

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

LAND CASE NO. 68 OF 2021

**DAR ES SAALAM WATER SUPPLY
& SANITATION AUTHORITY (DAWASA) 1ST PLAINTIFF
THE ATTORNEY GENERAL..... 2ND PLAINTIFF**

VERSUS

**TABU HASSAN (As a legal representative
of the late SALMA PILI TAMAAMBELE) 1ST DEFENDANT
MSOLOPA AUCTION MART & TRIBUNAL BROKER 2ND DEFENDANT**

Date of last order: 28/04/2022

Date of Ruling: 10/06/2022

RULING.

I. ARUFANI, J

The plaintiffs herein, filed the suit at hand in this court against the defendants herein alleging the defendants have unlawfully and without any colour of right and justification, trespassed into the first plaintiffs' land and ordered the demolition of the plaintiffs' house (two apartments) in Plots Nos. 792/1 & 792, Block B situated at Boko, Kinondoni Municipality in Dar es Salaam Region (hereinafter referred as land in dispute). The plaintiffs are claiming for a perpetual injunction against the defendants' threats and or intention to enter into possession of the land in dispute

together with specific damage of Tshs. 1,000,000,000/= and general damages of Tshs. 500,000,000/=.

After the defendants being served with the copy of the plaint, the defendants filed in the court their written statement of defence and in addition thereto the counsel for the first defendant filed in the court a notice of preliminary objection containing three points of law which read as follows: -

- 1. That the Land Case No. 68 of 2021 is barred in law by the principle of res judicata as provided under section 9 of the Civil Procedure Code, Cap 33, [R.E 2019] as it has already been determined by Bunju Ward Tribunal in Land Case No. 47 of 2005.*
- 2. That the drawn plaint is barred in law for contravening Order VI Rule 15 (3) of the Civil Procedure Code, Cap 33 [R.E 2019].*
- 3. The drawn plaint is barred for contravening section 44 (1) and (2) of the Advocates Act, Cap 341, [R.E 2019].*

When the matter came for hearing of the above quoted points of preliminary objection, Mr. Gallus Lupogo, learned State Attorney who was assisted by Mr. Amos Enock, learned State Attorney represented the plaintiff and they informed the court that, they are conceding to the second and third points of preliminary objection but they are opposing the first point of preliminary objection. The counsel for the first defendant, Mr. Jonas Kilimba, learned Advocate prayed to argue the first point of

preliminary objection by way of written submission and the prayer was granted.

In arguing the first point of preliminary objection the counsel for the first defendant referred the court to the meaning of res judicata as provided in **Academic's Legal Dictionary**, by S. L. Salwan, 20th Edition, 2010 at page 311 where it is stated res judicata means *a thing decided, a matter adjudicated. A matter already decided or adjudicated upon by authority.* He stated the author stated in the above cited dictionary that, it is a principle of law that once a decision is rendered by a competent court, it should not be permitted to be adjudicated over or opened again where a decision has been pronounced by a judicial or tribunal of competent jurisdiction over the same parties or privy to such litigation.

He argued that, the doctrine of res judicata is provided under section 9 of the Civil Procedure Code, Cap 33 R.E 2019 which provides for a restriction from litigating the same cause of action between the same parties on matter which has already been determined by a competent court. He argued that, the suit filed in this court by the plaintiffs is res judicata against the first plaintiff and the first defendant as the dispute over the land in the case at hand was determined in Land Case No. 47 of 2005 of Bunju Ward Tribunal (herein after referred as Ward Tribunal. He stated the plaintiffs have acknowledge the existence of the said case at paragraphs 8 and 9 of the plaint.

