

**IN THE HIGH COURT OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 377 OF 2002**

**TAHER YUSUFALI ..... PLAINTIFF**

**VERSUS**

**1. KYELA VALLEY FOOD LTD**

**2. COL – NSA KAISI ..... DEFENDANT**

**R U L I N G**

**Ihema, J.**

In this Civil Case No. 377/2002, Taher Yusufali, herein after referred to as the plaintiff, is claiming for a declaration that he is the lawful owner of the property described as Plot No. 45 A and 45 B, Ursino Estate Dar es Salaam held under Certificate of Title No. 1861551/59 herein after called the suit property, having acquired the same on 15/10/2002 at a public auction lawfully conducted by and or on behalf of the Registered Trustees of Agricultural Inputs Trust Fund. The Plaintiff also prays for a perpetual injunction to restrain the Defendants from claiming any rights therein and from harassing him in his enjoyment thereof. Kyela Valley Food Ltd and Col. Nsa Kaisi are the defendants in the suit.

It is further averred by the plaintiff in support of his claims that on 29<sup>th</sup> September, 2002 and 1<sup>st</sup> October 2002, Harvest Auction Mart acting under instructions of the Registered Trustees of Agricultural Inputs Trust Fund published a notice of sale by public auction of the suit property among other properties in the Sunday Observer and the Guardian Newspapers. The plaintiff through his representative one Ben Mulokozi successfully made a bid for the suit property for Tshs. 40,000,000/= which he fully paid on 17<sup>th</sup> October 2002. On 18<sup>th</sup> October 2002 the plaintiff was given vacant possession of the suit property by the Registered Trustees of Agricultural Inputs Trust Fund to which the suit property was mortgaged to secure a loan for Tshs. 20,000,000/=. The records show that the defendants had initially failed to repay the loan and further defaulted to satisfy a consent judgment entered into between the Registered Trustees of Agricultural Inputs Trust Fund and the Defendants in Civil Case No. 130/2001. As such it is the plaintiff's case that he has duly acquired good title which entitles him to the benefits of the disposition done under a lawful power of sale exercised by the Registered Trustees of Agricultural Inputs Trust Fund, hence the present suit.

Subsequent to the filing of the suit on 28<sup>th</sup> October 2002, the plaintiff filed a Chamber Summons under Order XXXVII Rule 1, 2 and 3, Sections 68 (e) and 95 of the Civil Procedure Code 1966 for grant of interim injunction to restrain the defendants, their directors,

employees, servants or agents from evicting him from the suit property or in any way interfering with the occupation thereof pending the hearing of the main suit. On 20<sup>th</sup> November 2002 the defendants also filed a chamber application under Order XXXVII Rule 2 ( I ) of the Civil Procedure Code 1966 for orders that the plaintiff and Harvest Auction Mart Ltd, their agents and servants be restrained in any way to deal, take possession, interfere, change ownership or evict any person from the suit property pending the hearing of the main suit.

Due to incurable defects in the two applications the said applications were struck out with costs. On 5<sup>th</sup> March 2003 the court, upon the prayer of Mr. Mpoki learned Advocate for the defendants, ordered the application to restrain the Registrar of Titles from effecting transfer of title in the suit property to the plaintiff to be marked withdrawn as the said transfer had already been effected by 23<sup>rd</sup> January, 2003.

From the record it is noted that the matter took another turn when on 20<sup>th</sup> November 2002 the defendants filed yet another ex parte chamber application under Order 1 Rule 10 (2) of the Civil Procedure Code 1966. The applicants/defendants sought the following orders, namely:

- (a) That the court be pleased to join the Board of Trustees of Agricultural Inputs Trust Fund and Harvest Auction

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- (a) That the court be pleased to join the Board of Trustees of Agricultural Inputs Trust Fund and Harvest Auction

Mart Ltd 1<sup>st</sup> and 2<sup>nd</sup> respondents in the application as 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs in High Court Civil Case No. 377 of 2002 in terms of the provisions of Order 1 Rule 10 (2) of the Civil Procedure Code 1966.

(b) Costs of the application be costs in the cause.

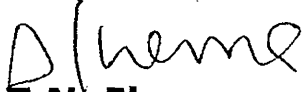
The said application was accompanied by the affidavit of Maureen Tumwagile Gideon a principal officer of Kyela Valley Food Limited. In paragraph 8 of her affidavit it is deponed that "it is necessary that in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in Civil Case No. 377/2002, to cause the respondents above named in this application to be added as 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs respectively".

On 22<sup>nd</sup> November 2002 Dr. Fauz learned Advocate for the plaintiff the first respondent in the application under reference filed a Notice of Preliminary Objection on points of law, inter alia, that

1. the application is improperly before the court.
2. the application is defective.
3. the affidavit in support of the application is defective for being in contravention of Section 8 of Cap 12 of the Laws.

On the other hand Azania Law Chambers, Advocates for the Board of Trustees of Agricultural Inputs Trust Fund, the first respondent, wrote a letter to the Registrar of the High Court requesting for another mention date due to counsel's inability to appear in court on 22<sup>nd</sup> November 2002, otherwise "we do not intend to object to the prayer that we be joined as plaintiffs so that all matters between the parties can be determined conclusively".

On 22<sup>nd</sup> November 2002, I inadvertently granted the application that the Board of Trustees of Agricultural Inputs Trust Fund and Harvest Auction Mart Ltd be joined as 2<sup>nd</sup> and 3<sup>rd</sup> plaintiffs oblivious of the fact that there was a notice of preliminary objection on points of law filed by Taher Yusufali pending for determination. This in my view is a procedural error which is curable by vacating the order in question for purpose of affording the parties a hearing. In the event the order of 22/11/2002 granting the application dated 20<sup>th</sup> October 2002 and filed pursuant to Order 1 Rule 10 (2) of the Civil Procedure Code 1966 is hereby vacated. It is so ordered.

  
**S.E.N. Ihema**

**JUDGE**

Court:

Ruling delivered to day 05<sup>th</sup> October 2004 before Mr. Mpoki and Dr. Fauz learned counsel.

By consent mention in court on 12/10/2004.



*S.E.N. Ihema*  
S.E.N. Ihema

JUDGE

5/10/2004