

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

**LAND APPEAL NO. 358 OF 2023**

(Appeal from the District Land and Housing Tribunal for Kinondoni  
in Land Application No. 365 of 2021)

**TATU ABDUL MPONDOMOKO.....APPELLANT**

***VERSUS***

**JAFFAR NAPINDA NAMBUGA.....RESPONDENT**

**JUDGMENT**

24/11/2023 to 06/12/2023

**E.B. LUVANDA, J**

The Appellant named above is unhappy with the ruling of the Tribunal which ruled her application (suit) to be an abuse of court process and *res judicata*.

In the petition of appeal, the Appellant grounded that: One, the trial Tribunal erred in law for holding that the suit is *res judicata* and abuse of court process; Two, the Tribunal erred in law for determining matters of ownership without hearing the parties; Three, the Tribunal erred in law for failure to appreciate that his decision will amount of (sic, to) shutting

up the door of justice to the Appellant; Four, the Tribunal erred in law by failing to consider and analyze arguments of the Appellant during trial.

Mr. Hassan S. Ruhwanya learned Counsel for Appellant submitted that the principle of *resjudicata* is envisaged under section 9 of the Civil Procedure Code, Cap 33 (R.E. 2019,) on that the suit should have been between same parties, litigating under the same title, on the same subject matter and the said subject matter has been determined on merit with a court of competent jurisdiction. He submitted that nowhere in record that the Appellant and the Respondent have been parties in a former suit anywhere. He cited **Hussein Ally Mpondoko vs. Musa Agiba**, Land Application No. 521/2015 page 2 and 4, regarding judgment in rem. He submitted that Probate Cause No. 17/2019 Kinondoni Primary Court, is a different subject matter, different parties, litigating under different titles differently from Application No. 365 subject of this appeal.

In reply, Mr. Emmanuel Domic Hayuka learned Counsel for Respondent supported the decision of the Tribunal, arguing the subject matter, the fact in issue, court of court competent jurisdiction and parties to the suit in Application No. 365/2021 are directly and substantially the same with what in Application No. 470/2021. He cited **Maimuna Alfana Salehe vs. Chilwa Lubawa**, Land Case No. 235/2021 Land Division; **Sabuni**

**Detergents Limited & Another vs. Haroon Daud Abdallah & Three Others**, Commercial Case No. 46/2006.

To my view this ground is without substance, paragraph six of the Respondent amended written statement of defence filed at the Tribunal, the Respondent pleaded that parties herein are litigating over the same house subject in appeal PC Civil Appeal No. 138/2020 and attached a copy of judgment along a will of the late Hussein Ally Mpondomoko showing that he bequeathed the suit house to one Bi Maya Said Kilopo whose in a judgment of this Court sitting as Probate Appellate Court in PC Civil Appeal No. 138/2020, propounded at page 4,

*"...the court must protect the WILL. It has to see that, the WILL of the deceased is respected. It is not for the court or beneficiary to question the manner in which the deceased has distributed his assets"*

At page 5 this Court went on to say,

*"The Respondent is directed to administer the WILL to its words and file his Inventory and Statement of Accounts to the court which appointed him immediately"*

In the amended written statement defence (WSD) of the Respondent at paragraph six, averred that the Appellant never appealed against the decision above. The Appellant did not file a reply to the WSD to contravert or give a different story, which amount to cossension.

In that regard, the Tribunal is faulted for nothing. Rights and ownership of the suit premises was already determined in the said probate cause and its subsequent appeal where the Appellant and Respondent herein where lingering therein. Therefore the Tribunal was justified to rule that the matter was *res judicata* and abuse of court process.

Ground number two, the learned Counsel for Appellant submitted that the principle of natural justice of the right to be heard was massively attacked by the ruling of the Tribunal. He submitted that the Tribunal was wrong to rule that the disputed property belong to Maya Said, while the matter was at preliminary stage and without hearing parties. He cited the case of **Lugwisha Ng'winamla vs. James Lugwisha**, Civil Appeal No. 195/2019 CAT.

In reply, the learned Counsel for Respondent submitted that there was no need to decide the said suit on merit because it was already decided on merit in Land Application No. 470 of 2011 **Mussa Ajiba vs. Hussein Mpondomoko** Kinondoni District Land and Housing Tribunal.

On rejoinder, the learned Counsel for Appellant submitted that the statement by the Tribunal was premature and amount to determination of suit on merit without hearing the other party or before giving the Appellant to prove her ownership on the same.

On my part, I cannot be detained here. I have already ruled on ground number one that right and ownership of the suit property was determined by the probate court via the will which courts below were called to respect and protect it. It is wrong for the Appellant to assume that she will open up discussion of the contents of the will which was ruled to be valid, by bringing a claim of ownership. That window is not available for her. She cannot complain of closure of doors or premature determination of a merit of her purported claim, while being aware that she lost that battle in the probate second appellate court and did not bother to appeal to the superior court.

Actually, it is PC Civil Appeal No. 138/2020 which closed doors against her, when ruled that a WILL where the deceased bequeathed the suit premises to Bi Maya Said Kilopo, was valid and held that there is no room for discussion in respect of its contents on that regard.

This adumbration takes into board grounds number three and four as well.

The appeal is wanting on merit.

- The appeal is dismissed. However, I spare the Appellant for costs in view of the fact that parties are lingering over inheritance (as per paragraph 6(a) (vi) of the amended application and paragraph 3 of the amended WSD.



E.B. LUVANDA  
**JUDGE**  
06/12/2023

Judgment delivered in the presence of Respondent and in the absence of the Appellant.



E.B. LUVANDA  
**JUDGE**  
06/12/2023