

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 301 OF 2022

YONA MTUI.....PLAINTIFF

VERSUS

DANIEL CHAMBIRI.....DEFENDANT

RULING

28/02/2023 & 03/03/2023

L. HEMED, J.

YONA MTUI, the Plaintiff in this matter presented for filing in this Court a Complaint on 15th November 2022 against **DANIEL CHAMBIRI** the Defendant. The Plaintiff alleged to be in dispute with the defendant on ownership of Plot No.645 Block E Tegeta since the year 2007. He stated that in 2007, the dispute was referred to the District Land and Housing Tribunal for Kinondoni *vide* Land Application No.47 of 2007. According to the Plaintiff, the suit was decided in favour of the Defendant, whereas the defendant herein was declared owner of the disputed land.

It was alleged further by the plaintiff that on 22.1.2020 he discovered new and important matter of evidence, that the letter of

offer with Ref No. LD/135258/1/cc dated 10.9.1998 admitted by the Tribunal is a forged document. He unsuccessfully filed Application for Review, Misc. Application No.115 of 2020 in the same Tribunal. The plaintiff prayed for the following reliefs:-

" (a) That the letter of Offer with Ref No.LD/135258/1/cc dated 10.9.1998 admitted in the tribunal as exh.P1 is a forged document

(b) The letter of Offer with Ref No.LD/135258/1/cc dated 10.9.1998 admitted in the tribunal as Exh.P1 which was relied by the tribunal in its judgment to declare the defendant owner of the disputed land, was not issued and is not recognized by the Commissioner for Land nor Kinondoni Municipal Land Offices.

(c) The DLHT was defrauded to deliver the judgment in favour of the defendant basing on the fraudulent document."

That, on the 7th day of December, 2022 the defendant filed his written statement of defence hereinafter "the WSD" altogether with a notice of preliminary objections on points of law to name:

- "1. The suit is untenable and bad in law for being res judicata as per section 9 of the Civil Procedure Code [Cap 33 R.E 2019].*
- 2. The suit is untenable and bad in law for being time barred contrary to the section 3, 1st schedule, Part 1 Column One and Column Two item 22 of the Law of Limitation Act [Cap 89 R.E 2019].*
- 3. The plaintiff has no locus to sue the defendant for want of interest on the suit property.*
- 4. The plaint is bad in law and incompetent for failure to disclose and state as to when cause of action accrued contrary to Order VII, rule 1(e) of the Civil Procedure Code [Cap 33 R.E 2019].*
- 5. The plaint is bad in law and incompetent for failure to disclose facts constituting cause of action contrary to Order VII, rule 1 (e) of the Civil Procedure Code [Cap 33 R.E 2019]."*

With the directives of this Court dated 8th day of December, 2022, the parties argued the preliminary objections by way of written submissions. The defendant's counsel filed his submissions in chief on

22nd day of December, 2022 and the plaintiff's counsel filed his reply submissions on 4th day of January, 2023. In determining the preliminary objection, Mr. Deogratus Mwarabu, learned advocate, acted for the defendant while Mr. Hamza Matongo, learned advocate was for the Plaintiff. I must thank both advocates for having performed their roles as officers of the Court.

In determining the preliminary objection, I have opted to start with the point of *res judicata*. Briefly, Mr. Mwarabu submitted on the point that the matter is *res judicata* in respect of Land Application No. 47/ 2007, decided by the District Land and Housing Tribunal for Kinondoni. To support his submissions, he cited the case of **Gerald Chuchuba vs. Rector, Itaga Seminary** [2002] TLR 213 and **Umoja Garage vs. NBC Holding Corporation** [2003] TLR 345. He submitted by praying the suit to be dismissed with costs.

In rebuttal, thereto, Mr. Hamza Matongo contended that, the suit is not *res judicata* as the present case is different from Land Application No. 47 of 2007 decided by DLHT. He also stated that the judgment in Land Application No.47 of 2007 was obtained by fraud. To cement his point he cited the book of **Sakar, Law of Evidence, 17th Ed., 2010, Lexis Nexis, Butterworth Wadhwa, India** at pages 1143, 1144 and

1145. He further, stated that, the case of **Umoja Garage** and **Gerald Chuchuma** abovementioned are distinguishable with the matter at hand. He prayed the Court to dismiss the preliminary objection for lack of merits.

