

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPEAL NO. 90 OF 2021

(Originating from Application No. 60/2016 of the District Land and Housing Tribunal for Kagera at Karagwe)

ALLI CHAMANI.....APPELLANT

VERSUS

DIONIZI KARWANI.....1ST RESPONDENT

YASINTHA DIONIZI.....2ND RESPONDENT

PASTOR OF BAPTIST CHURCH OMURUSHAKA KARAGWE.....3RD RESPONDENT

JUDGMENT

26th August & 14th September 2022

Kilekamajenga, J.

A background in this case is apposite; the record shows that, in 2003, the appellant sued the District Executive Director of Karagwe District Council together with a Pastor of Baptist Church of Omurushaka in the District Court of Karagwe vide Civil Case No.3 of 2003. In that case, the appellant sought an order of vacant possession against those two people from the land in dispute. By that time, the Pastor of the Baptist Church at Omurushaka was the first respondent in this case. One of the issues for determination in that case was whether the claimed part of the land belonged to the appellant. Finally, the District Court of Karagwe declared the appellant a trespasser. The decision to dismiss the appellant's case was delivered on 25th November 2003.



The appellant did not take any initiatives to challenge the decision of the District Court until in 2006 when he applied for extension of time to file an appeal through Miscellaneous Civil Application No. 15 of 2006. The said application was struck out before this court for being incompetent. In 2014, through Miscellaneous Civil Application No. 29B of 2014, the appellant applied for leave to extend time to file an appeal out of time and also prayed to stay the execution of the District Court's decree. This Court dismissed the application on 06th September 2016. Within the same year, the appellant went back to the District Land and Housing Tribunal at Karagwe and filed application No. 60 of 2016 seeking the declaration that the first and second respondents in this case are trespassers. He also sought compensation of Tshs. 30,000,000/= for the trees.

In fact, the first and second respondents are husband and wife and the first respondent is the Pastor of the Baptist Church whom the appellant sued in 2003. Sometimes later, the third respondent was also joined in this case. The District Land and Housing Tribunal, after noticing these facts, struck out the case on 06th April 2018 for being res judicata as per section 9 of the Civil Procedure Code, Cap. 33 RE 2019. After the order to strike out the case, the appellant did not prefer any appeal in time until on 02nd July 2018 when he applied for extension of time to file the appeal vide Miscellaneous Land Application No. 40 of 2018.

The same application was struck out for lack of competence. The appellant approached this court, again, with Land Application No. 67 of 2020 seeking extension of time to file the appeal. He was finally granted leave to file the appeal out of time on 28th September 2021, hence this appeal.

The appellant's memorandum of appeal before this court contains four grounds thus:

1. *That, the date of ruling and the drawn order of the tribunal are at variance thus there is nothing which has been determined;*
2. *That, the trial tribunal erred in law to hold that application No. 60 of 2016 of Karagwe District land and Housing Tribunal as well as Karagwe District Court Civil Case No. 3 of 2003 is res judicata;*
3. *That, the trial tribunal erred in law to join the respondent whereas the same has no legal entity to sue nor to be sued;*
4. *That, the learned chairman erred in law to strike out the suit after holding it to be res judicata instead of dismissing the same.*

When defending the appeal before this court, the appellant urged the court to order retrial of Application No. 60 of 2016 arguing that, the ruling being challenged bears a different date from the drawn order. While the ruling was delivered on 06th April 2018, the drawn order seems to have been made on 06th June 2018. In his view, the remedy was to remit back the record for correction. To support the argument, he cited the case of **Nassoro Abubakari Khamis**

and Another v. Wakf and Trust Commission of Zanzibar and Others, Civil Appeal No. 245 of 2020.

When submitting on the second ground, the appellant was of the view that, the trial tribunal misinterpreted the doctrine of *res judicata* as the first and second respondents were not the parties in the former suit. Though the disputed land is the same, which was determined in the former suit, it is not *res judicata* because the relief claimed are different. He further insisted that, the parties in the present suit are different from the former suit. To bolster his argument, he referred the court to the case of **Registered Trustees of Chama cha Mapinduzi v. Mohamed Ibrahim and Another**, Civil Appeal No. 16 of 2008.

On the third ground, the appellant argued that, the third respondent was erroneously joined in this suit as he/she is not a legal entity; the Pastor of Baptist Church of Omurushaka is a title which has no legal personality. On this point, he cited the cases of **Full Gospel Bible Fellowship Church v. Elgoodness Emmanuel Rwatto**, Civil Revision No. 4 of 2021 HC at Bukoba and **Kanisa la Anglikana Ujiji v. Abel Samson Heguye**, Labour Revision No. 5 of 2019. He insisted on the role of this court which includes correcting illegalities on the record. On the fourth ground, the appellant pointed on the erroneous order of the trial tribunal which struck out the application instead of dismissing it for

being *res judicata*. The order to strike out the application denied the appellant the right to rectify and file another case because the case was declared *res judicata*. The appellant invited the court to rectify the irregularities by way of revision.