He went on arguing that, the parties in the Land Case No. 47 of 2005 which its copy is annexed in the plaint as annexure DAWASA 3 were Pili Tamaambele who was the complainant versus I. S. Kakwezi and DAWASA. He argued that, the complainant in the said case said she is the owner of the land in dispute but due to her age she gave power of attorney to her son namely Richard Mairi and others as appearing in the copy of annexure DAWASA 3 to act on her behalf. He explained that, the said case was determined in favour of Salma Pili Tamaambele (Bi Tamaambele) who is now deceased and Tabu Hassan is her legal representative.

He argued that, after the delivery of the decision of Ward Tribunal, the legal representative of first defendant who was the decree holder executed the decree through Misc. Application No. 218 of 2005 filed in the District Land and Housing Tribunal of Kinondoni and the land in dispute was handed over to the legal representative of the decree holder by the Tribunal Broker who is the second defendant in the matter at hand.

He argued that, the plaintiffs have averred at paragraph 11 of the plaint that, when the first defendant was in execution process the first plaintiff filed objection proceedings before the District Land and Housing Tribunal which was registered as Misc. Land Application No. 703 of 2020 but it was dismissed for lack of merit. He went on arguing that, up to this moment there is no pending appeal or any application filed in any tribunal

or court to set aside the decision of the Ward Tribunal delivered in Land Case No. 47 of 2005. He stated that, annexure DAWASA 1 to the plaint which is an offer of land in dispute was not presented before the Ward Tribunal and it does not feature anywhere in the judgment of the Ward Tribunal and is not relating to the area demolished by the first defendant.

He argued further that, in order to establish principle of res judicata there are five conditions which must co-exist. He stated the said conditions were stated in the case of **Peniel Lotta V. Gabriel Tanaki and Another**, [2003] TLR 312 to be as follows: -

- 1. "The matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit.*
- 2. The former suit must have been between the same parties or privies claiming under them.*
- 3. The parties must have litigated under the same title in the former suit.*
- 4. The court which decided the former suit must have been competent to try the subsequent suit and;*
- 5. The matter in issue must have been heard and finally decided in the former suit."*

He argued in relation to the first condition that, the judgment of the Land Case No. 47 of 2005 of Bunju Ward Tribunal shows the subject matter in the suit at hand was the same subject matter in the former suit where the first plaintiff was ordered by the Ward Tribunal to demolish

beacons on the first defendant land. He submitted that, there is nowhere the first plaintiff was declared lawful owner of the land in dispute. He stated that, the parties in the former suit and in the present suit are the same. He stated that, Richard Mairi, Ikki Omari, Peter Majogo and others were attorneys of Salma Pili Tamaambele who is now being represented in the matter at hand by Tabu Hassan as her legal representative.

He invited the court to read the case of **Athnasia T. Massinde T/A Abeti Primary School V. National Bank of Commerce**, Commercial Case No. 34 of 2016, HC Commercial Division at DSM (unreported) where it was stated section 9 of the Civil Procedure Code bars the court to try a suit or an issue involving the same parties which matters are directly and substantially the same like the ones which were tried in the former suit. He submitted that, in the case at hand the parties are the same and the same matter has already been determined by Bunju Ward Tribunal.

As for the second condition the counsel for the first defendant argued that, in the former suit the parties were the same as in the case at hand. He stated the first plaintiff was in the former suit and in the present suit and the first defendant in the present suit was also in the former suit under representation of power of attorney and now is being represented by her legal representative namely Tabu Hassan in the matter at hand.

He stated in relation to the third condition that, the area in dispute in the suit at hand is the same as the one determined by Bunju Ward

Tribunal in the former suit. He stated the area has been clearly identified at page 5 of the judgment of Bunju Ward Tribunal and the said judgment has been acknowledged by the plaintiffs at paragraph 9 of the plaint. He referred the court to the cases of **Athnasia T. Massinde** (supra) and **North West Water Ltd V. Bannier Patmer**, [1990] ALL ER Vol. 3 page 547 where it was stated that, an attempt to re-litigate in another cause of action which has been fully investigated and decided in former action may constitute an abuse of court process. He submitted that, as the cause of action has already been determined by Bunju Ward Tribunal, the suit filed in this court by the plaintiffs is an abuse of court process.

