

“ORIGINAL”

**IN THE HIGH COURT OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA**

**LAND APPEAL NO. 50 OF 2016
(Appeal from the District Land and Housing Tribunal of KONDOA
Land Application No. 12 of 2015**

YUNISE KINYUNYU..... APPELLANT

VERSUS

HALIMA RAMADHANI..... RESPONDENT

JUDGEMENT

Date of Ruling- 18/08/2017

Mansoor, J:

Yunice Kinyunyu, the Appellant herein filed a case at the District Land and Housing Tribunal of Kondoa. She claimed for the following relief:

1. She be declared the owner of 1 ½ acre land situate in Olboroti Village;
2. The Respondent be declared the trespasser to the land;

“ORIGINAL”

3. General damages

4. Costs

5. Any other relief deemed fit and just to be awarded;

Yunice Manyunu claimed to have purchased the land in dispute from Merry Loilole on 24th February 2007, and that the respondent trespassed into her land on 20th November 2014. She said the Olborot Village office confirmed to her the land belonged to Merry Loilole and approved the sale. She said she constructed a house on the land, and on 29th January 2008, she was summoned at Mrijo Ward Tribunal, but on 22 March 2008, Mrijo Ward Tribunal allowed her to proceed with the construction. At Trial Merry Raphael Loilole testified as PW2. She said that, the respondent is her aunt, but the land in question does not belong to her aunt, but to her father. She confirmed to have sold the land to the Appellant.

The respondent says she had a case with Ole Loilole at the Mrijo Ward Tribunal regarding four plots including the plot in dispute. She won the case at Mrijo Ward Tribunal, and the

“ORIGINAL”

respondent was stopped from constructing a house thereat by the members of the Tribunal. The respondent testified before the Trial Tribunal that she was allocated the land in 1994 by the Village Land Allocating Committee. At Trial, Ally Mohamed Gumbo, a member of the Village Land Committee confirmed that the land in dispute was allocated to the respondent in 1994; Shabani Ally Kiduka also confirmed that the respondent was allocated four plots by the Village Land Committee, and she paid the necessary fees, and Besta Waziri Kambi confirmed that the respondent and Ole Loilole had a case at the Ward Tribunal, and Halima Ramadhani won the case. The Appellant was ordered to stop the construction but she did not obey the Ward Tribunal's orders. Shabani Issa testified that he never approved the sale of land between Merry Loilole and Halima Ramadhani, and he never allocated any land to Marry Loilole. The Trial Tribunal reached a decision in favour of the Appellant.

“ORIGINAL”

Aggrieved by the decision of the District Land and Housing Tribunal, the Appellant represented by Advocate Mcharo, filed an appeal raising five grounds of appeal, as follows:

1. The Trial Tribunal did not consider the sale agreement entered between the Respondent and Merry Loilele
2. The Tribunal failed to consider the evidence that Merry Loilele was the owner of the disputed land and had paid surveying fees of THz 1,000 to the Village Government;
3. The Chairperson of the Trial Tribunal erred in pronouncing that the evidence of Merry Loilele contradictory about her acquisition of the land in dispute thereby discrediting the testimony of Merry Loiloli is which substantiated that the Appellant was granted the land as a gift by her father and later she paid THz 1,000 as survey fees;

“ORIGINAL”

4. The land subject to a dispute between the Respondent and one Ole Loilole is different from the land in this dispute.

5. That the Chairperson should have held the disposition of the land between the Respondent and Merry Loilole lawful since the Village Executive Officer verified the sale.

After the submissions by the parties, the Court commissioned the Chairperson of the District Land Housing Tribunal to visit the locus in quo in order to find out whether the land in dispute was the same land subject of the case in Mrijo Ward Tribunal between Ole Loilole and Halima Ramadhani. The District Land and Housing Tribunal visited the locus in quo, and filed the following Report, part of the Report reads:

“at the locus in quo Yunice Kinyunyu showed us the land she bought and Halima Ramadhani showed her four plots of land including the one in dispute, and after passing through the judgement of the Ward Tribunal, it shows that

“ORIGINAL”

Halima Ramadhani was claiming for four plots of land and the name of Yunisi Kinyunyu appears in that judgement of a case between Ole Loilole and Halima Ramadhani.”

