

TANZANIA / JUDGMENT

Scanned 15457 OF 2024

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE NO.
15457 OF 2024 MOHAMED JUMANNE MBAGO.....PLAINTIFF VERSUS DAR
RAPID TRANSIT AGENCY..... 1st DEFENDANT THE ATTORNEY
GENERAL..... 2nd DEFENDANT

RULING

Last Order: 10/9/2024 Date of Ruling: 27/9/2024 A.MSAFIRIJ, The Plaintiff herein instituted the suit against the defendants hereinabove seeking for the following orders:-

1. A Declaratory Order that he is a lawful owner of the landed properties located at Mchikichini Street, Charambe Ward, Temeke Municipality within Dar es Salaam City, known as Plot No. TMK/CHB/MC23/171 with Square Meter 470, together with Plot No. TMK/ CHB/ MCH23/172 with Square Meter 309.
2. A Declaratory Order that the First Defendant has acquired part of landed properties lawfully owned by the Plaintiff located at Mchikichini Street, Charambe Ward, Temeke Municipality within Dar es Salaam city, known as Plot No. TMK/CHB/MC23/171 with Square Meter 470, together with Plot No. TMK/ CHB/MCH23/172 with Square Meter 309 for the purpose of implementation of Government projects, the expansion of the Kiiwa Road to accommodate Dar es Salaam rapid transport services @ Mwendokasi Bus Transport.
3. Punitive Damages in a tune of Tshs. 300,000,000/=.
4. General Damages in a tune of Tshs. 600,000,000/= and as would be assessed by this Honourable Court.
5. Interest at the sum in item (3) above at court rate of 12% from the date of Judgement of this case to the date of payment in full.
6. Cost of this Suit.
7. Any other order and relief as this Honourable Court may deem fit and just to grant. Upon being served with the plaint, the defendants filed a joint written statement of defence and raised the preliminary points of the laws as follows:-

- a) The suit is untenable in law for being res judicata contrary to Section 9 of the Civil Procedure Code.
- b) The suit is untenable in law as the Plaintiff has no cause of actions against the Defendants. The hearing of the preliminary objections was argued by way of written submissions, Mr. Faraji Mangula, Advocate, learned advocate appeared for the plaintiff and Mr. Ayoub Gervas Sanga, State Attorney represented the defendants. ■W 2 In support of the preliminary objection, Mr. Sanga submitted on the first limb of objection that the suit is bad in law for being res judicata contrary to Section 9 of the Civil Procedure Code, Cap 33 R.E 2019 (the CPC). He stated that this suit cannot be tried by this court because it was already tried by this court in Land Case No. 275 of 2023, over the same subject matter and same parties and this court dismissed the said Land Case No. 275 of 2023 with costs for being time barred. That the plaintiff if aggrieved by the decision in the said land case, the remedy he had was to lodge an appeal against the decision and not to institute the new suit as he has done. Mr Sanga submitted further that in the previous suit i.e. Land Case No. 275 of 2023, the plaintiff was claiming for compensation for the acquisition of his land by the defendants. However, the suit was dismissed for being time-barred. In this instant matter, the plaintiff prays for a declaratory order that he the rightful owner of the disputed land. He referred to the case of Zuberi Paul Msangi vs Mary Machui, (Civil Appeal No. 316 of 2019 and Paniel Lotta vs Gabriel Tanaki & Others, TLR 312 and Umoja Garage vs NBC Holding Corporation, TLR 339. The counsel argued that the suit is constructive res judicata as the facts in the previous suit, the subject matter which is the suit plots and the 3 parties are the same except for now sought declaratory order of being the lawful owner of the suit property. The counsel sought reliance from the case of Fredrick August Massawe vs Celine Ephraim Ngalugha & 6 Others, Land Case No. 155 of 2022 High Court Dar es Salaam at page 15 and Peniel Lotta vs Gabriel Tanaki & Others [2003] T.L.R 312, Umoja Garage vs NBC Holding Corporation [2003] TLR 339. On the second limb of preliminary objection, Mr Sanga submitted that the plaintiff has no cause of action against the defendants. He said that in paragraphs 4 and 7 of the plaint, the plaintiff seeks a declaration that he is the rightful owner of the disputed land and in the written statement of defence in paragraphs 2 and 3, the defendants admitted that the plaintiff is the lawful owner but on the allegation of demolition, the defendants denied that the demolition has been done in the disputed land. To cement this point, the counsel for the defendants cited the case of John M. Byombalirwa vs Agency Maritime Internationale (Tanzania) Ltd 1983 TLR 1 and Mashando Game Fishing lodge and 2 others vs Board of Trustees of TANAPA, T.L.R 2002. He pointed that the suit is incurably defective, so it deserves to be struck out with costs. -Art » - 4 In opposing submission, Mr. Mangula submitted that the first limb of preliminary objection is not on pure point of law as per the case of Mukisa Biscuits Manufacturing Co. Ltd. vs West End Distributors (1969) EA 696. He submitted that in Land Case No. 275 of 2023, the plaintiff was claiming for prompt and fair compensation while in this instant matter, the plaintiff claims for a declaratory order that he is the lawful owner of the landed properties located at Mchikichini Street, Charambe Ward, Temeke Municipality within Dar es Salaam. He said that since the reliefs claimed in this

