

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

**LAND CASE No. 335 OF 2022**

**LUKONGE GAMBUNALA MWANDAGANI.....PLAINTIFF**

**VERSUS**

**AZANIA BANK LIMITED.....1<sup>ST</sup> DEFENDANT**

**MABUNDA AUCTIONEERS MART CO. LTD.....2<sup>ND</sup> DEFENDANT**

**DESTINATION 255 CO. LIMITED.....3<sup>RD</sup> DEFENDANT**

**RULING**

*Date of last Order:22/02/2023*

*Date of Ruling:24/03/2023*

**L. HEMED, J.**

That, the Plaintiff claim against the defendants jointly and severally is for the declaration that a notice of eviction from the 2<sup>nd</sup> defendant which was served to him and, thus, his intended eviction from the suit premises is illegal, un procedural and avoid ab initio. He also claims for injunction restraining the defendant, its workmen, agents, assignee from further evicting him from the suit premises for general damages as shall be assessed by this Court and costs of the suit.

On 27<sup>th</sup> of December, the parties herein were ordered to address this Court through written submissions whether it has jurisdiction to entertain the present matter in view of existing decision in Land Case No. 160 of 2021 delivered on 30<sup>th</sup> day of November, 2022 before my

sister, Hon Msafiri, J. All the Defendant's counsels complied with the said order save for the plaintiff counsel.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants, through the noble legal services of advocate Endael Mziray submitted that, this court does not have jurisdiction to entertain the current suit between the parties as it is *resjudicata* and the cause of action was directly and substantially in issue in Land Case No. 160 of 2021.

He further stated that, the instantaneous suit is an abuse of Court process taking into account the matter was decided and the same is subject to appeal before the Court of Appeal of Tanzania as per the Notice of appeal lodged on 30<sup>th</sup> day November, 2022 by the plaintiff.

To buttress on his submissions, he referred this Court to the case of **Tanzania Electric Supply Company Limited vs. Dowans Holdings S.A (Costa Rica) and Dowans Tanzania Limited (Tanzania), Civil application No. 142 of 2012**, (Unreported) which was quoted with approval in the decision of **Serenity on The Lake Limited vs Dorcus Martin Nyanda**, Civil Revision No.1 of 2019.

While the 3<sup>rd</sup> defendant enlisted the legal service of Mr. Jovinson Kagirwa, he asserted that, this court has no jurisdiction to hear and entertain this matter as it is *functus officio* with the judgment and

decree in respect to Land Case No. 160 of 2021 delivered on 30<sup>th</sup> day of November, 2021 as public policy entails that litigation must come to an end to fortify his submissions, he cited the case of **Emmanuel Makamba vs. Bodi ya Wadahmini Jimbo Kuu la Mwanza, Miscellaneous Land Case No. 117 of 2020, (HCT-MWZ) (Unreported)** at page 6 out 11; Mohamed Enterprises (T) Limited vs. Masoud Mohamed Naseer, Civil Application No. 33 of 2012, (Unreported).

He qualified that, having received the said judgment and decree, the defendants successfully evicted the plaintiff from the suit property sometimes in mid-December 2022 and it is from the said eviction the plaintiff came with this instant suit which is *resjudicata* to Land Case No. 160 of 2021. Hence, he prayed for the suit to be dismissed with costs.

Having heard the submissions of the counsel for the defendants regarding the issue of jurisdiction raised suomotto raised by this Court, a review of their contending arguments is centred on whether the present suit is *res judicata* Land Case No. 160 of 2021 or not.

In our jurisdiction, the doctrine of *res judicata* is embedded in section 9 of the Civil Procedure Code (Cap 33 R.E 2019) which provides as follows:

“No court shall try any suit or issue in which the matter 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 the 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 foregoing, the following cardinal principles 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 litigation under the same title.

Upon examining the aforesaid principle (i) and (iii) in line with paragraph 5,6,8, and 9 altogether with annexures LG-2 collectively and LG-3 to the plaint, it is ostensibly that Land Case No. 160 of 2021 was finalized before this Court (Hon. A. Msafiri, J) on 30<sup>th</sup> day of November, 2022 in favour of the defendants.

Further, the subject matter in the instant suit is the Title No. 130748, located at Plot No. 1560, Msasani Peninsula, Kinondoni Municipality, Dar es Salaam is similar to that in Land Case No. 160 of 2021 as evidenced at page 2 of the said Judgment attached as annexure LG-2 collectively to the plaint.

Finally, the parties are the same both in this suit and in relation to Land Case No. 160 of 2021 who again litigating under the same title. In that regard I am at one with the defendants that, this matter is purely *res judicata*.

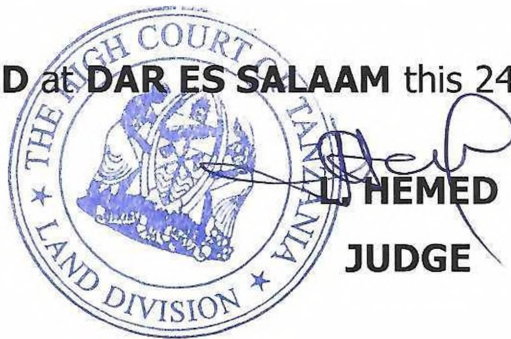
Therefore, the facts pleaded in the plaint suffice to constitute a point of *res judicata* on the face of record to warrant disposal of the matter at hand as was stated in **Lyamuya Construction Company Ltd vs Board of registered Trustees of Young Women Christians Association of Tanzania**, Civil Appeal No. 2 of 2010 (Unreported).

The plaintiff counsel having failed to comply with the directives and/ or orders of this Court dated 27<sup>th</sup> day of December, 2022, it is implied that if he could manage to file submissions to address the point, he would have supported it.

That said and done, I hold that this suit is *res judicata* and this Court is *Functus officio* to determine it. Therefore, I sustain my position that this Court has no jurisdiction to entertain the matter at hand as it is *res judicata* to Land Case No. 60 of 2021.

Consequently, is hereby dismissed with costs. order accordingly.

**DATED** at **DAR ES SALAAM** this 24<sup>th</sup> day of March 2023.



**COURT:** Ruling delivered this 24<sup>th</sup> March 2023 in the presence of Mr. Mbwana Chipaso learned advocate holding brief of Mr. Victor Kikwasi for the Plaintiff, Mr. Mbagati Nyarigo Advocate for the 1<sup>st</sup> and 2<sup>nd</sup> defendants and Mr. Simon Maro advocate of the 3<sup>rd</sup> defendant.

Right of appeal explained.