As for the fourth condition, the counsel for the first defendant stated that, when the matter was determined by Bunju Ward Tribunal in 2005 it had a competent jurisdiction to entertain the matter. He stated that, the condition of involving the Attorney General in all suits concerning the Government, Ministries, Government Department, Local Government Authority, Executive Agencies and Public Corporation where the first defendant belongs was introduced in the law by the Written Laws (Miscellaneous Amendment) Act, 2020. Again, he supported his submission with the case of **Athnasia T. Massinde**, (supra).

With regards to the fifth condition the counsel for the first defendant stated that, the judgment of Bunju Ward Tribunal shows at its page 3 and 4 that the suit was heard and the parties submitted their evidence and

finally the matter was conclusively determined by the trial tribunal. He submitted that, the said decision has never been challenged by way of appeal or set aside by a competent tribunal or court. He referred the court to the case of **Ally Mzee Luwingu and Another V. Mwajuma Mzee Korongo**, Misc. Civil Application where the court referred the decision in the case of **Fred Kweka & Another V. Abdallah Njema & Another**, Land Case No. 352 of 2015 where it was stated that, the principle of res judicate requires that, if there is a decision on the issue, there cannot be another decision on the same issue unless the first decision has been set aside or reversed. He also cited in his submission the case of **Jadra Karsam V. Harman Singh Chogal** 20 E.A.C.A 74 where the principle of res judicata was also discussed extensively.

In addition to that, he cited in his submission the case of **Karshe V. Uganda Transport Company**, [1967] EA 774 where it was stated at page 777 that, the court is not oblivious of the principle that the doctrine of res judicata is not a technical doctrine applicable only to records. It is a fundamental doctrine of all courts that there must be an end to litigation as a matter of public policy. At the end he submitted the case at hand is res judicata to Land Case No. 47 of 2005 determined to its finality by Bunju Ward Tribunal where the first plaintiff and first defendant were parties. In fine he prayed the instant case be dismissed with costs.

In reply Mr. Gallus Lupogo, learned State Attorney for the plaintiffs reproduced what is provided under section 9 of the Civil Procedure Code and continued to state that, the position of the law stated in the above cited provision of the law was well discussed in the case of **Badugu Ginning Co. Ltd V. CRDB Bank Plc & Two others**, Civil Appeal No. 265 of 2019 where five conditions for establishment of the doctrine of res judicata which are similar to the conditions stated in the case of **Peniel Lotta** (supra) were stated.

In arguing the first condition for establishment of the principle of res judicata the State Attorney contended that, the current suit is not involving the same property as the one involved in the case determined by Bunju Ward Tribunal. He stated the land in dispute in present suit which is Plot No. 792/1 & 793/1, Block B, situated at Boko B Kinondoni Municipality in Dar es Salaam and two apartments built thereat are owned by the first plaintiff. He argued that, the subject matter in the Land Case No. 47 of 2005 was a claim for a cemetery plot (graveyard) within the plot of land owned by the late Salima Pili Tamaambele.

He argued that, the Bunju Ward Tribunal in its judgment decided only the issue of ownership of cemetery, fenced area with residential house and warehouse and the rest of the parcel of land between the litigants was not touched. He stated the claim in the subsequent suit is for compensation based on trespass to the land of the first plaintiff and

unlawful demolition of the first plaintiff's house (two apartments) on land in dispute.

He stated it is a trespass to land because the land in dispute belongs to the first plaintiff and the demolition is unlawful because the Bunju Ward Tribunal did not order the removal or demolition of the plaintiff's house built on the land in dispute. He argued further that, in the execution order issued by Kinondoni District Land and Housing Tribunal did not order or direct the Tribunal Broker to demolish the first plaintiff's house located in the land in dispute. He submitted that the stated arguments show the first condition for the principle of *res judicata* has not been established in the matter.

