

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**LAND APPEAL NO. 12 OF 2022**

*(Arising from Land Application No. 93 of 2019 of the Kahama District Land & Housing Tribunal)*

**AMOSI BUNDALA..... APPELLANT**

**VERSUS**

**JOSEPH JONAS..... RESPONDENT**

**JUDGMENT**

*Date: 30/11/2022 & 23/02/2023*

**MASSAM, J.:**

This appeal arises from the decision of the District Land and Housing Tribunal for Kahama in Land Application No. 93 of 2019 where the appellant lost the case hence this appeal. The following are four grounds of appeal were filed in a memorandum of appeal on 16/3/2022.

1. *"That, the Chairman of the District Land and Housing Tribunal for Kahama erred in law and in facts in deciding that the piece of Land in dispute belongs to the respondent whilst the said Tribunal had no Jurisdiction to interfere the decision of the District Land and Housing Tribunal for Shinyanga, which in the execution of the decree did hand over the said piece of land to the appellant.*

2. *That, Chairman of the District Land and Housing Tribunal for Kahama erred in law and facts in his verdicts that the appellant did not adduced on how he acquired the land in dispute, whilst it is apparent from the proceedings/evidence on record that the land was obtained by grant from his father.*
3. *That, the Chairman of the District Land and Housing Tribunal for kahama erred in law and in facts when he raised the first issue which was not accordingly answered by the respondent's evidence.*
4. *That, the Chairman of the District Land and Housing tribunal for Kahama erred in law for failure to understand that two acres of land cannot be sold to a amount of tshs, 50,000/= as demanded by the respondent.*
5. *That, the Chairman of the District Land and Housing Tribunal for Kahama erred in law and in facts when he admitted and considered the agreement letter for sale of land whilst the same was not consented by the vendor's wife and it was denied by the 1<sup>st</sup> respondent in the main application. Besides, it was not corroborated by its author or any other person who witnessed the sale."*

As it can be gathered from the records, on 03.10.2019 the respondent at a lower Tribunal sued the Appellant together with one Munde Shija for a claim that the Tribunal to declare him a lawful owner of the suit land and

the same Tribunal declare the appellant with his mother one Munde Shija unlawful trespassed into the disputed land.

The dispute raised in a simple fact that on 02.3.2009 the Respondent purchased the land in disputed from one Bundala Manoni at Itembe Village, the same year respondent constructed a house. On June 2012 the seller of the land died, on the year 2015 while the respondent was in Mpanda he was phoned by his wife informing him that there is one person says the land is his and the house should be demolished. When he asked who want to demolish his house, he was told that the Appellant one Amos Bundala. In support his claim that he purchased the land in dispute, he tendered exhibit P1 (MAUZIANO YA KIWANJA). The pleadings in trial tribunal established the cause of action that respondent is the lawful owner of the disputed land upon purchased the land from one Munde Shija (the then 1<sup>st</sup> respondent in trial suit) and her husband one Manoni Bundala. On between 2015 and 2016 respondent claimed the suit land had trespassed by the appellant without any claim of right.

In trial, the then 1<sup>st</sup> respondent disputed the claim by telling the tribunal that she had no land to sale because she was under care of her children and she knew nothing if her late husband sold the land to the respondent.

On the other hand, appellant (the 2<sup>nd</sup> respondent in trial tribunal) told the trial tribunal that on 2015 the respondent trespassed into his land measured with 5 paces. The dispute was referred to Kagongwa Ward Tribunal where on 06/07/2015 the tribunal declared the disputed land with 5 paces belonged to him. He said, on 11/05/2015 he applied for execution in Shinyanga District Land and Housing tribunal where he prayed to be handled with the land in dispute. The Tribunal upon heard the application it ordered the disputed land to be handled to the appellant.

The facts established that Appellant admitted the respondent purchased the land from his father with 38 x 20 paces which is not in dispute, the disputed land is 5 paces which the respondent encroached. The trial tribunal at page 26 of the typed proceedings, ordered the Judgement of Kagongwa Ward Tribunal and the Ruling of the Shinyanga District Land and Housing Tribunal to be tendered and form part of proceedings the same was admitted collectively as exhibit D1.

After being heard the matter, the Tribunal came with findings that the respondent with evidence established the ownership and the appellant declared trespasser in disputed land.

