

TANZANIA / JUDGMENT

Land Case No

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1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LAND DIVISION AT PAR ES
SALAAM LAND CASE NO. 14712 of 2024 BENEDICTO RWEIKIZA
IJUMBA.....PLAINTIFF VERSUS ALEX MSAMA
MWITA..... 1st DEFENDANT THE AFRICAN COMPANY
LIMITED..... 2nd DEFENDANT ABDALLAH KHAMIS
RASHID..... 3rd DEFENDANT MUGASA MINING COMPANY
LIMITED..... 4th DEFENDANT LOCUS DEBT MANAGEMENT LIMITED..... 5th
DEFENDANT

RULING

Date of last Order: 25/11/2024 Date of Ruling: 29/11/2024 LALTAIKA, J. This Ruling is in respect of the preliminary objection raised by the learned Counsel for the 2nd Defendant, contending that the suit is res judicata under section 9 of the Civil Procedure Code [Cap 33 R.E. 2019]. The PO was argued by way of written submissions. Page 1 of 9 Mr. Mafuru Mafuru, learned Advocate argued in support of the PO while his learned brother in the bar, Augustine Kusalika, vehemently objected to the same. I hereby register my commendations to Counsel for their spotless compliance with the scheduled order. This positive habit of time management, which is growing among Counsel in this country, is essential to enable this Court to fulfil its constitutional mandate of timely dispensation of justice. The next part of this Ruling is, in that order, a summary of submissions by the parties, my analysis of the law and the verdict. Mr. Mafuru, Counsel for the 2nd Defendant, recalled that the Plaintiff sought declarations that he was the rightful owner of Plot No. 914, Msasani Peninsular, Kinondoni Municipality, Dar es Salaam Region (CT No. 186634/37), referred to as the suit premises. Additionally, the Plaintiff sought orders for the surrender of the original title deed related to the sale agreements executed between the Plaintiff and the 1st Defendant and between the 2nd and 3rd Defendants, a perpetual injunction restraining the 1st and 2nd Defendants from entering the suit premises, general damages, and costs of the suit. Page 2 of 9 Mr. Mafuru emphasized that the suit was res judicata as the same issue had been directly and substantially raised, heard, and finally decided by the court in Land Case No. 69 of 2019, involving the same parties or parties litigating under the same title. He referred to the principles on what constitutes a preliminary objection as outlined in *Alphonse Buhatwa v. Julie th Rhoda Alphonse and Another*, Civil Reference No. 9/01 of 2016 (unreported), where the Court of Appeal of Tanzania, per Mugasha J.A., defined a preliminary objection as a

pure point of law that can be determined on the assumption that all the facts pleaded are correct, without the need for detailed scrutiny of pleadings, affidavits, or counter-affidavits. He argued that the objection raised by the 2nd Defendant met these criteria. Mr. Mafuru further submitted that section 9 of the CPC explicitly bars the court from trying a matter that has already been decided by a competent court. He invited the court to consider the explanations provided under section 9, emphasizing that the suit premises—Plot No. 914, Msasani Peninsular—had been the subject of Land Case No. 60 of 2019, in which the court had declared the 2nd Defendant the rightful Page 3 of 9 owner. That decision had been upheld by the Court of Appeal in Civil Appeal No. 620 of 2022. Counsel contended that the doctrine of res judicata applied universally to bar multiplicity of suits and guarantee finality in litigation, as established in *Michael Obiero v. Ager Ondiek and Another*, Civil Appeal No. 422 of 2022 (unreported). He argued that even if some parties in the current suit were not part of the previous case, the judgment in Land Case No. 60 of 2019 had created rights in rem, binding the whole world. Thus, Counsel averred, the Plaintiff and other new parties could not escape the application of the doctrine. Citing the case of *Gerald Chuchuba v. Rector, Haga Seminary* [2002] TLR 213, he stressed that the doctrine of res judicata is a fundamental principle of public policy, intended to ensure finality in litigation and prevent the reopening of settled matters. He argued that the Plaintiff's actions amounted to an abuse of the court process, as the issues raised in the current suit had already been conclusively determined. Page 4 of 9 In conclusion, Mr. Mafuru urged the court to uphold the preliminary objection, dismiss the suit as res judicata, and award costs to the 2nd Defendant. Mr. Kusalika, Counsel for the Plaintiff, vehemently objected to the preliminary objection. He stated that before delving into the merits of the objection, it was prudent to outline the historical context of the matter, which led to the hearing of Land Case No. 60 of 2019. He noted that the 2nd, 3rd, 4th, and 5th Defendants were not parties to that case. On this basis, he asserted that the matter could not be considered res judicata, as proposed by the Counsel for the 2nd Defendant, rendering this limb of the preliminary objection meritless. He emphasized that, having provided a synopsis of the matter and its legal implications, it was essential to address the two limbs of the preliminary objection. Beginning with the claim under section 9 of the Civil Procedure Code (Supra) which alleged that the suit was resjudicata, he noted that the objection referenced a non-existent Land Case No. 69 of 2019 involving Leonard Reed and Alex Msama Mwita. He argued that this serious error, involving the citation of a non-existent case, undermined the Page 5 of 9 objection's validity, rendering it incompetent and deserving of being struck out with costs. Without prejudice to his position, Mr. Kusalika proceeded to address the submissions of the 2nd Defendant's Counsel. He questioned whether the matter at hand was resjudicata and argued that the references made by the 2nd Defendant, including a case defining preliminary objections, were irrelevant to the issue at hand. He emphasized that the question for determination was whether the matter was resjudicata with respect to Land Case No. 69 of 2019. He cited section 9 of the Civil Procedure Code and the case of *Peniel Lotta v. Gabriel Tanaki and Other* [2003] TLR 312 to outline the essential elements for the doctrine of res judicata to apply. He submitted that the matter was not resjudicata for several reasons. First, neither the Plaintiff nor the 3rd, 4th, and 5th Defendants were parties to the earlier suits. Second, the references to two cases, namely Land Case Nos. 60 and 69 of 2019, further complicated the matter and precluded the application of the

