

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(IN THE DISTRICT REGISTRY OF MWANZA)**

**AT MWANZA**

**LAND CASE NO. 7 OF 2021**

**HUSSEIN ABDALLAH ..... 1<sup>ST</sup> PLAINTIFF**

**JAMAL ABDALLAH ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**PRAVIN SHAH ..... 1<sup>ST</sup> DEFENDANT**

**MWANZA CITY COUNCIL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

20<sup>th</sup> July, & 19<sup>th</sup> August, 2021

**ISMAIL, J.**

The plaintiffs have instituted a suit for recovery of a piece of land registered as Plot Nos. 249 and 250, Block "DD" Igogo, Nyamagana District in Mwanza City. The claim is against the defendants, the first of whom is alleged to have trespassed onto the said land and constructed a wall, claiming that the said land had been located to him by the 2<sup>nd</sup> defendant. The plaintiffs contend that efforts to resolve the matter amicably hit the dead end. It is in view thereof, that a decision was made to resort to a court action

through the instant suit, in which the Court is moved to declare that the plaintiffs are the lawful owners of the suit land, and that the 1<sup>st</sup> defendant is a trespasser whose alleged ownership of the land was unlawfully given by the 2<sup>nd</sup> defendant.

The defendants filed separate written statements of defence, and in each of the said statements of defence preliminary objections were raised, challenging the tenability of the suit. For his part, the 1<sup>st</sup> defendant raised two grounds of objection, as follows:

- (a) That the plaint is bad in law for contravening the provisions of section 6 (3) of the Government Proceedings Act, Cap. 5 R.E. 2019;*
- (b) That the plaint is bad in law for non-joinder of necessary parties.*

With respect to the 2<sup>nd</sup> defendant, the grounds of objection are:

- (a) That the suit is time barred against the 2<sup>nd</sup> defendant;*
- (b) That the suit is defective for want of joinder of the Attorney General;*
- (c) The suit is defective for want of joinder of the Registrar of Titles and the Commissioner for Lands; and*

(d) *The suit is defective for want of joinder of the sellers of the suit land.*

Disposal of the objections took the form of written submissions whose filing conformed to the schedule drawn by the Court. Submitting on the first ground of objection, the Mr. Daniel Susuma, learned counsel for the 1<sup>st</sup> defendant, contended that the provisions of section 6 (3) of Cap. 5 had been flouted by the plaintiffs. This is in view of the fact that the requirement of the law is that suits against the Government have to have the Attorney General as a necessary party. He argued that, in this case, the suit has been preferred against a local government authority as a party, and that the non-joinder has the effect of vitiating the proceedings. The counsel aided his cause by citing the case of ***Wambura Masawe Karera & 5 Others v. The Village Council of Mori and the Executive Director of Rorya District***, HC-Civil Case No. 5 of 2020 (MSM-unreported), in which a non-compliant suit was struck out.

With regards to the second of the 1<sup>st</sup> defendant's objections, the contention is that non-joinder of the Registrar of Titles, Commissioner for Lands and a Mr. Karnail Singh, the alleged previous owner, is violative of the provisions of Order I rule 3 of the Civil Procedure Code, Cap. 33 R.E. 2019. The counsel argued that the criteria for determining if a party is a necessary

[1989] TLR 172; ***Alfons Mohamed Chilumba v. Dar es Salaam Small Industries Cooperative Society*** [1986] TLR 91; and ***Malekela Mahita v. Kibuwi Nzengwa*** [1989] TLR 113.

With regards to non-joinder of the Attorney General, the counsel relied on section 25 (a) (3) of Act No. 1 of 2020 which amended Cap. 5, that makes the joinder of the Attorney General in proceedings in which a local government authority is involved imperative. He argued further that section 32 (1) (a) of Act No. 1 creates a mandatory requirement for service of a 90-day notice on the Solicitor General and the Attorney General. On this, he referred me to the Court's decisions in ***Burafex Limited v. Registrar of Titles***, HC-Civil Appeal No. 235 of 2019; and ***Efratha J. Mlay (as an Administratrix of the Estate of the late William Jacob Ngowi v. Josephine Rasieli Mremi/Josephine William Ngowi)***, HC-Land Appeal No. 31 of 2019 (both unreported).