When this appeal called for hearing it was appeared that, the respondent was properly served but it seems he refused to sign the calling summons, the court ordered to proceed ex parte against the respondent. On the 1<sup>st</sup> ground of Appeal, appellant orally submitted that, the Trial tribunal had no power to entertain the matter because the Shinyanga District Tribunal was already entertained the matter and he was given the said land.

On 2<sup>nd</sup> ground, he submitted that the trial tribunal erred by saying that, he did not prove the ownership while there was enough evidence that the said plot, he was given by his father.

He went on submitting the 3<sup>rd</sup> ground by submitting that the Kahama DHL erred in law by deciding the same that the evidence he brought before the tribunal was not proved the ownership

The last ground of Appeal (4<sup>th</sup> ground) was to the effect that the trial tribunal erred by considering the letter of sale agreement brought by respondent while there was no prove consent of his wife. With that submissions he prayed the court to order the following;

*1. Appeal to be allowed with cost*

2. *The declaration the appellant a lawful owner of the disputed land of five steps.*

Having considered the grounds of appeal and the appellant's submission together with the trial tribunal's records, it is certainly that this court is subject to see whether this appeal is *meritously*.

When I was perusing the trial records and reading the grounds of appeal, I noticed that an appellant in the trial proceedings raised preliminary objection on point of law that the Application is incompetent in law as it was proclaimed by the doctrine of Res Judicata as it was duly determined earlier by Ward tribunal for Kagongwa. In determining the preliminary objection, the Trial tribunal ruled out that the Preliminary objection by stating that appellant failed to prove the issue of Res Judicata basing on evidence that Parties at kagongwa Ward Tribunal in Land Complaint No. 4/2015 and the Shinyanga District Land and Housing Tribunal in Misc. Application No. 138 of 2015 parties were Joseph Jonas and Amos Bundala whilst the Land Application No. 93 of 2019 parties were Joseph Jonas Amos and Munde Shija. Again, the address of the respondent was in the c/o VEO Kishima where the address of the appellant was in the care of VEO Kishima. Basing on those facts above, the trial Tribunal's Chairman had of

the opinion that preliminary objection by the appellant had no leg to stand, need to be dismissed.

With regards to the effect that the trial tribunal on determination of the preliminary objection on the issue of res judicata which to me is a serious issue as it touches the jurisdiction of court/tribunal if it had or not have powers to determine the matter on merit.

I am aware with the doctrine of Res Judicata and its essential, my mindful here is to evaluate the evidence of the trial tribunal when determining the issue of Res judicata. Now whether the Tribunal did confine itself in wider approach on issue of res judicata or narrowed. Considerably I must look the three essential elements which are (1) an earlier decision on the issue, (2) a final judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties. Section **9 of the Civil Procedure Code Cap.33** provides that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially issue in a former suit between the same parties or between parties under whom they or any of them claim to litigate under the same title in a court competent to try such subsequent suit or the suit which

such issue has been subsequently raised and has been heard and finally decided by such court.

In my evaluation I have read the proceedings and annexure therewith attached to form part of the trial proceedings. at page 26 of the trial proceedings the tribunal collectively admitted *Hukumu ya Baraza la Kata la kagongwa and Uamuzi wa Baraza la ardhi Shinyanga* as exhibit D1. The said annexure is a judgment and proceedings of Complaint No. 04/2015 of Kagongwa Ward Tribunal between Amosi Bundala who was the complainant and Joseph Jonas who was the Respondent. The said Land Application No. 93 of 2019 parties are same except Munde Shija but the subject matter purported to be the same. In complaint No. 04/2015 appellant claimed in Ward Tribunal that respondent encroached five (5) paces of the land of appellant of which the Tribunal determine the matter and found the appellant had a good title in a disputed land he was declared the lawful owner of the disputed land.

Upon declared the owner of the disputed Land, appellant applied Misc. Application No. 138 of 2015 for execution in Shinyanga District Land and Housing tribunal which upon heard the application ordered the respondent to handover the land to the appellant. Nothing proved in the records if the

respondent handled the disputed to the appellant as ordered in the Misc. 138 of 2015 or he appealed.

On 08/10/2019 respondent filed the Application No. 93 of 2015, at this time Respondent sued Munde Shija and the appellant on a claim that on between 2015 and 2016 the appellant and the said Munde Shija trespassed into a disputed land without any lawful justification.

In passing between the line of the trial proceedings and the annexures therein there is no dispute that respondent purchased the suit land measured 20 x 38 paces from one Manoni Bundala, the dispute as read in the records (the exhibit D1) show that the disputed emerged when the respondent encroached the land of the appellant by exceeding the amount of 20x38 he purchased to add 5 paces from the land of the appellant.

