

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

**LAND APPEAL NO. 321 OF 2023**

*(Being an appeal from the decision of the District Land and Housing Tribunal for Kinondoni,  
Hon. R. Mbilinyi Chairperson dated 6<sup>th</sup> day of July, 2023 in Application No. 61 Of 2023)*

**ALLY SHOMARI PANGAYA ..... APPELANT**

**VERSUS**

**MSOLOPA INVESTMENT COMPANY**

**LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**JAPHET MAKILO ..... 2<sup>ND</sup> RESPONDENT**

*Date of Last Order: 05/02/2024*

*Date of the Judgment: 14/02/2024*

**JUDGMENT**

**A. MSAFIRI, J.**

This is an appeal against the decision of the District Land and Housing Tribunal for Kinondoni (herein the trial Tribunal) in Land Application No. 61 of 2023 delivered on 06/7/2023 by Hon. R. Mbilinyi, Chairperson. The decision was in favor of the respondent.

The appellant, aggrieved by the decision of the trial Tribunal, has lodged five grounds of appeal as follows;-

- 1. That, Hon. Chairperson of the District Land and Housing Tribunal erred in law and in fact for sustaining a preliminary objection raised by the respondent that Application No. 61 of 2023 before her was res judicata*

*ALLS.*

*to Application No 273 of 2013 which was before the same Tribunal and also res judicata to Land Revision No. 273/2019, Land Revision No.04 of 2022 as well as Misc. Application No. 37 of 2022 both of which were at the High Court (Land Division).*

- 2. That, Hon. Chairperson of the District Land and Housing Tribunal erred in law and in fact for her failure to recognize that for a res judicata principle to apply, all conditions must be fully established.*
- 3. That, Hon. Chairperson of the District Land and Housing Tribunal erred in law and in fact for her failure to consider that the applicant's notice of appeal at the Court of Appeal had no effect of obstructing the proceedings in Application No.61 of 2023 because it related to different parties to proceedings and a different subject matter.*
- 4. That, Hon. Chairperson of the District Land and Housing Tribunal erred in law and in fact for concluding that a mere mention of an offer letter of the appellant in a judgment in Application No. 273 of 2023 meant that the subject matter in contention in Application No.273 of 2003 was the same as that in contention in Application No. 61 of 2023 before her.*
- 5. That, That, Hon. Chairperson of the District Land and Housing Tribunal erred in law and in fact for failure to know that the appellant's only available remedy was to institute a fresh suit against the respondents after he has been evicted unlawfully from his suit premises.*

The disposal of the appeal was by way of written submission as it was scheduled by this court on 29/11/2023. In the appeal, the appellant was represented by Mr. Bakari Juma, learned Advocate, while the respondents were represented by Mohamed Majaliwa, learned Advocate.

The appellant complied with the court order by submitting the written submission in support of the appeal on time while the respondents did not file their reply submission despite the fact they were aware of the

*Alls*

appeal as they have entered appearance in court through their advocate Mr. Mohamed Majaliwa. Following that, on 05/02/2024 this court ordered an ex-parte judgment against the respondents.

On his submission Mr. Juma, counsel for the appellant submitted on the 1<sup>st</sup> ground that the trial Chairperson erred in sustaining the respondents' preliminary objection that Land Application No.61 of 2023 was res judicata to the Land Application No. 273 of 2013 which was before the same trial Tribunal and also res judicata to Land Revision No. 273 of 2019, Land Revision No. 04 of 2022 as well as Misc. Application No. 37 of 2022 which were at the High Court (Land Division).

He contended that Application No. 61 of 2023 before the trial Tribunal was not res judicata for the reason that in the said Application No. 61 of 2023, the parties were different as Ally Shomari Pangaya vs Msolopa Investment Company Limited and Japhet Makilo whereas, in the previous applications, the parties were Ally Shomari vs Juma Said (As the Administrator of the Estate of the late Said Juma).

On the second ground of appeal, he was of the view that, the trial Chairperson erred for not considering whether all five conditions for the principles of res judicata to apply were met. He was of the view that the five conditions set by the law under Section 9 of the Civil Procedure Code

*Alles*

Cape 33 R.E. 2019, (herein CPC) were not met but that the same was disregarded. To cement his point he referred this Court to the case of **The Registered Trustees of Chama cha Mapinduzi vs Mohamed Ibrahim Versi and Sons and Another**, Civil Appeal No. 16 of 2008 CAT (Unreported) at page 8.

He argued that the respondents did not prove to the satisfaction of the Court that the mandatory conditions necessary for res judicata were met. He added that the subject matter in the two applications were different whereas, that the subject matter in Land Application No.273 of 2013 was house number FK/AM42 at Kawawa Street Hananasifu Ward within Kinondoni Municipality, while in Land Application No. 61 of 2023, the subject matter was House No. H.N.F./MKG/140 situated on Plot No. 102 Block 1 Hananasif Ward within Kinondoni Municipality.

