

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

LAND APPEAL NO 29 OF 2020

(Original Land Case No 223/2017 before the DLHT at Musoma)

BRAISON KANEJA.....APPELLANT

Versus

PILLY BWIRE MKAMA CHANGURU RESPONDENTS

RULING

3^d & 6th November, 2020

Kahyoza, J.

Braison Kaneja sued **Pilly Bwire Mkama Changuru** claiming for a piece of land before the District Land and Housing Tribunal. **Pilly Bwire Mkama Changuru** won the case.

Aggrieved, **Braison Kaneja** appealed to this court. At the hearing, Mr. Makowe, learned advocate represented the appellant while the Respondent enjoyed the services of Mr Manyama, learned advocate. Before arguing the appeal, the appellant's advocate raised a concern of *locus standi* on the party of the respondent. He contended that his client had sued a wrong party on the ground that the respondent was not the owner of the disputed land as it belongs to the respondent's family. There is no proof that the respondent was a representative of her family. The issue is whether the appellant sued respondent wrongly before the **DLHT**.

Did the appellant sue the wrong party?

The appellant's advocate submitted that the respondent testified that the disputed land belonged to her family and that there was no evidence to establish that the respondent was the representative of her family. It was wrong to sue the respondent in her personal capacity. Thus, the appellant sued the respondent wrongly. The learned advocate prayed this Court to invoke the provision of Section 43 of the **Land Disputes Courts Act** [Cap 216 R. E. 2019] to nullify the proceedings and direct the applicant to sue the proper party.

The respondent's advocate replied that the respondent was using the family land for a quiet of long period of time and that the appellant with no good reasons sued her on the ground that she trespassed to his land. It was not an issue before the DLHT whether the respondent was a proper party or not. The respondent's advocate submitted further that the DLHT did not err in its decision and that if there is any error, it is the appellant who committed it, by suing a wrong party. He prayed the Court to dismiss the appeal without cost or cost to be borne by the appellant.

I passionately considered the submissions and I had a cursory glance at the judgment of the DLHT. It is true that the DLHT did not consider the issue whether the appellant sued the respondent properly. The judgment shows that the respondent deposed that the land in dispute belongs to the family of Bwire Mkama Changuru and his wife Mugambi Musalika... It was therefore, clear from the evidence that the applicant had instituted a suit against the wrong party. Had the tribunal properly considered the facts on record it ought to have raised the issue whether the respondent was properly sued.

The appellant's advocate concern raises the issue of joinder or non-joinder of parties. It settled principle under Order 1 Rule 9 of the

Civil Procedure Code, [Cap 33 R.E. 2019] (the CPC) that a suit shall not be defeated by reason of non-joinder or misjoinder of parties. It stipulates that-

"Suit shall not be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it."

Much as it is clear from the above quoted law, that a suit shall not be defeated by reason of non-joinder or misjoinder, the Court of Appeal has held that there is an exception to that general rule. The Court of Appeal held in **Stanslaus Kalokola v. Tanzania Building Agency and Mwanza City Council** Civil Appeal No. 45 Of 2018

*Our decision on this point is that there are non-joinders that may render a suit unmaintainable and those that do not affect the substance of the matter, therefore inconsequential.**If the decree cannot be effective without the absent parties, the suit is liable to be dismissed". (Emphasis is added)***

Given the fact that the land in dispute, belonged to the family of Bwire Mkama Changuru and his wife Mugambi Musalika, if the appellant had obtained a decree, that decree cannot be effective without the owner of the land. For that reason, the suit/ application instituted by the appellant was unmaintainable in the absence of the purported owner of the suit property or their representative. Consequently, it would be waste of time and energy to proceed with the hearing of the appeal on merit.

The appellant's advocate prayed this Court to invoke its revisionary powers to quash the proceedings before the DLHT with costs. On the

other hand, the respondent's advocate requested the Court to dismiss the appeal with costs. Agreeably, the respondent was dragged into the legal wrangle by the appellant and hence, she did not bear the duty to establish her status in the suit as stated in the case of **Madam Mary Mary Silvanus Qorro V Editha Donath Kweka and Wilfred Stephen Kweka**, Civil Appeal No 102 of 2016 [CAT unreported]. The appellant had no cause of action against the respondent and therefore, he has no right to sue her. Thus, the appellant cannot escape to be condemned for costs.

Finally, I find the application/ suit unmaintainable, it instituted against a wrong party. I invoke my powers of revision under the provision of section 43 of the **Land Disputes Courts Act** (supra) to quash the proceedings and set aside the judgment of the DLHT. The respondent is awarded costs on the ground stated above.

It is ordered accordingly.



J.R. Kahyoza
JUDGE
6/11/2020

Court: Ruling delivered in the presence of Mr. Makowe advocate for the applicant and Mr. Manyama, advocate for the respondent. B/C Ms. Tenga present.



J.R. Kahyoza
JUDGE
6 / 11 / 2020