

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

CIVIL CASE NO. 53 OF 2016

MWASITI ALLYPLAINTIFF

VERSUS

DIAMOND TRUST BANK TANZANIA LTD DEFENDANT

RULING

The Plaintiff Mwasiti Ally has sued the Defendant Diamond Trust Bank Tanzania Limited Claiming that judgment in Civil Case No. 155 of 2013 be quashed as it was obtained through fraud, the Defendant to compensate for general damages to the Plaintiff for mental and physical torture suffered as a result of the execution of the judgment obtained by fraud, the Plaintiff be handed back the suit premises and any other order as this Honourable Court may fit (sic) to grant.

The defendant has filed a written statement of defence denying the claims. Furthermore, it has filed a notice of preliminary objection containing five points as follows;

- (a) The court lacks jurisdiction to hear determine this suit, it being nothing but a suit moving the court presided over by one Judge to quash a decision of the same court presided over by a different judge through a fresh suit.

- (b) The suit lacks a cause of action leading to the orders sought.
- (c) The suit is bad for not attaching the judgment sought to be quashed.
- (d) That the suit is bad for not attaching to it the documents on which the fraud aggrieving the plaintiff was committed
- (e) The verifications clause is defective.

At the hearing of the preliminary objection on 22nd September, 2016 Mr. Charles Semgalawe learned counsel represented the Plaintiff while the defendant was represented by Mr. George Vedasto, learned Advocate.

The preliminary objection was argued by way of written submission.

A brief history of the matter is follows. The defendant instituted civil case No 155 of 2013 against six defendants, the present plaintiff, inclusive.

The record in that matter which was filed in this court shows that the present plaintiff together with her fellows were dully served with summons but defaulted not only appearance in court but also failed to present any written statements of defence.

This court, invoking the provision of O. V111 Rule 14(1) of the civil procedures code (cap 33 R.E 2002), entered judgment for the plaintiff (now defendant).

The plaintiff who featured as the 6th defendant in civil case 155 of 2013 believed that the said judgment was obtained by fraud hence this suit.

Learned counsel for the defendant filed his written submission in support of the preliminary objection while learned advocate has filed a reply in objection to the preliminary objection.

I have considered the preliminary objection, particularly the first limb.

I have also considered the written submission of the either counsel. I am satisfied that this court lacks jurisdiction to entertain and decide this suit.

In the first place this court is functus. It has no jurisdiction to allow re-opening a matter which was before same court and which it rendered the final decision in the absence of statutory authority.

In other words, this court is no longer seized of civil case No 155 of 2013 because it has already discharged the office.

Second, the plaintiff, it is clear, is seeking this court to quash the decision of the very court which was given by Hon. Kaduri, J rtd ,in civil case no 155 of 2013, The exercise, I am not prepared to undertake.

The court of Appeal in the case of ***Mohamed Enterprises Tanzania Limited Vs Masoud*** observed at PP 27 -28 thus;-

“There has been no room open to the High court and courts subordinate thereto whereby one Judge would enter a judgment and draw a decree (thus bringing a suit to a finality only to find another judgment of the High court soon thereafter setting aside the judgment and decree and substituting therefore with a contrary judgment, and to do so amounts to gross abuse of the court process”.

It is argued on part of the plaintiff that this court should quash its decision as it was obtained by fraud.

With due respect I cannot do that, This court in the case of *Zuliat Sued Vs Issack Issa & Others*, High Court Civil Reference No. 2 OF 1997 (Bkb) observed:-

“Every judgment whether obtained by fraud or given without jurisdiction remains effective and binding and is capable of being execution, until it is reversed by a higher court. A judgment may be reversed either on appeal or revision”.

I subscribe to that observation.

For the reasons stated I uphold the first limb of preliminary object and hold that this court lacks jurisdiction to entertain and decide this case.

I order that the suit be dismissed with costs to the defendant.

In view of this determination I see no importance of discussing and determining the rest limbs of preliminary objection.

Order accordingly.



W.P Dyansobera

JUDGE

15/09/2017

Ruling delivered this 15th September, 2017 in the presence of Mr. Charles Sengalame learned Counsel for the Plaintiff and Mr. John Vedasto, learned Counsel for the Defendant.



A handwritten signature in black ink, appearing to read "W.P. Dyansobera".

W.P. DYANSOBERA

JUDGE

15/09/2017