doctrine. Third, the Plaintiff and certain Defendants had not been accorded the right to be heard in the earlier proceedings, making it improper to invoke section 9 of the Civil Procedure Code. Page 6 of 9 In conclusion, he submitted that the limb of the preliminary objection concerning res judicata lacked merit and that the matter should proceed to a hearing on its merits. He urged the Court to overrule the preliminary objection as devoid of foundation and meritless. I have dispassionately considered the rival submissions. The doctrine of res judicata, as encapsulated in section 9 of the Civil Procedure Code (Supra), serves the important purpose of ensuring finality in litigation and preventing the reopening of matters that have been conclusively determined by competent courts. For a plea of res judicata to succeed, the following conditions must be met:

1. The matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit.
2. The former suit must have been between the same parties or their privies.
3. The parties must have litigated under the same title in the former suit. 4 The court that decided the former suit must have been competent to try the subsequent suit.
5. The matter in issue must have been heard and finally decided in the former suit. Page 7 of 9 The Plaintiff's argument that he and certain Defendants were not heard in the earlier proceedings raises a question about the scope and limits of the right to be heard. While the right to be heard is a cornerstone of natural justice, it is not without boundaries. Courts must balance this right with the principle of res judicata, which ensures finality in litigation and prevents the judicial system from being overwhelmed by repetitive claims. The decision in Land Case No. 60 of 2019 definitively determined ownership of the suit premises. Ownership was the central issue, and it was resolved through an adversarial process involving competent parties and a judgment rendered by a court of law. This decision, later upheld by the Court of Appeal, constitutes a final determination that creates rights in rem, meaning those rights apply universally, including to parties who were not part of the original proceedings. It is settled law that once a judgment has been rendered on a matter, it becomes binding and conclusive as to that matter. In cases involving rights in rem, such as property ownership, the judgment transcends the immediate parties and binds the entire world. Therefore, the absence of certain parties in the original suit does not invalidate the finality of the decision. Page 8 of 9 I am inclined to add, albeit in passing, that the Plaintiffs contention should have been pursued through the appellate or review mechanisms provided under the law. If the Plaintiff believed that he was not afforded the right to be heard in Land Case No. 60 of 2019, the proper course of action would have been to apply for a review where permissible. The purpose of the right to be heard is to ensure fairness during the adjudication process, not to provide a perpetual opportunity to reopen matters already decided. The doctrine of res judicata acts as a safeguard against such misuse. In the upshot, the preliminary objection raised by the 2nd Defendant is hereby upheld. The suit is dismissed with cost. It is so ordered. E.I. LALTAIKA JUDGE 29/11/2024 Page 9 of 9

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Prepared on 14 October 2026 · Esheria