The question is whether the suit at hand is *res judicata*? In **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd** (1969) EA 696 ably stated the tests of a preliminary objection thus:

"A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit".

Going through the Plaintiff, it has been clearly pleaded by the Plaintiff that the parties had the dispute over the same suit property in 2007. The Plaintiff has further stated that the said dispute was on ownership of the same landed property, which was resolved by the District Land and Housing Tribunal for Kinondoni *vide* Land Application No.47 of 2007. This suit has been instituted by the Plaintiff as the way of challenging the decision of the DLHT in Land Application No.47 of 2007 on the ground that it was obtained by fraud.

Let it be known that, the *rationale* behind the doctrine of *res judicata* is to prevent a party from bringing a claim once that particular claim has been subjected to a final judgment in previous law suit. The doctrine envisages for finality in litigation (*i.e ut sit finis litium*). In Tanzania, the doctrine of *res judicata* is embedded in section 9 of the Civil Procedure Code [Cap 33 R.E 2019]. It is provided thus:

"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."

From the foregone, the following elements have to be satisfied which are:

- (i) That the judicial decision was pronounced by a court of competent jurisdiction;

- (ii) That the subject matter and the issues decided are the same or substantially the same as the issues in the subsequent suit.
- (iii) That the judicial decision was final; and
- (iv) That it was in respect of the same parties or parties litigating under the same title.

Having scrutinized elements (i) and (iii) in *tandem* as aforementioned *vis-à-vis* paragraph 3 together with annexure A to the plaint, it is apparently that Land Application No. 47 of 2007 was finalized in the District Land and Housing Tribunal for *Kinondoni* at *Mwananyamala* in favour of the defendant. Again, from the Plaint, it is vivid that, the subject matter is Plot No. 645, Block "E", Tegeta Area, Kinondoni, Dar es salaam, which was the subject matter in Land Application No. 47/ 2007 and is the subject matter in the present suit. Lastly, the parties are the same both in the present suit and in respect to Land Application No. 47/ 2007 and they are litigating under the same title.

The question is whether the above facts pleaded in the Plaint sufficient to constitute a point of res judicata on the face of record to warrant disposal of the matter at hand. In **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women**

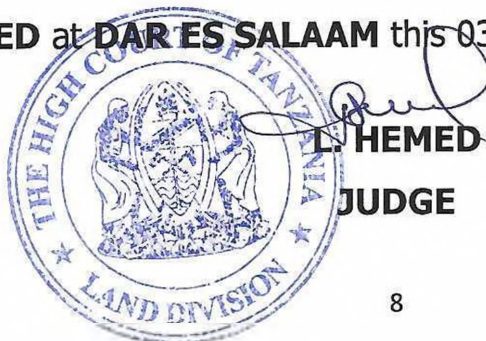
Christians Association of Tanzania, Civil Appeal No. 2 of 2010

(Unreported) postulated what a point of law is;

"...a point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of record, such as the question of jurisdiction; not one that would be discovered by a long-drawn argument or process".

Having gone through the pleadings as explained herein above, it is very clear that the present suit is *res judicata* to Land Application No.47 of 2007-DLHT for Kinondoni in which the present defendant was declared owner of Plot No. 645, Block "E", Tegeta Area, Kinondoni, Dar es salaam. The Plaintiff never challenged, thus, it remains intact. The fact that the point of *res judicata* is sufficient to dispose of the entire suit, I cannot labour to discuss the other points of preliminary objection. From the foregoing, I find the present suit worth for dismissal order on account of being *res judicata*. I hereby dismiss the entire suit with costs. Order accordingly.

DATED at DAR ES SALAAM this 03rd March 2023



COURT: Ruling delivered in the presence of **Mr. Hamza Matongo** Adv for the Plaintiff and in the absence of the defendants this 03rd March 2023. Right of appeal explained.