instant matter are different, then the suit is not res judicata. In the second limb of preliminary objection, Mr Mangula argued that the plaintiff has cause of action against the defendants. He added that it is the plaintiff who have the right to sue as was stated in the cases of Hamisi Salum Kizenga vs Moses Malaki Sewando and 18 Other, Land Appeal No. 51 of 2019 and Mashando Game Fishing lodge and 2 others vs Board of Trustees of Tanapa [2002] TLR at page 319- 320. He submitted the plaintiff has rightly and purposeful sued the defendants as paragraphs 4 to 7 of the plaint. He lastly prayed the court to dismiss the preliminary objection with costs. A[.. 5 Having heard the submissions of rival parties, I will start with the first limb of objection and the issue for determination and consideration is whether this suit is res judicata. The doctrine of res judicata is embedded in Section 9 of the Civil Procedure Code which provides thus: - "No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same the tide in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court..." From the foregoing, for the doctrine of res judicata to apply, the following elements have to be satisfied which are:-

- i. That the judicial decision was pronounced by a court of competent jurisdiction; ii. That the subject matter and the issues decided are the same or substantially the same as the issues in the subsequent suit; Hi. That the judicial decision was final; iv. That it was in respect of the same parties or parties litigating under the same title. 6 Upon examining the aforesaid principles (i) (ii) and (iii) in line with paragraphs 4,5,6,7 and 8 of the plaint together with annexures "MH" "MJ2" and "MJ3" collectively to the plaint, it is apparent that Land Case No. 275 of 2023 was dismissed with cost for being time-barred on 13/12/2023. Further, the subject matter in the instant suit is landed properties located at Mchikichini Street, Charambe Ward, Tememe Municipality within Dar es Salaam City, known as Plot No. TMK/CHB/MC23/171 with Square Meters 470, together with Plot No. TMK/CHB/MCH23/172 with Square Meters 309, which was also the subject matter in Land Case No 275 of 2023. Finally, the parties are the same both in this suit and with Land Case No. 275 of 2023 and litigating under the same title. In Land Case No. 275 of 2023, the plaintiff's cause of action is compensation for his land being acquired by the defendants, and in instant matter the plaintiff claims for a declaratory order that he is the lawful owner of the suit land. It is my considered view that the cause of action is related for one of compensation. I say this making reference on paragraph 8 of the plaint whereby the plaintiff states that on 05/10/2020, as a result of acquisition and demolition of his landed properties, he was given the notice for claim of compensation but to date he has never been 7 compensated. From this, I am of the view that the plaintiff is seeking for compensation as a result of the alleged acquisition and demolition of the suit properties. For one claiming compensation must first establish the ownership of the property. In that regard, I am at one with the defendants that, this matter is purely res judicata as in the previous suit, the plaintiff was claiming for compensation, thus making the instant matter a constructive res judicata. In the case of National Insurance Corporation

(T) Ltd versus Shengena Limited, Civil Application No. 230 of 2015, the Court of Appeal observed the following when giving the difference between the dismissal order and an order of striking that;- "...For that matter, we wish to remind the learned judges that orders of dismissal and striking out a matter have different legal consequences as rightly submitted by the applicants, while the former order presupposes that the matter has been heard on merit and finally determined hence hampers the appellant from pursuit of the same matter before the same court, the later does not for it presupposes that the matter is not heard on merits but for certain causes it is found incompetent.." L I j 8 The Land Case No 275 of 2023 was dismissed in this very court hence it was finally determined. Basing on the legal consequences of a dismissal order, read together with Section 9 of the CPC which prohibits subsequent litigation over substance of the same matter between the same parties or between parties under whom they or any of them claim to litigate, I find this case to be res judicata and I sustain the first limb of objection. I proceed to dismiss the suit with costs for being res judicata and I will not determine the remaining point of objection. It is so ordered.

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