As for the second condition he stated that, it is not true that the parties in the two cases are the same. He stated the parties in the former suit were Mjengwa Hassan, Kassim Chande, Richard Mairi, Ikki Omar and Peter Majogo and in the present suit parties are Dar es Water Supply and Sanitation Authority (DAWASA) and the Attorney General versus Tabu Hassan (legal representative of the late Salima Pili Tamaambele and Msolopa Auction Mart. He argued that, the former suit was initiated by five members of the community who had interest over the graveyard plot unlike in the current suit. He submitted that shows the parties in the former suit are neither the same parties nor privies in the case at hand.

He went on arguing that, the land in dispute and the two apartments have never been in the ownership of the complainants in Land Case No. 47 of 2005 decided by Bunju Ward Tribunal. He stated that, the land in dispute has never parted its ownership to the first defendant by way of inheritance, succession or purchase subsequently to the mentioned action. He referred the court to the case of **Badugu Ginning Co. Ltd** (supra) where it was stated that, to make a person privy he must have acquired an interest in the subject matter of action by inheritance, succession or purchase subsequently to the action.

He argued in relation to the third condition that, in the matter at hand the parties are not the same as those who were on record at the time of decision of the former suit. He added that, the parties in the current suit are not even privy to the former suit as they have never acquired interest over the disputed properties or made in compliance with joinder of necessary parties. He stated that, the complainants in the former suit were litigating for the claim of graveyard while in the current suit the parties are litigating for the claim of trespass to the land and compensation for demolition of the houses. He submitted that shows the third condition for the doctrine of res judicata to apply in the current matter has not been established.

He argued in relation to the fourth condition that, the Ward Tribunal had no pecuniary jurisdiction to hear and determine the matter. He stated

the jurisdiction of tribunal or court is a fundamental aspect in administration of justice as it affects power and authority of the tribunal or court to entertain a matter before it. He stated the pecuniary jurisdiction of Ward Tribunal at that time as provided under section 15 of the Courts (Land Disputes Settlements) Act, 2002 was Tshs. 3,000,000/=.

He stated that, according to valuation report dated 26th February, 2014 the value of the land in dispute was Tshs. 144,400,000/= which in 2005 could not have been valued at Tshs. 3,000,000/=. He stated the above illustration shows the ward tribunal had no pecuniary jurisdiction to entertain the matter so as to invoke the principle of res judicata in the current suit.

He went on arguing the fifth condition that, it is true that the matter which was presented before the Ward Tribunal was heard and finally determined. He submitted that, to the contrary, the present case of trespass to the land in dispute and demolition of the two apartments has never been heard or determined to its finality by any court of law. He stated the land case filed at the Ward Tribunal was for claim of land used for burial (graveyard) while the case at hand is on the claim for compensation based on trespass to land and demolition of the first plaintiff's lawfully owned houses.

He added that, there was no evidence at the Ward Tribunal to prove the ownership of the land in dispute. He went on contending that the

principle of finality cannot stand in the circumstances of the current case and that makes the case of **Athnasia T. Massinde** (supra) distinguishable from the case at hand. He stated that, in order for the doctrine of res judicata to be brought into play the alluded five conditions of res judicata must co-exist. He stated it is not the matter of assumption but conclusive determination on each principle and not by pick and jump.

He referred the court to the case of the **Registered Trustees of Chama cha Mapinduzi V. Mohamed Ibrahim Versi and Sons & Another**, Civil Appeal No. 16 of 2008 CAT at Zanzibar (unreported) where it was stated that, when the prerequisite conditions for the principle of res judicata have not been met the subsequent suit cannot be hit by section 9 of the Civil Procedure Code. After that submission he requested the court to dismiss the preliminary objection raised by the first defendant in its entirety with costs.

