

TANZANIA / JUDGMENT

joseph mgana scanned

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND CASE NO.15520 OF 2024 JOSEPH JAMES MGANA.....
PLAINTIFF VERSUS YONA AMBILIKILE SONELO..... 1st DEFENDANT CRISAM
COMPANY LIMITED..... 2nd DEFENDANT

RULING

13th August & 2Sh September, 2024 L.HEMED, J, The court is called to determine whether the instant case is res subjudice to Land Case No.4767 of 2024. This follows the preliminary objection that was raised by the counsel for the defendants. Hearing of the same has been by way of written submissions. At all the material time, the Plaintiff has been represented by Mr. Safari Malata, learned advocate while the defendants have enjoyed the legal service of Mr.Alfred Tukiko Okech, learned counsel. Submitting in support of the preliminary objection, the learned counsel for the defendants asserted that the Plaintiff instituted the instantaneous suit Scanned with OKEN Scanner on 1st July 2024 claiming ownership of Plot No. 542 Block 'K' located at Mbezi beach within Kinondoni District In Dar es Salaam with certificate of title No.

79674. It was the view of the learned counsel that, the Plaintiff instituted this suit while knowing the existence of Land Case No. 4767 of 2024 on the same subject matter in which the Plaintiff is the 5th Defendant. The learned counsel averred that, this suit contravenes section 8 of the Civil Procedure Code [Cap.33 R.E 2019] which prohibits trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, which is still pending in a competent court. The learned counsel contended that Land Case No. 4767 of 2024 which was previously instituted, concerns the same subject matter and the issues are directly and substantially the same in both suits. In cementing his arguments, he relied on various decisions including the case of Avodia Antipas Swai vs Asha Ahmed Jama and Four Others, Mise. Land Application No.7 of 2023 and Joseph Ntongwisangue & Another vs. Principal Secretary Ministry of Finance &Another, Civil Reference No. 10 of 2005. He prayed the court to dismiss the suit. 2 Qfe Scanned with OKEN Scanner In response thereto, the counsel for the Plaintiff submitted that the sub-judice principle is whole inapplicable in the matter at hand because parties in both suits are not the same. Example was given that, the 1st, 2nd, 3rd and 4th defendants in the previous suit are not parties in the instant case.

It was submitted further that issues in controversy in the two suits are not and can never be the same because parties are entirely different and the causes action in either case arise from different set of facts and circumstances. The learned counsel for the Plaintiff proceeded to insist this suit to be not res subjudice because the reliefs sought are quite different from the previous one. He ended praying the court to overrule the preliminary objection. Having gone through the rival submissions the question is whether the matter at hand is res-subjudice to Land Case No. 4767 of 2024. The doctrine of res sub judice implies that where the same subject matter is pending in a court of law for adjudication between the same parties, the other court are barred to entertain it. In our jurisdiction, the doctrine has been entrenched in section 8 of the Civil Procedure Code, [Cap.33 RE 2019] thus: - Qfe Scanned with OKEN Scanner "No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in Tanzania having jurisdiction to grant the relief claimed. [Emphasis added] The above provision envisages res-subjudice to exist in the following circumstances: -

- i. Where parties are the same in both cases; ii. The matter in issue is directly and substantially in issue in the previous suit; and iii. The former suit is pending before the same or any other court having jurisdiction to grant the reliefs sought. The question to answer is whether the above three conditions have been met in this matter for the court to rule out that the suit is ressubjudice. The counsel for the defendant could not avail the court with the pleadings of Land Case No.4767 of 2024, for the court to ascertain if the matter at hand is res-subjudice. However, through the information and communication technology, the case management system (cms.judiciary.go.tz) in particular, I managed to trace pleadings in respect of Land Case No,4767 of 2024 which were filed electronically. Having read the Complaint in respect of the previous Land Case, I became able to make an assessment as to whether the instant matter is res sub judice. It is undisputed fact that there is another suit, the previous case, Land Case No.4767 of 2024, which was instituted by HAPPINESS SIMON NDEKI, the wife of the Plaintiff in the instant case, Land Case No. 15520 of 2024. The question is whether the matter in issue is directly and substantially in issue in the previous suit. In the previous case, the Plaintiff is suing INTERNATIONAL COMMERCIAL BANK(T) LTD, MBUZAX AUCTION MART AND COMPANY LTD, YONA AMBILIKILE SONELO, NAND J INVESTMENT LIMITED and JOSEPH JAMES MGANA (the defendants) alleging that Plot No.542 Block K, Mbezi, Kinondoni Dar es Salaam was mortgaged without her consent. She seeks for the following reliefs/orders:- ..ii) An order for discharge of mortgage... O Scanned with OKEN Scanner Hi) The sale of the plaintiff matrimonial house... to the 3rd defendant was unlawful, illegal hence null and void; iv) An order nullifying the sale of the suit property..." In the instant suit, that is, Land Case No.15520 of 2024, the Plaintiff is one JOSEPH JAMES MGANA, the 5th Defendant in the previous case. He is suing, YONA AMBILIKILE SONELO (the 3rd Defendant in the previous case), the purchaser of the suit landed property together with CRISAM COMPANY LIMITED, for wrongful eviction from the

