

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(LAND DIVISION)

(ORIGINAL JURISDICTION)

LAND CASE NO. 30 OF 2021

AMIDU AMRI NDAGIJE.....PLAINTIFF

VERSUS

1. AMRI NDAGIJE

2. ZAINABU OMARI (the guardian of SUMAIYA

AMRI NDAGIJE)

3. KIGOMA UJIJI MUNICIPAL COUNCIL

4. ATTORNEY GENERAL

.....DEFENDANT

RULING

27/5/2022 & 31/5/2022

F.K. MANYANDA, J

This is a ruling in respect of a preliminary objection raised by the 3rd and 4th Defendants to the hearing of this case on two points of law namely;

- i. That the Plaintiff is bad in law for non-joinder of the Commissioner for Lands who is a necessary party in this matter*

ii. *That the matter be dismissed for want of a 90 days' notice of intention to sue the Commissioner for Lands as a necessary party in this matter.*

In this case the plaintiff is suing the Defendants jointly and severally for reliefs as follows;

- a) A declaration that the transfer of right of occupancy in respect of the property on plot No. 129 Bloc C Mlole Kigoma Ujiji Municipality is null and void as it was done by the person who was not the owner of the suit property*
- b) That the plaintiff be declared the lawful owner of the suit property*
- c) The 2nd Defendant be ordered to vacate from the suit property. The other reliefs are about costs.*

The 1st and 2nd Defendants refute these allegations while the 2nd and 3rd defendants on top of refuting they state that the disputed plot is already registered in the name of the 1st defendant. They feel the Commissioner for Lands who is responsible with registration of all Lands is left out, hence the preliminary objection.

At the hearing, the 2nd and 3rd Defendants who raised the objection were represented by Mr. Allan Shija, learned state Attorney, the plaintiff enjoyed legal services of Mr. Daniel Lumenyela learned advocate.

Arguing in support of their objection Mr. Allan Shija submitted that the Land in dispute is surveyed as averred in the pleadings, hence it is registered under the Commissioner of Lands, it is given plot number 129 Bloc "C" Mlole Area in Kigoma. There is also a letter of offer and transfer Land forms hence the Commissioner for Lands is a necessary party.

Secondly, Mr. Allan Shija argued that it needs a 90 days' notice prior to suing the Commissioner for Lands; Since the same is missing then the suit is incompetent the same be struck out for non-joinder of a necessary party.

Responding to the objection Mr. Lumenyela argued that the plaintiff does not have any cause of action against the Commissioner, hence he has no need of joining him.

Secondly, he submitted that pursuant to Order 1 Rule 9, no suit may be defeated for non-joinder of a party, however the defendant may, by way of a third-party notice join any person they wish.

He added that Order 1 Rule 13 require presentation of issues of non-joinder or mis joinder at the earliest opportunity.

The counsel was of the views that since there is no specific mentioning of a Commissioner for Lands, the need of joining him does not arise. The first point of objection is misconceived.

That being the case, the second point cannot stand. He prayed the preliminary objection be overruled.

From the equally urging submissions by the counsel for both sides the issue is whether the plaint is bad for non-joinder of the Commissioner for Lands.

I will start with the plaintiff's counsel argument that Order 1 Rule 9 provides that a suit cannot be defeated for non-joinder or mis-joinder of parties but the Court is to deal with the case to the end. It is true Order 1 Rule 9 provides so, however, that piece of legislation is not to be read in isolation. There are consequential effects to the application of that law alone such as resulting in unenforceable orders and violation of the natural justice.

Case laws has put it as law that any person likely to be affected by the resulting orders need to be heard. right to be heard is one of the components of natural justice.

A right to be heard is not only a cardinal principle of natural justice but also a fundamental right constitutionally guaranteed such that no decision should be left to stand in contravention of it, even if the same decision would be reached had the party been heard.

Cases on this point include the cases of the **DPP vs Sabini Inyasi Tesha and Another**, [1993] TLR 237, **National Housing Corporation vs**

Tanzania Shoe Company Ltd and Others, [1995] TLR 251, **Mbeya Rukwa Autoparts and Transport vs Jestina Mwakyoma** [2003] TLR 251, **Abbas Sheraly and Another vs Abdul Sultan Haji Mohamed Fazalboy**, Civil Application No. 33 of 2002 and **Dishon John Mtaita vs DPP**, Criminal Appeal No. 132 of 2004 (both unreported).

In **Abbas Sheraly and Another vs Abdul Sulan Haji Mohamed Razalboy** (supra) the Court of Appeal stated as follows;

"The right of a party to be heard before adverse action or decision is taken against such a party, has been stated and emphasized by the Courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice"

Back to the matter in hand, the defendant's contention is that by looking at the nature for the reliefs prayed for and the averment in the plaint it is obvious that the Commissioner for Lands will be involved because the Land in dispute is registered. The plaint also includes Land forms which are used for conveyance of Landed properties which are ultimately approved by the Commissioner for Lands.

The counsel for the plaintiff basically concedes that the plaintiff averments concern a registered Land and that it contains Land forms used for conveyance of Landed properties.

However, the Counsel argues that the plaintiff does not mention a Commissioner for Lands and the Land forms were signed by authorized officers, therefore the Commissioner for Lands will not be affected. Rejoining the counsel for the 2nd and 3rd Defendant argued conceding that the Land forms are signed by authorized officers, but he argued that those officers act on delegated powers of the Commissioner for Lands.

Moreover, it is the Commissioner for Lands who approves those forms, registration and transfer of registered Land.

In order to determine the tag of war between the two blocks of learned minds I will first have to consult the provisions of Land Act, [Cap. 113 R.E. 2019].

Section 2 defines an authorized officer to mean an officer authorized by the Commissioner or the Registrar to perform any functions of the Commissioner.

The Commissioner under the same law is defined to mean a Commissioner of Lands.

It follows therefore that authorized officers do sign Land forms on behalf of the Commissioner for Lands.

The next question is whether in the circumstances of this suit a Commissioner for Lands is supposed to be a necessary party. Test for necessary party were spelt out by the Court of Appeal in the case of **Abdullatif Mohamed vs Mahboob Yusuf Othman and Another**, Civil Revision No. 6 of 2017 where it stated as follows;

"a necessary party is one in whose absence no effective decree or order can be passed. Thus the determination as to who is a necessary party to a suit would vary from a case to case depending upon facts and circumstances of each particular case. Among the relevant factors for such determination include the particulars".

Then, such an order of this Court against the Commissioner for Lands cannot be implemented without affecting him, hence he deserves to be heard.

In the case of **Mbeya Rukwa Auto parts and Transport Ltd vs Jestina Mwakyoma** (supra) the Court of Appeal said this;-

"In this country, natural justice is not merely a principle of common law, it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to

be heard among the attributes of equality before the law and declares in part;

'Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa Mahakama au chombo kinginecho kinachotoa haki, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu...'

In view of the settled law on the right to be heard, we are of a serious considered view that, it will be absurd for this Court to make any order against the Registrar of Titles as prayed by the appellant without availing her opportunity to be heard".

From the string of the authorities above and the facts in the pleadings as explained above, I find that the suit is improper before the Court for not impleading the Commissioner for Lands as a necessary party.

Consequently, I do hereby strike out the plaint with costs. In case the plaintiff is still interested to sue the defendants, he may file a proper suit against the proper and necessary defendants.

It is so ordered




F.K. Manyanda

Judge

31/5/2022