

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

LAND CASE NO. 188 OF 2020

**THE REGISTERED TRUST OF
WINNER'S CHAPEL INTERNATIONAL.....PLAINTIFF**

VERSUS

MARIA MATHIAS.....1ST DEFENDANT
MARGRETH ANTHONY.....2ND DEFENDANT
SILILI NTWEVE.....3RD DEFENDANT
SAMWELI KASSIMU.....4TH DEFENDANT
CRACE ELIAS.....5TH DEFENDANT
DORIS KULUA.....6TH DEFENDANT
MARY MUSA.....7TH DEFENDANT
MWAYASA MSAFIR.....8TH DEFENDANT
CHRISTOPHER FADHILI.....9TH DEFENDANT
ERNEST WILSON.....10TH DEFENDANT
RASHID JUMA.....11TH DEFENDANT
BONIFAS MORRIS.....12TH DEFENDANT
MARGRET SABA.....13TH DEFENDANT
DICKSON JOHN.....14TH DEFENDANT
ABDUL BILALI.....15TH DEFENDANT
NEEMA ANTHONY.....16TH DEFENDANT

MIRAJI RASHID.....	17TH DEFENDANT
ELIZABETH SADIKI.....	18TH DEFENDANT
EMMANUEL DANIEL.....	19TH DEFENDANT
CHRISTOPHER JOHN.....	20TH DEFENDANT
BAKARI JUMA.....	21ST DEFENDANT
EMMANUEL RICHARD.....	22ND DEFENDANT
WEMA MWAKILASA.....	23RD DEFENDANT
HEMED JUMA.....	24TH DEFENDANT
SAID SALUM.....	25TH DEFENDANT
EMILI FELIX.....	26TH DEFENDANT
BERNARD WILLIAM.....	27TH DEFENDANT
ASHA MWABUDU.....	28TH DEFENDANT
JOHN MWAFUBA.....	29TH DEFENDANT
DIDA ELIAS.....	30TH DEFENDANT
MARY FELIX.....	31ST DEFENDANT
ELINAIKE MKOANI.....	32ND DEFENDANT
CHRISTOPHER KATALA.....	33RD DEFENDANT
ELIBARIKI SHANI.....	34TH DEFENADNT
CHRISTOPHER JUMA.....	35TH DEFENDANT
NOGO MWAMUDU.....	36TH DEFENDANT
HAMISI KAIBOYI.....	37TH DEFENDANT
DORICAS JOHN.....	38TH DEFENDANT
BEDA RETANAL.....	39TH DEFENDANT
DOROTEA GIDEIN.....	40TH DEFENDANT

ERASTO CHAYO.....	41ST DEFENDANT
JALALA SINDANO.....	42ND DEFENDANT
EMMANUEL MFINANGA.....	43RD DEFENDANT
ABISAL KISONGA.....	44TH DEFENDANT
YUSUPH ABIBU.....	45TH DEFENDANT
ELIZABETH JANK.....	46TH DEFENDANT
DIRIS BERNARD.....	47TH DEFENDANT
BELINDA NICOLAUS.....	48TH DEFENDANT
SELEMANI ABDALLAH.....	49TH DEFENDANT
MWAKALINGA.....	50TH DEFENDANT
EDITH ERASTO.....	51ST DEFENDANT
CHARLES YOHANA.....	52ND DEFENDANT
ELIAS MBINDA.....	53RD DEFENDANT
DEO IGNAS.....	54TH DEFENDANT
ELENA MTAGALA.....	56TH DEFENDANT
ELIA FREEDOM.....	57TH DEFENDANT
BENNY VENANT.....	58TH DEFENDANT
DICKSON MICO.....	59TH DEFENDANT
BARAKA NDEBELE.....	60TH DEFENDANT
CHERY RAPHAEL.....	61ST DEFENDANT
DARINI HASSAN.....	62ND DEFENDANT
ADIJA ABDALLAH.....	63RD DEFENDANT
CHRISTINA ALOYS.....	64TH DEFENDANT
DENIS MWALEMBA.....	65TH DEFENDANT