In his rejoinder the counsel for the first defendant reiterated most of what he argued in his submission in chief. He however countered the submission of the State Attorney by stating that, he has misdirected himself and he is trying to mislead the court by saying the subject matter in the Land Case No. 47 of 2005 was a claim of graveyard area within the land owned by the late Salima Pili Tamaambele and that the Ward Tribunal decided only issue of ownership of the graveyard. He stated that, the truth is that the Ward Tribunal determined two areas. He stated one is the

graveyard which was identified as area number I and secondly the issue of trespass to the land owned by the late Salima Pili Tamaambele which was identified as area number II. He quoted in his submission part of the judgment of the Ward Tribunal which he stated is showing what he has stated in his submission.

He stated further that, although the State Attorney argued the Kinondoni District Land and Housing Tribunal did not direct the Tribunal Broker to demolish the plaintiff's houses in the demolition order but the order shows the Tribunal Broker was directed to demolish all structures which was put at the area in dispute by the judgment debtor. As for the issue of parties to be the same in the former suit and in the subsequent suit he stated the parties are the same and stated the Attorney General has been joined in the subsequent suit because of amendment effected to the law by the Written Laws (Miscellaneous Amendments) Act, 2020 which requires the Attorney General to be made a party in all suit involving Government. At the end he prayed the plaintiffs' plaint to be dismissed in its entirety.

Having carefully giving due consideration to the rival submission filed in this court by the counsel for the parties which I have tried to reproduce most of its part in this ruling for clarity purposes the court has found the main issue to determine here is whether the suit at hand is *res judicata*. As rightly submitted by the counsel for the first defendant the term *res*

judicata as defined in the cited dictionary is that a matter already decided or adjudicated upon by a competent authority. The court has also found proper to state at this juncture that the said principle is incorporated in our law and specifically under section 9 of the Civil Procedure Code which states as follows: -

"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 above provision of the law which in its marginal note is written res judicata has six explanations giving expressions of the terms contained therein. However, our courts have traversed the expressions contained in the cited provision of the law in numerous cases. Some of the cases have been cited in the submission filed in this court by the counsel for the parties in the matter at hand. In the said exercise the courts have come up with five conditions which are supposed to be established to make the principle of res judicata to apply in a particular matter.

Example of the cases where the said five conditions were laid is the cases of **Peniel Lotta** cited in the submission of the first defendant and which I have listed them earlier in this ruling and were referred in the

case of **Badugu Ginning Co. Ltd** cited in the submission of the plaintiff. Therefore, in determining the issue before the court I will be guided by the said five conditions as argued by the counsel for the parties. I will start with the first condition which states that, the matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit.

In order to know the matter was directly and substantially in issue in the former suit the court is required to look to the pleadings filed in the court by the parties and the judgment delivered in the former suit. The court has found that, as averred at paragraph 5 of the plaint the claims of the plaintiffs in the current suit is about trespass to the plaintiffs' land and demolition of the plaintiffs' houses in the land in dispute. On the other hand, the court has found the claims of the first defendant in the suit decided by Bunju Ward Tribunal in Land dispute No. 47 of 2005 was about graveyard (Eneo la Kuzikia, makaburi) which was termed as Area Number I and the land of late Salima Pili Tamaambele which was termed as Area Number II.

The court has found the evidence given at the Ward Tribunal by Richard Mairi on behalf of other claimants as can be found at paragraph three of page two of the judgment of the Ward Tribunal annexed in the written statement of defence of the first defendant as annexure TLC 1 is to the effect that, he found youths putting poles and barbed wire

(sen'geng'e) on the land in dispute and when he asked them what they were doing they told him they were sent by I. S. Kakwezi who was an employee of the first plaintiff to do that work.

