

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND CASE NO 5 OF 2018

MAKARANI MZEE SHAWEJI & 193 OTHERS.....PLAINTIFFS

VERSUS

**THE PERMANENT SECRETARY, MINISTRY OF DEFENCE AND
NATIONAL SERVICE OF THE**

UNITED REPUBLIC OF TANZANIA.....1ST DEFENDANT

ATTORNEY GENERAL.....2ND DEFENDANT

MTWARA MUNICIPAL COUNCIL3RD DEFENDANT

RULING

2nd & 4th November, 2021

DYANSOBERA, J.:

The plaintiffs in this suit, Makarani Mzee Shaweji and 193 others, have instituted the suit against the three defendants, that is, the Permanent Secretary, Ministry of Defence and National Service of the United Republic of Tanzania (1st defendant), the Hon. Attorney General (2nd defendant) and Mtwara Municipal Council (3rd defendant) claiming the following reliefs:-

- i. Declaration that the plaintiffs are owners of the piece of land located at Mbae, Kiholo, California, Sokomjinga and Mangamba within Municipal Council at Mtwara Region.
- ii. That a permanent injunction be issued against the 1st defendant restraining his officers from interfering with the plaintiffs' ownership over the suit plots
- iii. That the defendants be ordered to pay damages to the plaintiff for losses and injuries caused due to their acts of interfering him(plaintiff) with peaceful enjoyment of the plots
- iv. Any other relief this court deems fit to grant
- v. Costs of this suit be paid by the defendant

According to the Exchequer Receipt Voucher No. 17169150 the suit was filed on 25.9.2018. The First Pre-trial Settlement and Scheduling Conference was conducted on 29.8.2019 whereby Messrs. Songea and Msalenge, learned Advocates, appeared for the plaintiff and Ms Getruda Songoi, learned State Attorney, represented the defendants and at the same time held brief for Mr. Peter Musseti, learned State Attorney for the defendants. After consultation with learned Counsel, the court determined speed track Four for this suit meaning a period not exceeding twenty four months. The hearing of this suit commenced on 1st day of December, 2020 and by 29th day of September, 2021, a total of fifty three (53) witnesses had testified in support of the suit.

On 30th day of September, 2021, Mr. Issa Chiputula, learned Advocate of Phoenix Advocates firm, representing the plaintiffs, made the following prayer:

'My Lord, the matter was for hearing. The Phoenix Advocate prays to withdraw from representing the plaintiffs in this case for lack of proper instructions. The other procedures should take their course.

In reply to this prayer, Mr. Benson Hoseah, learned State Attorney, stated that he had no objection to the withdrawal by the firm from conduct in this case. He, however, prayed for court's directions.

In consideration of the firm's prayer for withdrawal and its request that the other procedures should take the course and taking account the response by learned State Attorney for the defendants on court's directions, I granted the prayer by Mr. Issa Chiputula, learned Counsel for the Plaintiffs to withdraw from representing the plaintiffs but imposed the following conditions, namely:-

1. The Firm Phoenix Advocate to supply in writing a proof that their clients were given proper notice of their intended withdrawal and notices of upcoming hearing dates.
2. The said Firm to notify the court of their clients contact information so that notices can be sent directly to their clients following the withdrawal.
3. The matter is set for further hearing on 19.10.2021.

On 19.10.2021, it was a public holiday. The matter came for further hearing on 21st day of October, 2021. The plaintiffs made no appearance, only Ms Getruda Songoi, learned State Attorney, appeared for the defendants. There was no compliance of the court's order by Phoenix Advocate' firm. The matter was further adjourned to 2.11.2021.

When the matter came up on 2nd day of November, 2021 for further hearing as earlier on ordered, the court's orders were still not complied with. However, Ally Mohamed Mikanga, Selemani Selemani Omary and Makarani Mzee Shaweji, respectively, PW 1, PW 2 and PW 4, appeared for the plaintiffs whereas Ms. Getruda Songoi, learned State Attorney represented the three the defendants.

The learned State Attorney made perceptive submission. She contended that, as per the last order, the court gave directions on the withdrawal of the advocate. She submitted that advocates are governed by Advocates Act [CAP 341 R.E 2019] and its Regulations among which are the Professional conduct and Etiquette Rules GN No. 118 of 2018 in which there are directions. She explained that under rule 63 (1) it is stipulated that where an advocate wishes to withdraw from the case, he must effectively complete the task unless there is justifiable cause. Further that, rule 63(11) of the same Regulations insists that when an advocate wants

to withdraw from the case he has to show good cause by notifying, the court the client and the opposite party. Learned State Attorney also referred this court to rule 67. In her view, the advocates in this case did not follow the laid down procedures of withdrawing themselves and this causes the delay of the case leading to its failure to be completed.

Respecting the plaintiffs, Ms Songoi contended that they have been negligent in their failure to make appearance without notifying the court on their absence. It is learned State Attorney's further submission that the plaintiffs had to come to court to seek courts directions and that the case was assigned to speed track 4 which is, according to O. VIII B rule 22 (d) of the Civil Procedure Code, for special cases which fall in none of the three speed tracks and falls within the period of twenty four months from the time the mediation or negotiation failed. She clarified that O VIII C rule 41 (1) of the Code states that where speed track expires and where the delay is caused by the plaintiff the court shall dismiss the suit with costs. According to the record, the case delays as the plaintiffs have lost interest in pursuing their case or are not diligent. The plaintiffs do not attend and they do not come to give their testimonies. With this submission, learned State Attorney prayed the suit to be dismissed with costs.