CHARLES EMMANUEL.....	66TH DEFENDANT
DICKSON MWITA.....	67TH DEFENDANT
CHARLES NDEGE.....	68TH DEFENDANT
DOTTO JUMA.....	69TH DEFENDANT
JEMES BUYA.....	70TH DEFENDANT
MACARIUS WOLGANG TURUKA.....	71ST DEFENDANT
EVA ERNEST ISHEMJABI.....	72ND DEFENDANT
MOHAMED SALEHE BEJA.....	73RD DEFENDANT
ADAMU A. SELEMANI.....	74TH DEFENDANT
ABDALLAH RAJABU MATIGISA.....	75TH DEFENDANT
ANIFA RAMADHANI KONDO.....	76TH DEFENDANT
ANOLD EVARIST ALFREDY.....	77TH DEFENDANT
ASIA S. KIPANDU.....	78TH DEFENDANT
BAKARI SALUMU MATANDIKA.....	79TH DEFENDANT
COLETA DAMIAN STAMANGA.....	80TH DEFENDANT
COSTA A. ROBERT.....	81ST DEFENDANT
DOMINA JOSEPH MARIA.....	82ND DEFENDANT
DEODATUS EDWARD BUYOKWE.....	83RD DEFENDANT
ERICK GELVAS KAYANDA.....	84TH DEFENDANT
ERMASI PANCRASI SHAYO.....	85TH DEFENDANT
FATUMA TWAHA SHEMNDOLWA.....	86TH DEFENDANT
FEYSAL A. MATIGISA.....	87TH DEFENDANT
FADHILI LODI CHITAWALA.....	88TH DEFENDANT
GIDO PROSPER SILAYO.....	89TH DEFENDANT

DEVOTA A. SWAI.....	90TH DEFENDANT
HAMISI RAMADHANI SAMATA.....	91ST DEFENDANT
HAWA MUSA KABONGO.....	92ND DEFENDANT
HADIJA H. LWANGA.....	93RD DEFENDANT
HASSAN S. NGULANGWA.....	94TH DEFENDANT
HIDAYA S. SHAMTI.....	95TH DEFENDANT
ISSA KEYA MARIRI.....	96TH DEFENDANT
IBRAHIMU KHAMIS LWANGWA.....	97TH DEFENDANT
JOSEPH C. NGULLY.....	98TH DEFENDANT
JOYCE MUSSA LUNGWA.....	99TH DEFENDANT
JOSEPH BRUNO KOMBA.....	100TH DEFENDANT
JOHNASS WOLFGANE TURUKA.....	101ST DEFENDANT
JUSTINE DANIEL NSANZE.....	102ND DEFENDANT
KHADIJA O. SAGUTI.....	103RD DEFENDANT
MICKNESS ADSON CHEYO.....	104TH DEFENDANT
MAGRETH THEOBARD MTANI.....	105TH DEFENDANT
MAHMOUD HAROUN MAJOLLO.....	106TH DEFENDANT
MONICA ZAKARIA NGULI.....	107TH DEFENDANT
NEEMA J, MBILINYI.....	108TH DEFENDANT
NURU HATIBU HUSSEIN.....	109TH DEFENDANT
PETER F. KIANGO.....	110TH DEFENDANT
PROLIMINA TITUS SHALO.....	111TH DEFENDANT
REBECA JOEL MSHANA.....	112TH DEFENDANT
REHEMA PAULO MREMA.....	113TH DEFENDANT

