

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

AT DAR ES SALAAM

LAND CASE NO. 77 OF 2015

VENERANDA THOMAS MOSHA 1ST PLAINTIFF
(Adminstratrix of the Estate of the late Thomas Mosha)
NDORO KILIMERU MOUNTAIN
LODGE CAMPSITE2ND PLAINTIFF
VERSUS

TWIGA BANCORP LIMITED 1ST DEFENDANT
JABEEN IQBAL NOORAY 2ND DEFENDANT
VIOVENNA AND COMPANY LIMITED 3RD DEFENDANT
ATTORNEY GENERAL 4TH DEFENDANT
REGISTRAR OF TITLES 5TH DEFENDANT
COMMISSIONER FOR LANDS 6TH DEFENDANT

Date of Last Order: 17/05/2021

Date of Ruling: 24/06/2021

R U L I N G

MGONYA, J.

Preliminary objections have been raised in the due cause of proceedings of the case at hand, whereby the 1st Defendant states:

- 1. That, the counter claim has been raised by a stranger; and***
- 2. That, the Plaintiff to the Counter claim has no cause of action against the 1st Defendant to the***

counter claim as the counter claim is time barred.

Having gone through the objections and submissions to the objections as filed by the Counsel of the parties after the Court's Order, I will consider both points for determination as herein below without intentions to reproduce the parties respective submissions.

With regards to the **1st points of preliminary objection**, that the counter claim has been raised by a stranger, it is claimed by the 1st Defendant that the 2nd Plaintiff who is **NDORO KILI MERU MOUNTAIN LODGE CAMPSITE** was never party to **Land Case No. 77 of 2015** that was filed by the 2nd Defendant in Court.

The 1st Defendant states that by the look of the wording in the Counter Claim it appears the Counter claim is raised by the **2nd Plaintiff**. This directly proves that the counter claim is raised by a stranger. In the Counter Claim the 1st Plaintiff under paragraph 10 of the Counter Claim reiterates as to how the claim had raised against the 1st Defendant from the 2nd Plaintiff.

It is the Plaintiff's submission that it is important to appreciate the intentions of the marker, i.e. the Legislator, that made the law. It is an undisputed fact, that the intention of the

law marker was to try and avoid a multiplicity of cases, that can, where possible be disposed of together.

Moreover, it is evident from the facts that the 2nd Plaintiff is a necessary party to enable the 1st Plaintiff to prove her case. It is important to remember that the suit was not filed by the Plaintiff to the counter claim but by the Defendant and that, the Plaintiff to the counter claim could not determine who the parties to the main suit should be.

Under **Order VIII Rule (1) and (2) of the Civil Procedure Code, Cap. 33 [R. E. 2019]**, it is the Defendant who is availed with room to raise a Counter Claim against the Plaintiff or add another party that Counter Claim is against and even add another person who is not party to the suit. It is not in the provisions of the **Civil Procedure Cap. 33 [R. E. 2019]** that a Plaintiff is availed the same right despite the same being not a party to a suit that was once filed in a Court of law.

From the above it is the position of the law that it is only the Defendant who has room to add a new party to a Counter Claim even when the same has not been a party to the suit before the Court from which the Counter Claim has been raised. The act of the Plaintiff in this circumstance of adding the 2nd Plaintiff who the counter claim arises from, is contrary

to the law. It is so since as stated by the 1st Defendant that the 2nd Plaintiff has never been a party to the Land Case already mentioned above. **It is therefore that this objection holds water and is therefore sustained.**

On the **2nd objection**, regarding that the counter claim is time barred, the 1st Defendant avers that the claim in the Counter Claim is based on **breach of contract**. The 1st Defendant has narrated a series of events as they appear in the submission that indicates that the dispute arouse on **01/08/2009** and the Counter Claim was filed on **05/11/2019** which is **11 years** later after the cause of action arouse. The same is from the law of limitation act to be prosecuted within six years. But in this circumstance, the cause of action raised 11 years ago and the matter was never prosecuted and hence makes the Counter Claim **time barred**.

The Plaintiff in the argument stated that second objection that the Plaintiff to the Counter Claim has no cause of action against the 1st Defendant to the counter claim since the Counter Claim is time bared and baseless.

It is by all definitions, that the dispute in this suit is a land matter. The **Limitation Act, Cap. 89 [R. E. 2019]** provides that the Limitation of a suit for land matters is **twelve (12) years**.

From the records before this Court the matter that is being argued is based on a landed property that was used as a security to a loan that was secured by the 2nd Plaintiff from the 1st Defendant and a security for the said loan was and is a landed property.

It is from here that I join hands with Counsel for the Plaintiff that this matter is a land matter since the definition of a land matter is in the **Land Disputes Courts Act Cap 216 [R.E. 2019]**.

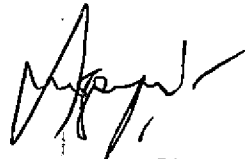
Under the interpretation section, the Legislature took efforts in defining what is land and the same was defined as **"Land includes the surface of the earth and the earth below the surface and all substance other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to land.**

It is therefore my firm view that the matter herein is a land matter and was therefore instituted within time. Therefore, **this objection holds no water and is hereby overruled.**

In the event therefore from all that has been said above the Counter Claim before this Court is struck out

for being incompetent by joining a party that was not a party to the suit.

It is so ordered.

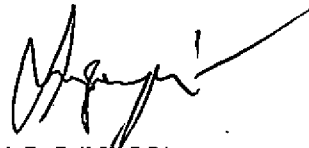


L. E. MGONYA

JUDGE

24/06/2021

Court: Ruling delivered in my chambers in the presence of the Mr. Pascal Kihamba, Advocate for the Plaintiff, Ms. Maryline Kitali, Advocate for the Defendants and Ms. Msuya RMA, this 24th day of June, 2021.



L. E. MGONYA

JUDGE

24/06/2021