On the non-joinder of the Registrar of Titles, Commissioner for Lands and sellers of the suit land, Mr. Vungwa's take is that this is an anomaly that renders the suit liable to striking out. He fortified his argument by citing the decisions of the Court in ***Juma B. Kadala v. Laurent Mkandee*** [1983] TLR 42; ***Luhumbo Investment Ltd v. National Bank of Commerce***, HC-Land Case No. 6 of 2016 (unreported); and ***Abdullatif Mohamed***

party are as propounded in the Indian case of ***Benares Bank Ltd v. Bhangwandas*** A.I.R. (1947) All 18. These are: that there must be right of relief against such a party in respect of the matters involved in the suit; and that the court must not be in a position to pass an effective decree in the absence of such party. Mr. Susuma was heard further that in the decision in ***Abdullatif Mohamed Hamis v. Mehboub Yusuf Osman & Another***, CAT-Civil Revision No. 6 of 2017 (unreported) the rationale for joinder of necessary parties was underscored. The superior Court held that joinder of parties is intended to enable the court to adjudicate and pass effective and complete decrees, and that, in the absence of necessary parties, the court may fail to deal with the suit thereby creating an inability in passing an effective decree. The counsel took the view that non-involvement of the Commissioner for Lands and the Registrar of Titles will impair the Court's ability to make a declaration on the true ownership of the suit land. Mr. Susuma prayed that the suit be struck out with costs.

With respect to the first objection raised by the 2<sup>nd</sup> defendant, the contention by Mr. Joseph Vungwa, learned State Attorney, is that the suit is time barred, it having been instituted 13 years from 2008 the year in which the plaintiffs' right of ownership was allegedly extinguished. The counsel cited the decisions of the Court in ***Kabuya s/o Essore v. Mturi Nyegeri***

***Hamis v. Mehboub Yusuf Osman & Another*** (supra). He urged the Court to strike out the suit with costs.

The plaintiffs' reply submission was brief and it combined submissions in respect of the objections raised by the defendants. While disputing all other defects, Mr. Fidelis Mteuele, learned counsel for the plaintiff, was magnanimous enough to concede to the objection on the non-joinder of the Attorney General, the Registrar of Titles and the Commissioner for Lands. The learned counsel was in agreement with the counsel for the defendants that the consequence of this anomalous conduct is to render the suit liable to striking out. While expressing no hard feelings with the striking of the suit, Mr. Mteuele prayed that no order as to costs be made against the plaintiffs.

The plaintiffs' concession has cut down the work, thereby narrowing the focus to the question of non-joinder of the necessary parties and the resultant consequence. As stated by the defendants' counsel, joinder of the Attorney General in the proceedings in which the Government is a party is an imperative requirement that has been enshrined in section 6 (3) of Cap. This provision lays down a requirement of serving a notice of an intention to sue the government prior to the institution of the said suit. Service of the said notice is, in terms of the section 32 (1) (a) of the Amending Act, to be done on the Solicitor General Attorney General. Simultaneous therewith is

the requirement of having the Attorney General impleaded as a necessary party to the said proceedings. The authorities cited by the counsel for the defendants guide on this requirement.

See also: ***Banny Maijo t/a Banny Technical and General Supply v. Medical Officer in Charge Geita Referral Hospital***, HC-Civil Case No. 12 of 2020; ***The Attorney General v. The Trustees of the Tanzania National Parks***, HC-Civil Revision No. 1 of 2021 (both unreported).

Gleaning from the pleadings it comes out, quite clearly, that the 2<sup>nd</sup> defendant, a government office, was impleaded in the pending proceedings without first serving a notice of such intention. I say so because what is purported to be a notice i.e. Annexure A-5 was addressed to the director of the 2<sup>nd</sup> defendant without any proof that the same was served on the Solicitor General and the Attorney General. The letter was addressed to none of the two offices either. As rightly argued by the counsel for the defendants, this was a serious infraction of the imperative requirements of the law. The law that has been infringed does not provide for any exception or leeway to what sub-section (2) provides. The 'must do' position was emphasized in the case of ***Thomas Ngawaiya v. Attorney General & 3 Others***, HC-Civil Case No. 177 of 2013 (unreported), in which it was held as follows:



*"The provisions of section 6 (2) of the Government Proceedings Act are express, explicit, mandatory, admit no implications or exceptions. They must be strictly complied with. Besides, they impose absolute and unqualified obligation on the Court."*

There is yet another anomaly that is closely connected to the foregoing requirement. This is the consequential requirement of having the Honourable Attorney General joined in the proceedings for which issuance of a notice is prerequisite. A cursory glance at the pleadings reveals that the Attorney General features nowhere as a party. The net effect of the failure to join the Attorney General is to render the proceedings a mere charade that cannot be allowed to see the light of the day. They are simply a nullity and, in consequence of all this, I hold that the objection is meritorious and I uphold it.

While the plaintiffs are amenable to the striking out of the suit, they take the view that they should be spared of the wrath of having to pay costs of the matter. No reasons have been advanced for the requested waiver. I take the view that this Court cannot accede to this prayer, keeping in mind that the omission is quite obvious and one that would be avoided had the



plaintiffs demonstrated a modest diligence. In view thereof, I order that costs of the matter be paid by the plaintiffs.

Since this objection is sufficient to dispose of the matter, I find no reason to delve into the rest of the preliminary objections, for doing so is an unnecessary waste of time.

It is so ordered.

DATED at **MWANZA** this 19<sup>th</sup> day of August, 2021.



**M.K. ISMAIL**

**JUDGE**

