

TANZANIA / JUDGMENT

UNFREIGHT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE NO.15779 OF 2024 UNFREIGHT LOGISTICS LTD.....
APPLICANT VERSUS LAMADA HATEL AND APARTMENT LTD..... 1st RESPONDENT THE
REGISTERED TRUSTEES OF THE ANGLICAN CHURCH OF
TANZANIA..... 2nd RESPONDENT THE ANGLICAN CHURCH OF
TANZANIA..... 3rd RESPONDENT REV. FR WILLIAM MSAKI..... 4th
RESPONDENT PADRE LAMECK P. NDOMBA..... 5th RESPONDENT

RULING

Date of Last Order: 28.08.2024 Date of Ruling: 05.09.2024 T.N. MWENEGOHA, J The present Ruling follows the Preliminary Objection that the case at hand is res-subjudice to Land Application No. 48 of 2024, pending before District Land and Housing Tribunal for Temeke, hereinafter referred as the Tribunal, filed by the 1st defendant. That, the said case has the same parties, same subject matter and same reliefs sought. Addressing the Court on the said issue, the 1st defendant's counsel, Omary Kilwanda maintained that, the instant case is on a landed property with a Certificate of Title No. 2689, situated at Mtoni Buza Area within Temeke i Municipality and Dar es Salaam Region. The same property is involved in the case before in the case before the Tribunal, vide Land Application No. 48 of 2024. The claims in both cases are the same, that the dispute is on the validity of a lease agreement. That, the reliefs are the same. Where among others, the plaintiff is seeking before this Court to be declared the lawful tenant of the 2nd and 3rd defendants and a further declaration entered between the 1st defendant and the plaintiff. In alternative, the plaintiff be paid 301,000,000/=, while the 1st defendant who is the applicant before the Tribunal is seeking to be compensated as outstanding rent to the tune of 166,000,000/=. Also, the parties in these two cases are the same, save for the 2nd, 3rd, 4th and 5th defendants herein above who are not included in the case pending before the Temeke District Land and Housing Tribunal, vide Land Application No. 48 of 2024. Hence it is res subjudice as stated under section 8 of the Civil Procedure Code, Cap 33, R.E 2019 and the case of Avodia Antipas Swai versus Asha Ahmed Jama and Others, Misc. Land Application No. 7 of 2023, High Court of Tanzania (unreported). Arguing against the issue, Advocate Fares Mshana for the applicant, maintained that the case before this Court is not res subjudice to any case. The defendant if interested with any case, or have any claim against the plaintiff, can raise a counter claim under Order VIII Rule 9(1) of the Civil Procedure Code, Cap 33, R.E 2019, Regulation 7 of

the Land Disputes Courts (The District Land and Housing Tribunal Regulations) of 2003 and section 51(2) of the Land Disputes Courts Act, Cap 216, R.E 2019. Because there is a pending Land Application No. 48 of 2024, as an applicant in that case and a defendant in this case, she should have raised a counter claim. Above all, the two 2 cases are not similar in terms of matter at issue. In this case the relief claimed are to the tune of 301,000,000/=, while in the case at the Tribunal the compensation claimed is to the tune of 166, 000,000/=. Also, the parties are different as the second to fifth defendants are not involved in the case before the Tribunal. I have gone through the arguments of both counsels for and against the preliminary objection. What I have gathered from the arguments in the submission of the parties is that, both agree that there is a pending case, vide Land Application No. 48 of 2024, involving the first defendant as the applicant and the plaintiff herein as the respondent. The case is on the same subject matter which is a lease agreement entered on the same property which is involved in this suit. Further, the parties in both cases are the same, though in the instant suit, the second to the fifth defendants have been added and are not involved in the case before Temeke District Land and Housing Tribunal. And lastly, the reliefs are the same, both cases involve a compensation in monetary value, where at the Tribunal, the compensation claimed is 166,000,000/= and in this case, the plaintiff has claimed to be paid a total of 301,000,000/= Now, for the principle of res subjudice to be invoked, the parties should show that, there is a pending case before a Court/ Tribunal of competent jurisdiction to try it and that a subsequent case involving the same parties, reliefs and subject matter has been preferred in another Court. This is according to the provisions of section 8 of the Civil Procedure Code, Cap 33 R.E 2019, which says; - "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 3 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." As highlighted above that parties are in agreement that, there is another case before the Temeke District Land and Housing Tribunal, having the two principal parties, that is to say, the plaintiff who is the respondent in that case and the first defendant and the applicant in the said case. Also, the case in question involves the same property and the claim is the same which is on the legality of the lease entered between the two principal parties over the landed property in dispute. Again, the reliefs claimed are the same, which is compensation, though they differ in value, that which was claimed in this case being higher than that claimed at the Tribunal. In that case, I am in agreement with the counsel for the first defendant that, the instant case is res-subjudice to Land Application No. 48 of 2024. Although the plaintiff has tried her level best to find the differences in the two cases, including the parties and claims, in my opinion such arguments are unfounded. So long as the two principal parties are involved, the other 4 added defendants in this case, do not make it a different case. The claims and the subject matter including the reliefs are same. After all, the existence of the plaintiff and the first defendant in this case proves that the two cases do involve the parties who are substantially the same. Further the plaintiff's claim that the first defendant can raise a counter claim in this case if interest is baseless and does not change the fact that, the present suit is res-subjudice, see *Avodia Antipas Swai versus Asha Ahmed Jama and Others*, (supra) 4 Hence, this Application is incompetent as it is res subjudice, being brought by the same person who is trying

to present his case in different jurisdictions causing multiplicity of suits. Such actions have to be frowned upon as a multiplicity of suits clogs the wheels of justice, by not only i causing unnecessary costs of time and money to parties and Courts but also compromising the Court to a position where it may end up with contradictory verdicts of the same matter. In the event, I Order the instant Application to be struck out with costs. I. MWENEGOHA, JUDGE, 05/09/2024 5

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