It is stated further in the same part of the judgment of the Ward Tribunal that, historically the area in dispute in their case was bordering the area of the first defendant which had been fenced for long time. He said the area which had the house of servants of the first defendant was built on the land of the late Salima Pilli Tamaambele and as the late Salima Pilli Tamaambele did not want quarrel she decided not to ask for the said land, notwithstanding the fact that she was not paid any compensation. He stated that, they were surprised by the act of putting poles for fencing the remaining area of the late Salima Pilli Tamaambele and to trespass into the graveyard area.

The similar story was given by Salima Pilli Tamaambele who when she was giving her evidence before the Ward Tribunal as stated at paragraph six of page three of the judgment of the Ward Tribunal, she stated that, she had an area of land which is bordering the area of the first defendant which had been fenced. She said initially there was a land which was owned by her and it was taken by the first defendant and used as their workshop where they were keeping their pipes (mabomba) and they built the house thereon for their Project Manager. She said on the Northern side her land is bordering the graveyard.

After hearing the evidence from both sides, the Ward Tribunal found that, the area of the first plaintiff had already been fenced for long time and there was area of land of Salima Pilli Tamaambele which was taken by the first plaintiff without following the required procedure. It was stated that, late Salima Pilli Tamaambele failed to make follow up of the area taken earlier by the first plaintiff and decided to leave it to the first plaintiff and stated it was not proper for the first plaintiff to take another land of the late Salima Pilli Tamaambele.

Thereafter the Ward tribunal ordered that, the graveyard area will remain for the purpose of burial and not otherwise and the area claimed by Salima Pili Tamaambele was declared to be her property. The Ward Tribunal stated that, whoever want to take or acquire that land should agree with Salima Pili Tamaambele and the first plaintiff was prohibited to do anything on the land of Salima Pili Tamaambele which was in dispute in the matter which was before the Ward Tribunal.

From the above stated facts of the former suit decided by the Ward Tribunal in Land Case No. 47 of 2005 it is crystal clear that, the land in dispute in the referred case is different from the land in dispute in the case at hand. The court has found that, although it is true as stated by the counsel for the first defendant that, the claim in the former suit was not only on graveyard as argued in the submission of the plaintiffs but the land of the first defendant which was in dispute in the former suit is

different from the land which the plaintiffs are claiming it has been trespassed and the houses built thereon demolished.

The court has arrived to the above finding after seeing that, as appearing in the judgment of the Ward Tribunal which its part has been referred hereinabove it is crystal clear that, the land claimed by the first defendant in the former suit filed at the Ward Tribunal is not the land which had houses which the plaintiffs have averred have been demolished. The court has come to the above finding after seeing that, the first defendant stated categorically to the Ward Tribunal that, she decided to leave the land taken by the first plaintiff where the first plaintiff built the house for their Project Manager and Workshop and stated the land she was claiming from the first plaintiff was the land which was out of the land which had been taken earlier by the first plaintiff.

That makes the court to come to the finding that, the first condition for the principle of res judicata to apply which requires the matter in issue in the subsequent suit to be directly and substantially in issue in the former suit has not been established in the case at hand. Having arrived to the above finding the court has found there is no need of continuing to look into other conditions for making the principle of res judicata to apply in the case at. The reason behind is because as stated in the submission of the plaintiffs it was stated in the case of **Badugu Ginning Co. Ltd**

(supra) that, all the conditions provided under section 9 of the Civil Procedure Code are required to co-exist to bar a subsequent suit.

Going to the second and third points of preliminary objection which were conceded by the State Attorneys who represented the plaintiffs in the matter, the court has found both sides have made a long and detailed submission about what is supposed to be the remedy for the said points of law after been conceded by the plaintiffs. The court has found that, while the counsel for the first defendant is arguing the remedy available is for the plaintiffs' suit to be struck out but the plaintiffs' side is of the view that the remedy available is to allow the defective pleadings to be amended.

The court has found in supporting their argument both sides have referred the court to various cases which I will not belabour in dealing with them at length to avoid making this ruling unnecessarily long. However, the court has gone through the submission from both sides and find that, there is nowhere in the cases cited in the submission of the first defendant is stated a pleading which has not been verified properly as required by Order VI Rule 15 (3) of the Civil Procedure Code is supposed to be struck out.

