litigated under the same title. Four, the former suit was determined by the Court with competent jurisdiction. Five, there are two suits, the former suit and subsequent suit. Six, the issue has been determined conclusively (see the case of **Onesmo Olengurumwa vs. Hon. Attorney General**, Misc. Civil Cause No. 36 of 2019, High Court Main Registry (unreported). *Ads.*

Also, in the case of **Peniel Lotia vs. Gabriel Tanaki & others** (2003) TLR 312, the Court of Appeal set five conditions which when co- existent, will bar a subsequent suit. The conditions set are as follows;

- 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.*

Basing on the above principle, I will determine the issue on whether Application No. 470 of 2020 at the District Tribunal was res judicata to Complaint No. 0104 of 2014 at the Ward Tribunal.

According to the Court records, previous to Application No. 470 of 2020, the 5<sup>th</sup> respondent Juma Ramadhani filed a Land Dispute No. 0104 of 2014 before Mabwepande Ward Tribunal claiming that the current appellant Dastan Elias Kikwasha has trespassed to his piece of land which is 40x40 feet in size, and located at Mabwepande Street, Mabwepande Ward. He prayed for the Ward Tribunal to declare him a lawful owner of the land in dispute. In his defence, the current appellant claimed that the land in dispute is lawfully owned by him having purchased it from Mussa Shabani Matigiti – 4<sup>th</sup> respondent, Mohamedi Kinjulya – 2<sup>nd</sup> respondent and Said Upunda – 3<sup>rd</sup> respondent. *Atls.*

The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents were the witnesses of the applicant who confirmed that, they were members of the Village Committee which was allocating the pieces of land to the villagers. That, it is true that they were involved in allocating the land in dispute to the applicant.

After hearing, the Ward Tribunal decided in favour of the 5<sup>th</sup> respondent and declared him the lawful owner of the land in dispute. The judgment was delivered on 18/2/2016.

In Application No. 470 of 2020, the appellant filed claims against the respondents (who includes 5<sup>th</sup> respondent who was an applicant in Land Dispute No. 0104 of 2014). The appellant was seeking for declaratory order that he is the lawful owner of suit premises located at Mabwepande, Kinondoni, Dar es Salaam.

Therefore, in this appeal, Land Dispute No. 0104/2014 is the former suit, and Application No. 470/2020 is the subsequent suit.

The subject matter which is directly and substantially in issue in the subsequent suit is the claim of ownership of land dispute which is a piece of land size 40 x 40 feet located at Mabwepande. This is the same subject matter which is directly and substantially in issue in the former suit. In the subsequent suit, the appellant was claiming ownership of the land in dispute and in the former suit, the 5<sup>th</sup> respondent was claiming ownership of the same land in dispute. In addition to that, the said parties were litigating under the same title in the former suit i.e. the 5<sup>th</sup> respondent sued the appellant over the land in dispute. Furthermore, the Ward Tribunal which decided the former suit had jurisdiction to try the matter

*Alle.*

before it whereby it was heard and finally concluded by entering a judgment in favour of the 5<sup>th</sup> respondent.

Basing on the above analysis, I am of the view that the conditions set under the doctrine of res judicata which bar a subsequent suit are clearly met in this matter.

Going through the appellant's submissions, he seems that he is not disputing the conditions for res judicata which are set under Section 9 of the CPC and elaborated further in numerous cases some of them have been cited herein.

What the appellant is vehemently contesting is that, the former suit i.e. Dispute No. 0104/2014 before the Ward Tribunal involved the appellant and 5<sup>th</sup> respondent while in the subsequent suit i.e. Application No. 470/2020 before the District Tribunal involves the appellant, 5<sup>th</sup> respondent, and the rest of the respondents who were not part to the former suit. In his opinion, the parties in the former suit and the subsequent suit are substantially not the same so the matter cannot be res judicata.

However, with due respect, I disagree with the arguments of the appellant that the parties in the former suit are different from subsequent suit. The appellant and 5<sup>th</sup> respondent in the subsequent suit were litigating parties in the former suit, over the same subject matter. The rest of respondents were the witnesses in the former suit, it was a claim of ownership of the same subject matter in both suits, former and subsequent which was decided and concluded by declaring the 5<sup>th</sup> respondent a lawful owner of

*Atty.*

the said subject matter. In such circumstances, the addition of the respondents in the subsequent suit who were witnesses in the former suit does not make it a different new suit.

It is my view that even though the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents were not a party in the former suit i.e. Dispute No. 0104/2014, the doctrine of res judicata is still intact since the subject matter and cause of action were the same and the matter was determined to its finality.

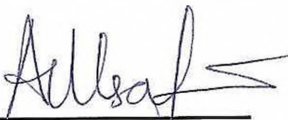
Therefore, it is my finding that the Application No. 470/2020 before the District Tribunal was res-judicata to the Dispute No. 0104/2014 before the Ward Tribunal, and the District Tribunal did not error in law in fact in its findings.

In the upshot, I find no reason to differ and fault the findings and decision of the District Land and Housing Tribunal for Kinondoni in Land Application No. 470 of 2020. I therefore proceed to dismiss the appeal with costs.

Order accordingly. Right of Appeal explained.

DATED at Dar es Salaam this 14<sup>th</sup> Day of June 2022.



  
A. MSAFIRI,  
JUDGE