

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT MWANZA

LAND CASE APPEAL NO. 32 OF 2008

*(From the Decision of the District Land Housing Tribunal of
Mwanza District at Mwanza in Land Case No. 41 of 2007)*

MAHMOUD ABDALLAH.....APPELLANT

Versus

MERKIADI MKUFU.....RESPONDENT

JUDGEMENT

18/05 & 13/8/2010

Sumari, J.

This is an appeal by the Appellant, Mahmoud Abdallah against the Decision of the District Land Housing Tribunal of Mwanza District at Mwanza in Land Case No. 41 of 2007 who unsuccessfully claimed that the respondent has trespassed into his land and cut down a number of plants found on that land.

The Appellant has filed two grounds of appeal namely:-

1. That the learned chairperson of the tribunal patently and categorically erred in law to rule that the matter was res-judicata.
2. That the decision of the chairperson was not founded on the weight of the evidence or submission by either parties to the suit (sic).

Before the hearing commenced in the District Land Housing Tribunal of Mwanza District at Mwanza in Land Case No. 41 of 2007 the Respondent filed four points of preliminary objection against the Application namely:-

- a) That the Applicant's claim against the Respondent is time barred as provided for by the Law of Limitation Act No.10/71 Section 14(1) and Section 68 (e) and 95 of the CPC Act No.49 of 1966.
- b) That the Applicant has no lawful letters of administration of the estate of his late grandfather. The Respondent continued to state that the Applicant has no any special or general Power of Attorney or a lawful 'will' which will entitle him to file this Application.
- c) Another point of preliminary objection raised is that the Applicant's Application in this Tribunal is res-judicata. The Respondent alleges that the substance of the Application in this Tribunal was conclusively determined and a judgment pronounced by Mwanza Urban Primary Court in Civil Case No.29 of 1981. Therefore, the Respondent states that the Application in this Tribunal has no legal basis.

The Tribunal conclusively determined the application by considering the fourth point of objection only. This is whether the application in this Tribunal is res-judicata. The Tribunal considered whether the Application was substantially the same as the matters

conclusively determined by the Mwanza Urban Primary Court in Civil Case No.29 of 1981.

In so doing the Tribunal considered the Applicant's written submission on the Preliminary objection filed on the 7th January 2008. The Applicant in that submission at paragraph 2 discloses that he is representing the interests of Zainab Saidi through the Power of Attorney. From the court records, Zainab Saidi was a party in Civil Case No.29 of 1981 before Mwanza Urban Primary Court which was conclusively determined. Further, the Tribunal after perusal of Court records, it discovered that it is the same issues which were resolved in Civil Case No.29 of 1981 before Mwanza Urban Primary Court are being brought again.

The Tribunal discovered further that it was not, the first time for Zainab Saidi to institute such cases. She has been moving her case from one Court to the other to the extent of confusing the Courts. This is seen in the High Court decision at Mwanza in (PC) Civil Appeal No.146 of 1996 between Melikiadi Mkufu versus Zainabu Saidi where the High Court held as hereunder:-

"In conclusion, this proceeding fell perfectly in the ambit of res-judicata rule. The issue in civil Case No.29/1981 was the same issue in the instant case. In the former the defendant being the manager of the Appellant's society, in the present the defendant being the Appellant who is the current manager. The same issue has therefore come up for Adjudication twice and, most unfortunately has received conflicting decisions"

In the application No. 41 of 2007 Zainabu Saidi appears in a different style. She granted a Power of Attorney to the appellant/applicant with the aim of creating further confusion in Court decisions. The Tribunal was not ready to entertain such an abuse of court process so application was dismissed with costs for being res-judicata.

I had ample time to study carefully the record of the case and I am satisfied that the Tribunal is very correct in its finding that the matter is re-judicata and I see no way I can default the findings of the Tribunal.

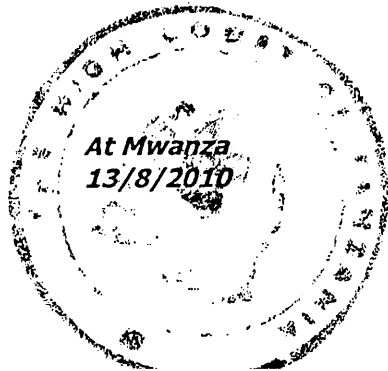
The appeal is dismissed with costs.


A.N.M. SUMARI
JUDGE

At Mwanza
13/08/2010

Date : 13/8/2010
Coram : Hon. Sumari, J.
Appellant : Present in person
Respondent : Present in person
B/clerk : Sekela Mwaijibe

Order: Judgment delivered right of appeal explained.




A.N.M. SUMARI
JUDGE