The response from the counsel for the respondents, Mr. Raymond Laurent conceded on the variance between the ruling and drawn order but, in his view, the rectification of the dates may be meaningless as the case was incompetent for being *res judicata*. Mr. Laurent insisted that, as per section 9 of the Civil Procedure Code, the case is *res judicata* because the first respondent is the same person holding the office of the 3rd respondent. As the former decision, which declared the appellant as a trespasser, remains unchallenged, the appellant cannot execute the decree of the subsequent suit. Mr. Laurent argued further that, the appellant had room to rectify the errors in this case after the case was struck out. This court, therefore, should invoke **section 43(1)(b) of the Land Disputes Courts Act** and dismiss the appeal with costs.

When rejoining, the appellant insisted that, he had no room to rectify the errors because the case was declared *res judicata*. The proper remedy was to dismiss the case instead of striking it out.



Having considered the submissions from the learned counsels and the grounds of appeal advanced by the appellant, I wish to start the discussion with the most pertinent issue in this case which also features as the second ground. When addressing on this point, the appellant insisted that, the case does not fall under the doctrine of *res judicata* as the parties are different and the claims between the former and the instant case are also different. On the other hand, the counsel for the respondent was of the view that, the instant case is *res judicata* as the matter was previously decided by a competent court and such decision remains unchallenged. As already indicated in the background above, previously, the appellant sued the Pastor of Baptist Church of Omurushaka together with the District Executive Director of Karagwe District Council over ownership of a piece of land. In that erstwhile suit, the appellant claimed for vacant possession and compensation. The determination of the former case led to the conclusion that, the appellant trespassed into the land in dispute and he was, accordingly, ordered to demolish the house built there on and cut down the trees. Precisely, the District Court of Karagwe stated that:

*'Therefore with the aforesaid stand of the law in mind when tested together with the evidence as also afore analysed, **I find the plaintiff is not entitled to compensation because he had trespassed into the land of the second defendant, otherwise he is supposed to pull down his houses and cut down the trees, which had planted on the said land.**'*
(Emphasis added).

The former case finally reached this case. Despite the fact that the case took a bouncy route it finally came to an end in 2017. The appellant went back to the District Land and Housing Tribunal to sue over the same piece of land. This time, the appellant did not sue the Pastor of the Church as in the former suit. Instead, he preferred the cause of action against the Pastor of the same church in his own name. He also joined the Pastor's wife as the second respondent. Therefore, the first respondent is the Pastor of the Baptist Church of Omurushaka who was attending to the former suit.

Before this court, the appellant confirmed that the piece of land which was a subject of determination in the former suit is the same land in dispute in this case. However, the appellant had changed the story arguing that, the third respondent who was a party in the former suit and later joined in the subsequent suit has no legal personality. He further argued that, the claims in the previous and subsequent suit are different. In my view, as long as the appellant was declared a trespasser on the same piece of land and the former decision was made by a competent court and remains unchallenged, it may be injustice today to declare the appellant the lawful owner of the piece of the same land. As long as, the cause of action this case arises from the same piece of land which the appellant was declared a trespasser, this suit is *res judicata*.

The doctrine of *res judicata* derives from **section 9 of the Civil Procedure Code, Cap. 33 RE 2019** thus:

*"9. 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 title** 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. (Emphasis added).*

Under the above provision of the law, a suit is *res judicata* where the subsequent suit involves a matter which was directly or substantially in issue in the former suit; where the subsequent and former suit involves the same parties or their proxies or privies; where the parties or any of them claims under the same title as that of the former suit; where the former suit have been conclusively determined; and where the former suit have been decided by a competent court or tribunal.

The doctrine of *res judicata* intends to cure the following: **First**, there must be end to litigation where the parties are the same or their privies/proxies and the matter involves the same cause of action or issues. **Second**, the parties should be relieved from litigating on the same cause of action and by the same parties or their proxies or privies. **Third**, the parties should respect judicial decisions.

Fourth, the parties should be protected from persons who just want to spend their time in courts on the same dispute or cause of action. **Fifth**, the doctrine is intended to protect multiplicity of suits.

On the fourth ground of appeal, the appellant argued that the trial tribunal erroneously struck out the case instead of dismissing it. In my view, it was actually beneficial to the appellant for the case to be struck out. The dismissal order would inhibit the appellant from correcting and filing a competent case. The order to strike out the case allowed the appellant to correct the errors before approaching the tribunal for justice. The appellant could even omit the third respondent who was later joined and sue the right person. This ground of appeal, therefore, invites the court to set aside the favour given to the appellant and render an appropriate order of dismissal which does not allow the appellant to approach the court rather than filing an appeal. On the first ground, the appellant alleged variance on the dates appearing on the ruling and drawn order. In my view, this does not worthy to be ground of appeal as its remedy is just simple. The appellant after noticing the discrepancy on the dates, should have withdrawn the appeal and apply for the correct drawn order. Again, the corrected drawn order may have no value to the appellant as the suit was res judicata. I find no merit in the appeal as the suit was res judicata. I hereby dismiss the appeal with costs. Order accordingly.

DATED at BUKOBA this 14th day of September, 2022.



Ntemi N. Kilekamajenga.
JUDGE
14/09/2022

Court:

Judgment delivered this 14th September 2022 in the presence of the first respondent who is also the third respondent but in absence of the appellant.

Right of appeal explained.



Ntemi N. Kilekamajenga.
JUDGE
14/09/2022