SALUMU ATHUMANI MWINYI.....	114TH DEFENDANT
SOMOYE A. SAID.....	115TH DEFENDANT
SEFU MBARAKA MGONJA.....	116TH DEFENDANT
SALIM MUHARAMI KIPANDU.....	117TH DEFENDANT
SAMSON STEPHANO MASAMBWA.....	118TH DEFENDANT
HADIJA HAMISI.....	119TH DEFENDANT
VALERIA R. MAUTILA.....	120TH DEFENDANT
VALENCE R. KYOJO.....	121ST DEFENDANT
ZAHARA ATHUMANI RAJABU.....	122RD DEFENDANT
EVOD ERNEST KERET.....	123TH DEFENDANT
ADELPHINA MASSAWE.....	124TH DEFENDANT
SADA MUSSA MSIBE.....	125TH DEFENDANT
YUSTA K. KIGANGWA.....	126TH DEFENDANT
RAMADHANI THOMAS KAYUGA.....	127TH DEFENDANT
OMARI MIRAJI MSUYA.....	128TH DEFENDANT
ISAKA LUKANDA.....	129TH DEFENDANT
JACKSON P. OTIENO.....	130ST DEFENDANT
GEORGE MGIMWA.....	131ND DEFENDANT
GEORGE G. FUPI.....	132RD DEFENDANT
RAJABU R. DIKULA.....	133TH DEFENDANT
SALMA M. KUSENGWA.....	134TH DEFENDANT
SALMA MWARAMI.....	135TH DEFENDANT
ABDALLAH SAID MNGAZIJA.....	136TH DEFENDANT
SOMOE H. CHITAWALA.....	137TH DEFENDANT

R U L I N G

Date of Last Order: 25.4.2022
Date of Ruling: 02.05.2022

T. N. MWENEGOHA, J.

The plaintiff filed the present suit praying for declaration that they are lawful owners of the suit premises and further that the defendants and/or their agents have trespassed over a landed property measuring about 48 acres described as plot No. 21 to No. 25 Block 'T' Goba Tegeta situated Kwabedui area of Goba – Ubungo Municipality in Dar es Salaam Region.

Pleadings having been completed and mediation conducted hearing of the suit began. After the plaintiff closed their case the defence's case opened and the first witness was heard. When the matter came for the hearing of the remaining witness on 25/04/2022 the counsel for the defendant Mr. Machibya Emanuel raised a preliminary objection

a) that the matter is res judicata.

I ordered the parties to address me orally on the said preliminary objection.

In his submission Mr. Machibya informed the court that a similar matter involving the same parties and subject matter has been adjudicated by Hon. Kalunde, J in 2020 in Land Case No. 188 of 2016 and Ruling was delivered in July 2020 where the suit was dismissed. He therefore prayed to submit

that the current matter is res judicata as per section 9 of the Civil Procedure Code R. E. 2019.

In reply Mr. Emmanuel Kessy advocate for the plaintiff submitted that the plaintiff had declared in the 1st Pre-Trial-Conference that he has no further application. He gave the procedure that will enable this court to vacate the said order is by counsel to pray for this court to depart from it. He insisted that to him the Preliminary Objection was raised unprocedural.

On the merits of Preliminary Objection, he stated that the matter has never been heard on merit. He added that if the counsel wanted the court to take judicial notice, he should file it in his final submissions.

In Rejoinder Mr. Machibya submitted that Preliminary Objection can be raised at any time. It was his further submission that he discovered this defect when his witness gave testimony in court. He stated that as officer of the court he ought to inform the court whenever he discovers a defect.

I have considered submissions of both parties. The issue for determination is whether this suit is Res Judicata. Before, I begin my determination I have noted that Mr. Kessy is challenging the timing of the Preliminary Objection. Mr. Machibya finds that the Preliminary Objection raised is proper as he has discovered the fact when his witness was giving testimony before this Court.

I am in agreement with the position of law as stated by both counsels that Preliminary Objection should be raised at the earliest possible opportunity preferable before the matter goes to mediation after the completion of the pleadings.

I could have summarily dismissed this Preliminary Objection for the above reason. However, considering the nature of the Preliminary Objection raised that is res judicata, this objection touches the jurisdiction of this court. In the case of. **Tanzania Revenue Authority vs. Tango Transport Company LTD**, Civil Appeal No. 84 of 2009 (unreported), the Court of appeal had this to say: -

"Principally, objection to the jurisdiction of a court is a threshold question that ought to be raised and taken up at the earliest opportunity, in order to save time, costs and avoid an eventual nullity of the proceedings in the event the objection is sustained. The law is well settled and Mr. Bundala is perfectly correct that a question of jurisdiction can be belatedly raised and canvassed even on appeal by the parties or the court Suo moto, as it goes to the root of the trial (See, Michael Leseni Kweka; Kotra Company Ltd; New 12 Musoma Textiles Ltd. cases, supra). Jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests."

