

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

LAND CASE NO. 257 OF 2023

AL-HASSAN BABA ISAKA.....PLAINTIFF

VERSUS

**THE REGISTERED BOARD OF TRUSTEES OF SILOAM MINISTRY
INTERNATIONAL.....1ST DEFENDANT**

BAGAMOYO DISTRICT COUNCIL.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

RULING

Date of Last Order: 04.10.2023

Date of Ruling: 26.10.2023

T. N. MWENEGOHA, J.

In this Ruling, I am invited to decide on the merits or otherwise of the following Preliminary Objections; -

- 1. The suit is time barred, raised by the 1st defendant.**
- 2. The matter is resjudicata to Land Case No. 27 of 2012, raised by all defendants above.**
- 3. The case is an abuse of court process, raised by the 2nd and 3rd defendants.**

The Objections were heard by written submissions, and in her submissions, the 1st defendant chose to abandon the 1st Objection and remained with one Objection.

Submitting in favour of the 2nd objection, Mr. Raymond Wawa, counsel for the 1st respondent, was of the view that, the instant matter is res judicata to the former case, vide Land Case No. 27 of 2012. The claim in the present suit is similar to that of the former suit, the subject matter is the same, the remedies sought are the same like the one in the previous suit, the parties also are the same, save for the 1st defendant who was being represented by one of the board members, testified as DW2 in the former suit. Therefore, the parties in the present suit are litigating in the same title and the matter was finalized. Therefore, this case contravenes the provisions of **Section 9 of the Civil Procedure Code, Cap 33 R. E. 2019**. He also cited a number of cases, including the case of **Paniel Lotta versus Gabriel Tanaki & Others (2003) TLR 312**.

On the other side, Mr. Urso Luoga, Senior State Attorney, supported the arguments by the counsel for the 1st defendant on the issue of resjudicata. He insisted that, the former case, vide Land Case No. 27 of 2012, involved the 1st defendant and the same subject matter. The Judgment was delivered by Wambura, J. on the 16.12.2016. Mr. Luoga cited the case of **The Registered Trustees of Chama Cha Mapinduzi versus Mohamed Veri and Son & Others, Civil Appeal No. 16 of 2008, Court of Appeal of Tanzania (unreported)**.

In reply, Advocate Henry Mwakalasya for the plaintiff, insisted that, this case is not res judicata. That in the Land Case No. 27 of 2012 the subject matter was Plot No. 37, Block "C", Bagamoyo. The same involved different parties, which are not in the present suit. Therefore, this is a new suit which has not been determined by any Court. He cited a number of cases, to cement his arguments, including the case of **Coca cola Kwanza Ltd**

versus Peter John Mkenda, Civil Appeal No. 111 of 2017, High Court of Tanzania at Dar es salaam (unreported).

On my part, I have considered the arguments of parties in this objection. To resolve the issue in question, I made a perusal of the pleadings, both the Plaintiff and the Written Statement of Defence by the 1st to 3rd defendants. I found the copy of the Judgment given in Land Case No. 27 of 2012, annexed as SIL-1 in the Written Statement of Defence of the 1st defendant and annexure BDC-01, in the Written Statement by the 2nd to 3rd defendants. I took judicial notice of the same.

Indeed, the suit at hand is res judicata to the former case. I say so because the current suit involves the same subject matter, which is a land, located at Plot No. 660, Block "C", Nianjema Area in Bagamoyo District. At paragraph of page 3 of the Decision given by Hon. Wambura, J. vide Land Case No. 27 of 2012, the same property was described as forming the subject matter of the former case. The parties are also substantially the same, the plaintiff is the same and the 1st defendant is the same, only the 2nd and 3rd defendants are new in this case. After all, the 1st defendant is litigating under the same title as the defendant in the former suit was a Church, now a Board of Trustees of the same Church.

As for reliefs, at the plaintiff, it has been stated that, the plaintiff wants to be declared the lawful owner of Plot No. 660 Block "C" Nianjema and that the 1st defendant occupies the same wrongly, see prayer A to C in the plaintiff. However, the Judgment of Hon. Wambura, J. has sealed the issue of ownership of the said land when it declared the defendant in the former suit to be the lawful owner and should be left to enjoy the said land peacefully. That is to say, the reliefs sought by the plaintiff in this case,

cannot be granted, as the owner has already been declared a long time ago.

Hence the present suit clearly contravenes the provisions of **Section 9 of the Civil Procedure Code, Cap 33 R. E. 2019**. For these reasons, I find the 2nd Objection to be meritorious and sustain it accordingly. Because of that, I do not need to discuss the 3rd Objection, the findings in the 2nd objection are capable of disposing the entire suit.

Eventually, the suit is hereby struck out with costs.




T. N. MWENEGOHA

JUDGE

26/10/2023