

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

LAND CASE NO. 15 OF 2021

JUMA SELEMAN MBIFYA.....PLAINTIFF

-VERSUS-

MAHEZANGULU VILLAGE COUNCIL.....1st DEFENDANT

SALUMU MCHOMVU.....2nd DEFENDANT

RICHARD MBEGA.....3rd DEFENDANT

ATTORNEY GENERAL.....4th DEFENDANT

BUMBULI DISTRICT EXECUTIVE DIRECTOR.....5th DEFENDANT

RULING

Date of Last Order: 11/05/2022

Date of Last Ruling: 20/05/2022

AGATHO, J.:

The present ruling emanates from the Preliminary Objection raised by the 1st, 2nd, 4th and 5th defendants that the suit is bad in law for misjoinder of the party and suing a wrong party contrary to the requirements of Section 26(3) and 12(1(b) of the Local Government (District Authorities) Act [Cap 287 R.E. 2019]. On 28/03/2022 the court directed the parties to dispose the PO by way of written submission, a schedule was drawn, and the parties complied with.

The parties' submissions were divergent. While the defendants supported the PO, the plaintiff vehemently opposed it. I have read the parties submissions. The defendants submitted that the suit is bad in law for misjoinder of the party and suing a wrong party contrary to Section 26(3) and 12(1)(b) of the Local Government (District Authorities) Act [Cap 287 R.E. 2019]. To appreciate the substance of the PO or otherwise, I will reproduce the said provision.

"Notwithstanding subsection (2), the District Executive Director shall have the right to be joined as a party in any suit or matter instituted by or against the Village Council, and for that purpose the Village Council shall have a duty to notify the District Executive Director of any impending suit or intention to institute a suit or matter against the Village Council."

What is gathered from the above provision of the Cap 287 R.E. 2019 is that the District Executive Director (DED) has the right to be joined in any matter instituted by or against the Village Council. That is the first limb of the said provision. And on this the plaintiff rightly joined the DED as defendant (5th defendant). Therefore, requirement of the law is fulfilled.

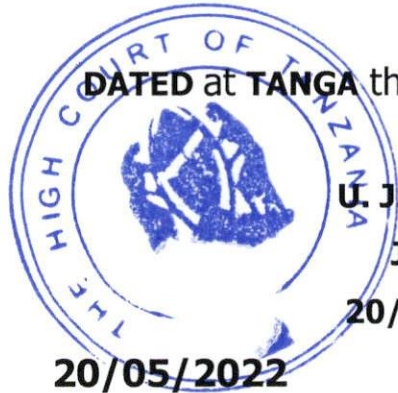
The second limb of Section 26(3) of Cap 287 R.E. 2019 requires the Village Council whenever it is sued or want to sue must notify the DED. This latter obligation is of the Village Council not the plaintiff. A good thing about the present suit is that the plaintiff has joined the DED, relieving the Village Council the burden of notifying the DED of the suit filed against the said village council. I am afraid the learned State Attorney's submission that the plaintiff sued a wrong party is misconceived. Section 12 (1)(b) of the Local government (District Authorities) Act [Cap 287 R.E. 2019] requiring the suing the District Council as proper party does not eliminate the requirement of joining the DED under Section 26(3) of Cap 287 R.E. 2019. In fact, it is my view that both the DED and the District Council ought to be joined. Misjoinder of non-joinder of a party is a curable defect.

As rightly pointed out by the Plaintiff in his submission that it is the law that a suit cannot be defeated by reason of misjoinder of the parties. For clarity, Order 1 Rule of the Civil Procedure Code [Cap 33 R.E. 2019] is quoted below:

"No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal

with the matter in controversy so far as regards the rights and interests of the parties actually before it..."

In lieu of the foregoing, the preliminary objection is overruled. Each party to bear its own costs.



DATED at TANGA this 20th Day of May 2022.


U. J. AGATHO

JUDGE

20/05/2022

Date: 20/05/2022

Coram: Hon. Agatho, J

Plaintiff: Zaujia Jacob Advocate for

1st, 4th and 5th Defendants: Rashid Mohamed, State Attorney for

2nd defendant:

3rd defendant

B/C: Debora

JA: Ms. Husna Mwiula

Court: Ruling delivered by on this 20th day of May, 2022 in the presence of Zaujia Jacob plaintiff's Advocate and Rashid Mohamed, State Attorney for the 1st, 4th and 5th Defendants.




U. J. AGATHO

JUDGE

20/05/2022