The Court of Appeal have been strict when dealing with the Preliminary Objection that touches jurisdiction by calling the court concerned to determine it first and its failure would render the whole proceedings nullity. The case of **Said Mohamed Said vs. Muhusini Amiri & another, civil Appeal No. 110 of 2020 Court of Appeal at Dar es salaam** had the following to say,

"Unfortunately, in our present case, despite being raised, the learned judge did not wish to address the issue of jurisdiction to which he was

obligated to consider even by raising it Suo motu. Instead, he proceeded to hear and determine the suit without, first, ascertaining if the suit was lodged within time. Time bar touches on the jurisdiction of the court. That was, in our decided view, an error which cannot be condoned. Simply stated, even upon failure by the respondents to lodge submissions in support of the objection, the trial judge ought to have asked the parties to address him on that issue so as to satisfy himself if the court had the requisite authority to hear and determine it."

On my part, I find it prudent to ensure that this matter is not res judicate and that I still have jurisdiction to proceed with the matter. Failure to determine Preliminary Objection may be fatal if the Preliminary has merit and I, unknowingly pass another decision on the same subject matter. This court will have two decisions on the same subject matter, and in case those decisions contradicts themselves, not only that the decisions will be rendered inexecutable but they will form confusion in the jurisprudence/precedent of the court.

I further consider the fact that the matter was raised soon after it was discovered by the advocate, who become aware of it when the 1st defendant witness was giving testimony. Having said that I find it prudent to proceed with the determination of Preliminary Objection for the reasons stated above.

On the merits of the preliminary objection Mr. Kessy admitted on the existence of the matter at hand and having been dismissed by this court, although to him the matter was not heard on merits.

With due respect to the counsel that cannot be a ground to convince this court to rehear a dismissed case. The fact that there is a matter as the one of hand with the same parties and subject as the one that was dismissed makes the suit Res Judicata as provided under section 9 of the Civil Procedure Code which reads,

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court."

The fact that there is a matter as the one at hand with the same parties claiming the same title and the matter have been dismissed this makes the suit Res Judicata. The act of Mr. Kessy to file a new case while it was formerly dismissed by this court is unprocedural.

As it is settled position that where the matter is dismissed a part cannot again come at the same court for a fresh suit. Msoffe, J.A (as he then was) in the case of ***Cyprian Mamboleo Hizza vs. Eva Kioso & Another, In Civil Application No. 3 Of 2010, Cat*** at Tanga where he cited the case of ***Ngoni- Matengo Cooperative Marketing Union Ltd. V. Ali Mohamed Osman (1959) EA577*** at page 580 had this to say:

"..... This court, accordingly, had no jurisdiction to entertain it, what was before the court being abortive, and not a properly constituted

*appeal at all. What this court ought strictly to have done in each case was to "strike out" the appeal as being incompetent, rather than to have "dismissed" it: **for the latter phrase implies that a competent appeal has been disposed of, while the former phrase implies there was no proper appeal capable of being disposed of.**" (Emphasis supplied)*

Msofe, J.A added further that,

"Presumably, if the application had not been dismissed the applicant could have gone back to the High Court and start the process afresh. Since the application was dismissed instead of being struck out, he came to this Court vide Civil Application No.4 of 2009 by way of a "second bite", so to speak."

When the matter has been dismissed its effect is not to file another fresh case. The plaintiff should have sought different avenue. Allowing this suit to proceed will led to bad precedent.

I therefore find this matter res judicata and hence incompetent before this court. I hereby struck it out with cost.

It is so ordered.




T. N. MWENEGOHA

JUDGE

27/04/2022