PW 1, PW 2 and PW 4 who attended on 2nd November, 2021 replied to the submission given by learned State Attorney. Ally Mohamed Mikanga (PW 1) told this court that they came to testify but other plaintiffs have not and cannot come to court. Selemani Selemani Omary (PW 2) joined hands with PW 1. On his part, Makarani Mzee Shaweji (PW 4) informed the court that they managed to testify but had been informed by the advocate of his withdrawing from representing them that morning which means that they were not aware. He asserted that they (plaintiffs) are not lawyers arguing that they were noting the names of the people and were recording them but they (plaintiffs) are not lawyers, but it turned out that some of those who were attending were just their representatives. This means that there are people who are not the owners of the properties in dispute. They were just representing the owners and are, therefore, incapable testifying in court. In further clarification, PW 4 said that some of the plaintiffs are dead. He mentioned one of them as being Mohamed Ally Kazembe. He also elaborated that there are some who cannot attend the court, others are outside the Region; either in the vicinity or far but cannot attend. According to PW 4, some owners of the pieces of land had some offers and most of the plaintiffs bought the areas from the people to whom the pieces of land were allocated but the previous owners are reluctant to come to

court to testify. PW 4 further argued that they asked the advocate to have the case finalized but the advocate said that he could not close the case as other plaintiffs are yet to testify. He decided to withdraw from conduct in this case.

In her rejoinder, Ms Songoi was emphatic that the advocates came to withdraw from conducting the plaintiffs' case and this court gave them some conditions but have not been fulfilled. Since the plaintiffs are unable to close their case and cannot continue with the case, the suit should be dismissed with costs, learned State Attorney prayed.

With unfeigned respect to the learned State Attorney's submission, I agree that the order of this court was not complied with as directed.

This court (Luanda, J. as he then was) in Misc. Civil Application No. 96 of 2000 between **Tanzania Breweries Limited and Edson Dhobe and 19 others**, observed, inter alia, that:-

'Court orders should be respected and complied with. Court should not condone such failures. To do so is to set a bad precedent and invite chaos. This should not be allowed to occur. Always court should exercise firm control of proceedings.'

I respectfully subscribe to that standing.

I understand that in most litigations, delays are inevitable but sometimes, parties can push delays too far. However, when the case takes long in court with or without good cause, the court may take action.

In the case under consideration, the plaintiffs have intentionally allowed their suit to remain in limbo. The plaintiffs have neither withdrawn their suit nor closed their case. They have failed to continue to pursue it. The prayer by Mr. Issa Chiputula to have the Phoenix Advocate firm withdrawn from representing the plaintiffs was granted subject to the three conditions.

One, the Firm Phoenix Advocate to supply in writing a proof that their clients were given proper notice of their intended withdrawal and notices of upcoming hearing dates. Two, the said Firm to notify the court of the firm's clients' contact information so that notices can be sent directly to their clients following the withdrawal and three, the matter was set for further hearing on 19.10.2021. When the matter came for the last time that is on 2nd day of November 2021 for further hearing, such directions/orders were still not complied with.

It is to be noted that efficient administration of judicial business for the benefit of all litigating parties entails public interest in expeditious

resolution of litigation and the court's need to manage its cases. As the saying goes, 'the court does not have the obligation to play nursemaid to indifferent parties' (**Pinto v. Universidad de Puerto Rico**, 895 F.2d 18, 19 (1st Circ. 1990)).

Since the plaintiffs have failed not only to continue to pursue their case but also to close it and the Phoenix firm have disobeyed the order of this court dated 30th day of September, 2021, the court should, in the circumstances of the case, take an action.

I have carefully considered the plaintiffs' conduct in failing to continue to pursue their case and their failure to either withdraw or close it and the failure on part of Phoenix Advocate firm to timeously comply with the order of this court dated 30th day of September, 2021. I have equally considered the available sanctions such as further adjournment, explicit warning and ordering costs and after a thorough consideration, I have no any flicker of doubt that there are no less severe sanctions given the fact that this is an old and a backlog case in our registry, than dismissing the suit for failure to prosecute. Undoubtedly, Courts in this country do exist to conduct serious business affecting people's lives. As human being has an end, litigation also must have an end.

This is, I think, will ensure that 'the procedures take their course' as suggested by Mr. Issa Chiputula, learned Counsel for the plaintiffs, and the 'proper directions of the Court', as prayed by Mr. Benson Hoseah, learned State Attorney on 30th September, 2021 and insisted by Ms Gertrude Songoi, learned State Attorney on 2nd day of November, 2021 as well.

Invoking the provisions of section 95 of the Civil Procedure Code [CAP 33 R.E.2019], for the ends of justice and to prevent further abuse of the process of the court, I dismiss the suit for failure by the plaintiffs to prosecute their case. No order for costs.




W.P. Dyansobera

Judge

4.11.2021

This ruling is delivered under my hand and the seal of this Court on this 4th day of November, 2021 in the presence of Ms Anisa Mziray, learned Advocate for the plaintiffs and Ms Getruda Songoi, learned State Attorney assisted by Major Fredrick Christopher Mfyoa, both representing the defendants.




W.P. Dyansobera

Judge