suit land. The Plaintiff prays for Judgment and decree against the defendants jointly and severally for: - "(a) a declaration that as on 31st May 2024, the Plaintiff was and still is the lawful registered beneficial owner of all that property known as Plot 542 Block "K" Mbezi in Kinondoni District Dar es Salaam with Certificate of Title No. 79674("the CT") together with all unexhausted improvements thereon;

- (b) a declaration that the 1st Defendant has not and is neither the rightful nor the lawful owner or assignee of the property not even as personal legal representative or an administrator of any estate; 6 Qfe Scanned with OKEN Scanner
- (c) a declaration that the 1st Defendant's self- representation and/or holding out as the owner of the suit premises and property is wrongful, invalid, false hence wrongful and unlawful; (d)a declaration that the Defendants' forceful entrance onto and/or invasion on the premises on 31st May 2024 were and are wrongful and unlawful;..." The property in both suits is the same, that is Plot No.542 Block K Mbezi beach, Kinondoni - Dar es Salaam. The said two cases as enumerated herein above, have been instituted by spouses. The wife is challenging the mortgage of the property to INTERNATIONAL COMMERCIAL BANK(T) LTD and the subsequent disposition of the same by sale to one YONA AMBILIKILE SONELO (the 3rd Defendant in the previous case and 1st Defendant in the instant case). The husband on his part, is challenging the title of YONA AMBILIKILE SONELO over the suit land. He intends to move the court to find that the said purchaser is not the owner of the suit landed property and that the eviction done by the said purchaser through CRISAM COMPANY LIMITED was illegal. O Scanned with OKEN Scanner By examining the cause of action and the reliefs sought in both cases, one would conclude saying, the two cases are interrelated. The cause of action on the legality of mortgage and sale is similar to that which challenges the validity of ownership of the suit land by the purchaser. It is thus obvious that, matter in issue in Land Case No. 15520 of 2024 is directly and substantially at issue in Land Case No.4767 of 2024, the previous case. In fact, the causes of action in both cases arise from same facts and circumstance. The 2nd question is on whether the former suit is pending before the same or any other court having jurisdiction to grant the reliefs sought. The answer to this question is straight forward that, both Land Case No. 4767 of 2024 and Land Case No. 15520 of 2024 have been instituted and still pending in this Court which has jurisdiction to grant the reliefs sought. The final condition of res subjudice \s that parties have to be the same in both suits. In the instant case, the Plaintiff and the 1st Defendant are also parties to the previous suit (Land Case No. 4767 of 2024) as 5th and 3rd defendants respectively, save for the 2nd Defendant who has been joined to this suit only because she evicted the Plaintiff from the suit landed property. Q Scanned with OKEN Scanner My firm view is that, though some of the parties in the previous suit have not been included in the present suit, the final verdict in either suit will have impact on the other. If the two cases are left to be tried simultaneously, there is likelihood of getting conflicting decrees at the end of the trials. I am of the firm opinion that where it is found that the matter in issue is directly and substantially in issue in the previous suit pending before a competent court and that the final verdict of one case appears to have direct impact on the other, it should be construed that constructive res sub

judice exists, notwithstanding the variance of parties. In the final analysis, I find this suit constructive res subjudice to Land Case No.4767 of 2024 which is still pending before this court. I thus proceed to strike out the entire suit with costs. Order accordingly. 9 Q? Scanned with OKEN Scanner

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