On the third ground of appeal, Mr. Juma learned Advocate submitted that the Notice of Appeal to the Court of Appeal in respect of Land Appeal No. 176 of 2019 could not affect the proceedings in Application No. 61 of 2023 because the parties in the Notice of Appeal were quite different from Land Application No. 61 of 2023, as *Ali Shomari Pangaya vs Juma Said (As the Administrator of the Estate of the late Said Juma)*, while in the latter the parties were *Ally Shomari Pangaya vs Msolopa Investment Company Limited*.



On the 4<sup>th</sup> ground, Mr Juma contended that the trial Chairperson erred in concluding that a mere mention of the appellant's offer letter by the Tribunal in Application No. 273 of 2003 was a conclusive proof that the subject matter in Application No. 273 of 2003 was the same as that in Application No. 61 of 2023. He submitted further that in Application No. 273 of 2003, the subject matter was in dispute was ownership between the appellant and one Juma Saidi and it was in respect of house No. FK/AM42 at Kawawa Street Hananasifu Ward within Kinondoni Municipality, whereas in Application No. 61 of 2023, the matter in contention concerned trespass to the applicant's premises at house No. H.N.F./MKG/140 situated on Plot No. 102 Block 1 Hananasif Ward within Kinondoni Municipality.

He prayed that this court be pleased to allow the appeal, quash the proceedings of the trial Tribunal and set aside its judgment and decree with costs.

Having gone through the submission of the appellant through his counsel, it is clear that the appellant opted to argue only four grounds of appeal and abandoned the fifth ground of appeal. I will also not touch it.

I have read the first, second and fourth grounds of appeal, and it is my view that they all evolve around one subject which is that the trial

*Alle*



Tribunal erred in its findings that the Land Application No. 61 of 2023 was res judicata to Application No. 273 of 2013, the two cases were both before the trial Tribunal. The counsel for the appellant contended that that the conditions set for res judicata principle were not met, on the two grounds that, **first**; the parties in Land Application No.273 of 2013 were not the same in Land Application No. 61 of 2023, **second**; that the subject matters were different. In that regard I will consolidate the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> grounds of appeal and determine them together.

Having gone through the court records, it appears that there is no clear indication that the subject matter in Application No. 273 of 2013 and Application No. 61 of 2023 were different, it was the duty of the appellant to have shown such differences in the trial Tribunal. The court records including a letter dated 25.01.2022 and letter dated 20.12.2022 shows that Msolopa Investment Company Limited (the respondent) received the order by the executing Tribunal to make eviction of the occupiers of House No. F/K/AM42 which was the subject matter in Land Application No. 273 of 2013 and the execution was effected accordingly.

The appellant who was the respondent in Land Application No. 273 of 2013 is disputing that the respondent effected the execution on house No. H.N.F./MKG/140 situated on Plot No. 102 Block 1 Hananasif Ward within Kinondoni Municipality while the subject matter was house No.

*Alle*

FK/AM42 at Kawawa Street Hananasifu Ward within Kinondoni Municipality.

However, as said earlier, the evidence shows that the execution was done on house No. FK/AM42 as per the eviction orders in the Tribunal records. This was cemented by the trial Chairperson at page 7 of the impugned judgment when he finds that the subject matter on the above two applications were the same, hence res judicata.

Furthermore the changes of names where the subject matter is the same does not take the issue of res judicata away. The appellant sued the court broker who was executing the decree of the Tribunal in Execution No. 1377 of 2021 which was between **Juma Said (As the Administrator of Estate of Said Juma) vs Ally Shomari**. Therefore, Application No. 61 of 2023 was not a new case but the continuation of what resulted to such execution which was already determined to an end, therefore the change of names by excluding Juma Said (As the Administrator of Estate of Said Juma) in Land Application No. 61 of 2023, did not help make it a new case but subsequent case to Land Application No. 273 of 2013. Msolopa Investments Company Limited was executing what was awarded to Juma Said in Land Application No. 273 of 2013. Suing Msolopa was as the same as instituting a fresh suit against Juma Said after the first one being determined to the end. *Als.*


If the appellant was aggrieved with the execution process he could have filed the objection proceedings challenging the execution process as it is obvious that his claims is that the court broker effected execution on the wrong subject matter from the one which the Tribunal ordered. The remedy was not to institute another suit suing the broker.

Resultantly, I concur with the decision of the trial Tribunal that the Application No.61 of 2023 was res judicata to Application No. 273 of 2013 and subsequent applications thereto. Hence, the trial Tribunal had no jurisdiction to determine the same.

Having, resolved the above issue, I find no reason to determine the 3<sup>rd</sup> ground of appeal because the matter was res judicata before the trial Tribunal.

I find this appeal to have no merit. I dismiss it in entirety. Since the appeal was heard ex-parte, I issue no order as to the costs.

It is so ordered.

 *A. Msafiri*  
**A. MSAFIRI**  
**JUDGE**  
**14/02/2024**