To the contrary the court has found the cases of **Praygod Mbaga V. Government of Kenya, Criminal Investigation Department & Two others**, Civil Appeal No. 9 of 2011, **Mandorosi Village Council**

and Two Others V. Tanzania Breweries Limited and Four Others, Civil Appeal No. 66 of 2017 (unreported) and **SGS Societe Generale De Surveillance SA and Another V. VIP Engineering and Marketing Limited & Another,** Civil Appeal No. 124 of 2017 discussed how the principle of overriding objective is supposed to be used.

The court has found that, although it was stated the principle is not meant to circumvent the mandatory rules of the court or to turn blind the mandatory provisions of the procedural laws but there is nowhere it was stated a remedy for a pleading which has not been verified properly is to be struck out. To the contrary the court has found the cases cited in the submission of the plaintiffs and specifically the cases of **A/S Noremco Construction (NOREMCO) V. Dar es Salaam Water and Sewage Authority (DAWASA),** Commercial Case No. 47 of 2009, HC Commercial Division at DSM (unreported) states a pleading which is not correctly verified, its defect can be cured by way of ordering amendment to be made. The court stated categorically at page 18 of the cited decision that:-

"On the preliminary objection raised by the learned counsel for the defendant that the verification clause in the plaint is defective for not showing the place and date of verification. The learned counsel for the plaintiff has readily conceded. With due respect to the learned counsel for the defendant this is not fatal error attracting the drastic measures proposed. It is an error which is curable by simple amendment of the pleadings."

The position of the law stated in the above case when the court was dealing with the similar issue to the one before the court together with the position stated in other cases cited in the submission of the plaintiffs shows the remedy for pleadings which have not been verified properly as required by the law is not to strike out the plaint as proposed by the counsel for the first defendant. To the view of this court there is a room for amendment where the defect has not gone to the root of the matter. The court has similarly found the remedy for the plaint of the case at hand which was not endorsed by one of the State Attorney as required by section 44 (1) and (2) of the Advocates Act is not to strike it out. The court has arrived to the above finding after seeing the defect appearing in the plaint of the matter at hand is not a defect which the court is required to take a drastic measure proposed by the counsel for the first defendant that the plaint is supposed to be struck out.

To the contrary the court has found that, as the plaint is endorsed by one of the drawers the defect can be cured by way of directing the remaining drawer to endorse the plaint so as to comply with the requirement of the law. The court has come to that view after seeing to do so will bring the matter to the ambit of the principle of overriding objective and what is provided under Article 107A (2) (b) of the

Constitution of the United Republic of Tanzania, 1977 as amended from time to time.

In the final result the court has found the first point of preliminary objection raised by the counsel for the first defendant that the current Land Case No. 68 of 2021 is res judicata as it has already been determined by Bunju Ward Tribunal in Land Case No. 47 of 2005 has not been established to the required standard and is hereby overruled in its entirety for being devoid of merit. As for the second and third points of preliminary objection which have been conceded by the plaintiffs the court has found the remedy available is to order the plaintiffs to amend the plaint so as to comply with the requirement of the law and not to struck out the plaint as proposed by the counsel for the first defendant. In the upshot the plaintiffs are allowed to amend the plaint so as to comply with the requirement of the law. It is so ordered.

Dated at Dar es Salaam this 10th day of June, 2022



I. Arufani

JUDGE

10/06/2022

Court:

Ruling delivered today 10th day of June, 2022 in the presence of Ms. Eliwinjuka Kitundu, Advocate for the plaintiffs and in the presence of Mr. Twaha Taslima, Advocate for the first defendant and in the absence of the second defendant. Right of appeal to the Court of Appeal if fully explained.



I. Arufani

I. Arufani

JUDGE

10/06/2022