In determining this appeal, I have heard the parties' submissions, and went through the records of the Trial Tribunal including the Report filed by the Chairperson of the District Land Housing Tribunal of Kondoa dated 13/07/2017, in which the Judgement of Mrijo Ward Tribunal was referred.

First and foremost, I agree with the findings of the Chairperson of the District Land and Housing Tribunal regarding the ownership of land by Merry Loilole. Merry Loilole could not establish her ownership of the land in dispute. She gave contradictory evidence as observed by the Trial Tribunal at the last paragraph of page five and the first two paragraphs of page 6. Merry Loilole said she was given the land by her father. Her father could not have given her the land since he was not the owner. The Mrijo Ward Tribunal had already declared that the land in dispute belongs to Halima Ramadhani. The decision of the Mrijo Ward Tribunal is still

“ORIGINAL”

valid as Merry Loilole father never appealed against that decision. I am alive to the decision in the case of the Village Chairman KCU Mateka vs. Anthony Hyera (1988) TLR pg. 188, Para 4, where the Court had this to say:

“One of the conditions for successful invocation of the plea of Res Judicata is that the parties to the previous suit must be the same in the subsequent suit. In Kigosera Primary Court, Civil Case No. 59/1983, the parties were Anthony Hyera and Osman Mbuguru, the Appellant as the Chairman was not a party to these proceedings therefore the plea is not maintainable.”

The subject matter in the case before the Mrijo Ward Tribunal between Merry Loilole’s father and Halima Ramadhani is substantially and directly the same subject matter in this appeal, and that since the Ward Tribunal is the quasi-judicial body of competent jurisdiction, have already determined on the subject matter, it is a bar for re-litigating on the same subject matter in a subsequent suit.

“ORIGINAL”

Since a decree was passed by a competent tribunal against this same land and that decree is effective unless it is reversed by a superior court. There is no proof given by the Appellant or Merry Loilole that the decision of the Mrijo Ward Tribunal was reversed by any Court superior to the District Land and Housing Tribunal of Dodoma.

This matter was clearly discussed in the case of UMOJA GARAGE VS NBC LIMITED, Civil Appeal no. 63 of 2003 Court of Appeal of Tanzania (unreported), where the Justices of the Court of Appeal had held that *“res judicata is not confined to same parties but it covers the same subject matter of the proceedings.”*

Also the explanation given by Mullah in his book the Indian Code of the Civil Procedure, which it was said:

“the principle underlying explanation IV that res judicata is not confined to issues which the Court is actually asked to decide but covers issues or facts which are so clearly part of

“ORIGINAL”

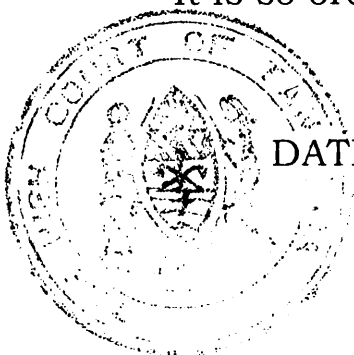
the subject matter of litigation and so, clearly could have been raised that it would be an abuse of the process of the Court to allow a new proceeding to be started in respect of them;”

Since the subject matter of the proceedings in this appeal was conclusively determined by a competent Tribunal in a previous suit hence the Appellant is barred by res judicata to re-litigate on the same subject matter.

Based on the above stated reasons and on the reasons that the seller i.e. Merry Loilole failed to prove her title on the land in dispute, I therefore dismiss the appeal, and I confirm the decision of the District Land and Housing Tribunal of Kondoa in Land Application No. 12 of 2015.

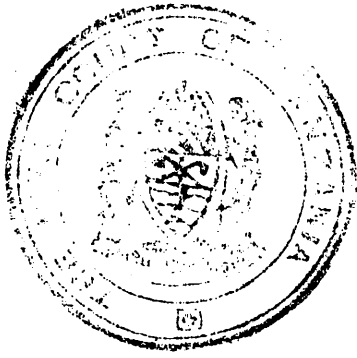
Appeal dismissed with costs.

It is so ordered



DATED at DODOMA this 18TH day of AUGUST, 2017

“ORIGINAL”




L. MANSOOR

JUDGE

18TH AUGUST 2017