

TANZANIA / JUDGMENT

ALEX MWITA SCANNED

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21 November 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND CASE NO. 26547 OF 2024 ALEX MSAMA MWITA.....
PLAINTIFF VERSUS KAMAL HUSSEIN MUCCADAM..... 1st DEFENDANT JAPHETY
BIKOLABILUNGI ADELHARDUS..... 2nd DEFENDANT

RULING

21st November, 2024 L. HEMED, J The instant matter was called on 13th November, 2024 for necessary orders. Having gone through the Complaint, the court raised suo motto two points of law to wit: -

1. Whether the instant case is tenable in view of the decision of this court in Land case No.355 of 2014 declaring the Plaintiff owner of Plot No. 782, Msasani Beach Area in Kinondoni Municipality.
2. Whether the Registrar of Titles is necessary party to the suit at hand. i The background pertaining to the preliminary points raised by the court is that, the Plaintiff presented the instant suit against the defendants seeking to be declared owner of the suit premises/land/ property known as and situated at Plot No. 782, Msasani Beach Area in Kinondoni Municipality, Dar es Salaam City. He also prays for restraint order against the defendants from disturbing and or interfering the Plaintiff from his peaceful enjoyment of the suit land. In the Complaint, it has been averred that on 25th February, 2014, the Plaintiff purchased a suit land from one Moses David Mabula at the consideration of Tanzania Shillings One Hundred and Fifty Million (TZS 150,000,000/=). That on 19th November, 2014 one Paul Meenda Mushi trespassed into the suit land, which act prompted the Plaintiff to file Land Case No. 355 of 2014 in this court. It was stated further that Land Case No. 355/2014 which was lodged by the Plaintiff against Moses David Mabula and Paul Meenda Mushi, ended in favour of the Plaintiff who was declared the lawful owner of the same vide the judgment which was delivered on 17th August, 2018 by Honourable Judge Wambura. He added that after the Judgment, 2 transfer documents were lodged to the Ministry of Lands and Human Settlement Development where it was discovered that the suit piece of land was registered in the name of the 1st Defendant (Kamal Hussein Muccadam). Moreover, the Plaintiff asserted that while he was arranging to pursue his right against the 1st Defendant, there emerged the 2nd Defendant also claiming that he is the rightful owner of the suit property alleging to

have purchased it from the 1st Defendant. The Plaintiff is thus seeking for the Judgment and Decree against the defendants as follows: - "1. That the Plaintiff is a lawful owner of the suit premises.

2. That Restraint Orders be issued against the defendants be permanently restrained from disturbing and or interfering the plaintiff from his peaceful enjoyment of his suit land.
3. The Plaintiff be awarded costs of this Suit.
4. Any other relief(s) that this Honourable Court shall deem fit to grant. " 3 On 21st November parties appeared through their advocates as follows; Mr. Walter Goodluck, learned advocate appeared for the Plaintiff. The 1st Defendant was duly represented by Mr. Fredrick Ododa, learned advocate while the 2nd Respondent enjoyed the legal service of Mr. Alex Balomi, learned advocate. When called to address on the points raised by the court, Mr. Goodluck submitted that after having gone through the Plaint and discussion with the Plaint they have decided to concede. He also added his own point that the Plaint has discovered to have no cause of action against the defendants. He prayed the matter be struck out. On his part, Mr. Ododa, learned advocate of the 1st Defendant prayed for the dismissal of the entire suit as it is res judicata. The learned counsel for the 2nd Defendant urged the court to strike out the suit without costs. After careful consideration of the submissions made by the learned counsel, it is quite clear that all the learned counsel are in consensus ad idem that the point raised by the court are valid. They only differ in the consequences thereof. The counsel for the Plaintiff and the 2nd Defendant are of the view that the matter be struck out while the counsel for the 2nd Defendant has insisted for dismissal. The question is what is the appropriate order in the circumstance of the matter at hand. It should be noted that, one of the point raised by the court is on existence of the judgment in respect of Land case No.355 of 2014, where the Plaintiff was declared lawful owner of the disputed property, that is Plot No. 782, Msasani Beach Area in Kinondoni Municipality. In the said judgment, the question of ownership of the suit landed property was conclusively determined. I have read the judgment and found it being falling in the category of judgments in rem. I am holding so because, when this court declared the Plaintiff owner of the suit property, it did so against the whole world. Therefore, the said judgment cannot be invalidated by instituting another fresh suit, rather through appeal, revision or review. The present matter has been brought by the decree holder in Land Case No. 355/2014 seeking to be re-declared owner of the same suit property. Since, the question of ownership had already been determined, the matter at hand is constructively res judicata. The consequence for a matter found to be res judicata is that such a party cannot be permitted to re-litigate a claim that has already been the subject of a final judgment in a previous suit. The doctrine of res-judicata has been enshrined in our procedural law to make sure that litigations come to finality. It is found under section 9 of the Civil Procedure Code [Cap.33 R.E 2019] providing thus: - No court shall try any suit or issue in which the matter directly and substantially in issue has directly and substantially in issue in a former suit..." The above provision prohibits courts to try a matter which has already determined. Therefore, the proper order for the matter which is

found to be res-judicata is dismissal. I am aware that the counsel for the Plaintiff has also conceded to the point of non-joinder of the Registrar of Titles as necessary party. It is a trite law that, failure to join a necessary party, renders a suit incompetent before the court and thus deserving to be struck out. In the instantaneous matter, the point on the matter being substantially determined in Land Case No. 355 of 2014 requires the 6 matter to be dismissed while the point on non-joinder of the necessary party has the effect of striking out the suit. This being the case, the dismissal order takes precedent to the order for striking out the suit. In the upshot, I proceed to dismiss the entire suit. The fact that the plaintiff has wasted no time of the court and of the parties, and the fact that the defendants were yet to file written statements of defence, each party to bear its own costs. Order accordingly. DATED at DAR ES SALAAM thi 1st November, 2024 JUDGE 7

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