The facts of the subject matter in Complaint No. 04 of 2015 and the Land Application No. 93 of 2019 have same similar features of which led for the appellant to raise the issue of res judicata in trial tribunal. When I was reading the Judgement and Proceedings of the Complaint No. 04 of 2015, I found that the Joseph Jonas complained in the Kagongwa Ward tribunal that the respondent trespassed into his land by encroaching the 5 paces

out of 20x38 paces he purchased from one Manoni Bundala (the late father of the appellant). Is the Land Application No. 93 of 2019 distinguishable to Land Complaint No. 04 of 2015? The clear facts are that there some features which are similar and some are different. For instance, in Complaint No 04 of 2015 the land in dispute described only the size without mention other important features like location, boundaries and neighbours. In land Application No. 93 of 2019 nothing shown if the land measured with 20x38 paces as pleaded by the respondent in his application to show the size, location, neighbours and boundaries respondent only pleaded the value of the land to be estimated 10,000,000/= which also was not proved in the trial. This fact can not make distinction if the claim of respondent that his land with 20 x38 was all trespassed or the claim of the appellant in Complaint No 04/2015 that the dispute is on 5 paces.

Respondent also fail to establish in his statement to tell the tribunal that he once he had a dispute with the appellant in the Kagongwa Ward Tribunal which the tribunal declared the appellant lawful owner in Complaint No. 04 of 2015 if could be informed so, the trial tribunal could be able to make an inquiry if the land in dispute is the same land determined in Land

Complaint No. 04/2015. It is very dangerous to ignore the issue of res judicata as raised by the appellant in trial tribunal because the record proves some feature which was supposed to be dealt with in the trial tribunal.

Nevertheless, the respondent in his pleadings and his evidence during trial failed to describe the size, location, neighbours and boundaries of the dispute land which the trial tribunal and this court would determine if the disputed land in Land Application No. 93 of 2019 is the same of Land Complaint No. 5 of 2015.

The court in numerous decisions stated the point of law that any land in dispute must state land description with certainty so that it can be distinguished from other lands as stipulated in **Regulation 3 (2) (b) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003, GN. No. 174 of 2003** reads as follow;

*"An application to the tribunal shall be made in. The form prescribed in the second schedule to these regulations and shall contain:*

*(b) the address of the suit premise or location of the land involved in the dispute to which the application related."*

I subscribe the above authority by citing the case of said **Hassan Shehoza**

**V. 9 The Chairperson CCM Branch and another**, Land Appeal No. 147

of 2019 held inter alia that:

*"Having the same principle in mind, it is the finding of this court that as per the available evidence on encroachment, the contradictions on the size of the land and the boundaries therein, it was a fit case for the trial tribunal to exercise its discretion and make a visit the locus in quo in order to ascertain the boundaries in dispute and the size of the land. I am convinced that by doing so, the tribunal would have made a more informed decision on the issue of encroachment. Failure to do so might have made the tribunal reach into a wrong finding."*

Basing on those findings and authority though the trial tribunal overruled the preliminary objection basing on the facts that the doctrine of Res Judicata was not established merely because in Complaint No. 04 of 2015 parties were Amos Bundala and Joseph Jonas while in Land Application No. 93 of 2019 parties were Joseph Jonas, Amos Bundala and Munde Shija but nothing established that the subject matter is not the same. The Trial tribunal failed to explain clearly the subject matter of Complaint No. 04 of 2015 and the Land Application No. 93 of 2019 if are similar or not in its

decision the trial tribunal based only on parties of which Munde Shija who was not part in the Land complaint No. 04 of 2015 but the subject matter as per evidence the subject matter is the same.

Having saying so, I find that the 1<sup>st</sup> ground of appeal have merit the trial tribunal entertained the matter with no jurisdiction as the matter was earlier determined in merit by Kagongwa Ward Tribunal therefore Land application was res judicata. Within that ambit no reasons to determine grounds 2, 3 and 4. following those reasons I hereby allow the appeal, quash and set aside the proceedings, judgment and decree in Land Application No. 93 of 2019. Costs to be born from all events.

Ordered accordingly.

**DATED** at **SHINYANGA** this 23<sup>th</sup> day of February, 2023.



  
**R.B. MASSAM**  
**JUDGE**  
**23/02/2023**

**Court:** Right of Appeal explained