

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

LAND CASE NO. 21 OF 2018

**ADNAN KITWANA KONDO1ST PLAINTIFF
MAHMOOD AMIR KARIMJEE 2ND PLAINTIFF
FAKHRUDDIN GULAMHUSSEIN BHARMAL.. 3RD PLAINTIFF
HAMID FAZAL BHARMAL 4TH PLAINTIFF
ZAINUL FAKHRUDIN BHARMAL5TH PLAINTIFF**

VERSUS

**THE COMMISSIONER FOR LANDS1ST DEFENDANT
THE ATTORNEY GENERAL 2ND DEFENDANT**

R U L I N G

Date of last Order: 28/05/2020

Date of Judgment: 28/05/2020

MGONYA, J.

The instant suit was initially filed on 24th July 2020 in this Registry where all parties to this matter were respectively represented.

The Plaintiffs pray for judgment and Decree against the Defendants and for the following reliefs:

- a. A declaration that the Plaintiffs are lawful owners of their respective plots of land numbers 629, 630,631,632 and 633 Kawe Beach Area Kinondoni Municipality Dar es Salaam;*
- b. A declaration that the cancellation of Certificate of Title Nos. 80054, 41607, 41666, 41606 and 41603 at Kawe Beach Area Kinondoni Municipality Dar es Salaam of the Respective Plaintiffs by the Registrar of titles at the instance of the 1st Defendant was contrary to the law and thus illegal;*
- c. A declaration that Survey Plan No. E¹ 146/8 and Register Plan No. 26182 preceded Survey Plan No. E¹ 204 and E¹ 204/21 Registered Plan No. 6476 and 31162;*
- d. A declaration that the Plaintiffs plots are clearly seen in both surveys and thus their titles were not issued contrary to any law and they are not void ab initio;*
- e. An order that the Registrar of titles be ordered to return the names of the Plaintiffs in the land register as lawful owners of plots 629,630,631,632 and 633 Kawe Beach Area, Kinondoni Municipality Dar es Salaam;*
- f. An order that the 1st Defendant should respect the land rights of the plaintiffs over the disputed plots and should not interfere with the developments that the Plaintiffs intends to carry onto those plots;*

- g. A permanent injunction be issued against the Defendants from interfering with the Plaintiffs' quite use and enjoyment of their plots of Land in Kawe Beach area Kinondoni Municipality Dar es Salaam;*
- h. Costs be provided for; and*
- i. Any other order or relief that this Court may deem just and fair to grant.*

When the matter was called before the court for 1st Pretrial Conference on 10th March 2020 and 16th March 2020 all Plaintiffs were not in court. On this date, 28th May 2020 being the third time, when the matter was scheduled again for 1st Pretrial Conference, **Ms. Mercy Kyamba** learned State Attorney is the only Counsel who appeared for the Defendants in the absence of Plaintiffs and their Counsel.

It is from the above record Ms. Kyamba submitted to this honourable court that, out of the court's trend and particularly Plaintiffs frequent absence in court, prayed the court to dismiss the Suit under **Order VIII Rule 21 (a) of the Civil Procedure Code (Amendment of the First Schedule GN. No. 381/2019)**.

I have gone through the record of this matter and as I have said above, I have noted that the Plaintiffs herein have in three

occasions were missing when the matter was scheduled and called for 1st Pretrial Conference before the court. I am aware that at this time there is a problem of Covid 19 pandemic, however that shouldn't be an excuse for the Plaintiffs and their Advocates to abscond from attending their case. That is the reason why the court is still at work, and also the reason the Defendants Counsel is before the court for this very same matter.

It is from the above divergence submissions, this court is satisfied that the Plaintiffs absence under the circumstances has become severe. Out of that, I am left with no other option than to take up the Defendants' Counsel concern and grant the prayer accordingly.

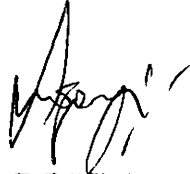
All said and done, I take the recent Amendment to the **Civil Procedure Code Cap. 33** very seriously and under the circumstances, I join hands with Ms. Kyamba the learned State Attorney for the Defendants that the instant Suit ought and deserve to be dismissed for the above legal reasoning.

In the event therefore, I have decided to invoke the provisions of **section 21 (a) of the Civil Procedure Code (Amendment of the First Schedule GN. No. 381/2019)** and proceed to **DISMISS THE INSTANT SUIT**, that is **CIVIL CASE NO. 21 of**

2018 accordingly on account of the Plaintiffs' failure to attend the scheduled 1st Pretrial Conferences.

I make no order as to costs

It is so ordered.



L. E. MGONYA

JUDGE

28/5/2020

Court: Ruling delivered in chamber in the presence of Ms. Mercy Kyamba State Attorney, Counsel for the Defendants; and Ms. Janet RMA this 28th day of May, 2020.



L. E. MGONYA

JUDGE

28/5/2020