

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND DIVISION

(APPELLATE JURISDICTION)

LAND APPEAL NO. 19 OF 2021

(Arising from Land Application No. 35/2019 of the District Land and Housing Tribunal for Kigoma at Kigoma Before M. Mwinyi, Chairman)

WADHAMINI WA BARAZA KUU LA WAISLAMU

TANZANIA (BAKWATA)APPELLANT

VERSUS

MWAJUMA D/O NTABWA.....1st RESPONDENT

PATRICK S/O MVURUNGU.....2nd RESPONDENT

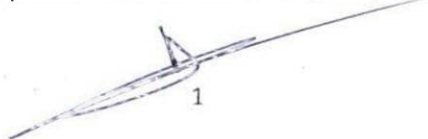
MARTHA D/O LEONARD3rd RESPONDENT

J U D G M E N T

02nd & 02nd August, 2021

A. MATUMA, J.

The appellant sued the respondents in the District Land and Housing Tribunal for Kigoma at Kigoma for trespass in land. She claimed to own plot No. 28/1 (PB) Katubuka in which a mosque building has been built. The allegation is that the respondents who are neighbours thereat have encroached into her boundaries of the said plot No. 28/1. The respondents in their respective written statements of defence (some of


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them), did not dispute that the appellant is the lawful owner of plot No. 28/1 which is the subject matter in this appeal.

They however disputed any encroachment or trespass thereof.

The trial tribunal (Mbarouk Waziri Mwinyi) raised suo motto a jurisdictional issue for none joinder of necessary parties.

In resolving the issue, the learned chairman concluded that since it was the Municipal Council which allocated the Dispute plot to the appellant, such Municipal Council was a necessary party to be joined in the suit. He went further that once joined the Municipal Council, the Attorney General would be necessary party and as such the District Land and Housing Tribunal shall seize jurisdiction over the matter. He thus dismissed the application for want of jurisdiction.

The appellant was aggrieved with such decision hence this appeal with eight (8) grounds of appeal drafted in a layman's language.

Even though, the major complaint is the dismissal of the suit on the ground that necessary parties i.e. The Municipal Council and the Attorney General were not joined.

At the hearing of this appeal, the appellant was represented by her representative one Majaliwa Ally while the respondents neither turned up

nor filed any reply to the Petition of Appeal. I thus heard this appeal *ex parte*.

Mr. Majaliwa Ally submitting on the grounds of appeal lamented that they were not heard by the trial chairman on the alleged issue which the tribunal raised *suo motto*. He however contended that it is not always necessary to join the Municipal Council in every suit which she has issued the letter of Offer or Certificate of Occupancy even when she has done no wrong. He further submitted that the problem was not ownership of the whole plot but a mere trespass and therefore the Municipal Council is not necessary and they should not be forced to sue a party they do not have any problem with.

Having heard the appellant for this appeal, I am of a firm view that this appeal should be allowed. The appellant's representative Mr. Majaliwa Ally is absolutely right.

Under order VII rule 1 (e) of the Civil Procedure Code, Cap. 33 R.E. 2019, a suit must constitute a cause of action against the defendant and when it arose. No suit shall be entertained if there is no cause of action against the defendant.

In the instant matter, the plaintiff/appellant has no whatsoever cause of action against the Municipal Council so does the Attorney General. She

merely claims that the respondents have encroached into her boundaries on plot No. 28/1 (PB) Katubuka. The respondents dispute such allegations. Therefore, the dispute is revolving around the parties herein and does not in any way involve the said Municipal Council. Officers of the Municipal Council could only be brought as witnesses for either side or even be summoned by the trial tribunal itself to assist in ascertaining the boundaries between the parties.

It was wrong therefore for the trial chairman to assume that in every suit concerning land, the Municipal Council so does the Attorney General are necessary parties merely because of the allocation which is in itself not in dispute. It would depend to the nature of the dispute.

In the instant matter the dispute is not ownership of the dispute plot but a mere encroachment thereat. I cannot see how does the Municipal Council becomes a necessary party for the alleged encroachment. Even if the appellant is forced to join the Municipal Council and the Attorney General, she shall have no cause of action against them which is defined as the rights which the plaintiff asserts and the infringement thereof by the defendant, see ***Aiyar, PR, Concise Law Dictionary 1997, Wadhwa and Company Law Publishers, New Delhi, 1997 at p.135.*** In that respect the suit shall suffer the preliminary objection and

accordingly be dismissed. A mere fact that the Municipal Council allocated the dispute plot to the appellant which is a fact not in dispute does not constitute a cause of action against her.

I therefore allow this appeal, quash the decision of the trial tribunal and set aside the drawn order thereof.

I order restoration of the appellant's suit and trial on merit to its finality before another chairman. No orders as to costs.

It is so ordered.



A. Matuma

Judge

02/08/2021

Court: Judgment delivered in presence of appellant in absence of respondents.

Sgd: A. Matuma

Judge

02/08/2021