

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

**ARUSHA DISTRICT REGISTRY AT ARUSHA**

**CIVIL CASE NO.17 OF 2014**

**IBRAHIM ABDALLAH.....PLAINTIFF**

*(Suing as the administrator of the estate of the  
Late Abdallah Mwalimu)*

**VERSUS**

**SELEMANI HAMISI.....DEFENDANT**

*( Sued as the lawful administrator of the estate of the late  
Hamisi Abdallah)*

**RULING**

*Date of last order: 15-7-2022*

*Date of Ruling: 5-8-2022*

**B.K.PHILLIP, J.**

This suit was filed in this Court in 2014. On 11<sup>th</sup> March 2016 it was dismissed following the ruling of this Court in which it upheld the point of preliminary objection raised by the defendant's advocate that the case is time barred. Aggrieved by the ruling aforesaid the plaintiff appealed to the Court of Appeal. On 21<sup>st</sup> day of February 2022 the Court of Appeal delivered its decision in which it allowed the appeal and ordered the case to be heard on merit. Thus, the case file was remitted to this Court for continuation of hearing. The learned Advocates Hamisi Mkindi and Erick Kanga appears for the Plaintiff and Defendant respectively. When the

case was called for the 1<sup>st</sup> Pre-Trial Conference the learned advocates prayed for amendment of pleadings. I allowed their prayers. The learned advocate Erick Kanga filed his amended written statement of defence together with two points of Preliminary objection, couched as follows;

- i) To the extent that the plaintiff seeks orders for nullification of ownership of Plot No. 54, Block "G" Area "F" Arusha Municipality and or declaration that Hamisi is not a lawful owner of Plot No.54 , Block "G" Area "F" Arusha Municipality , and to the extent that the Plaintiff has not joined the relevant land allocation authorities and the Registrar of Titles , the suit is incompetent before the Court.
- ii) In the Alternative to ground number (i) above, the suit is incompetent for want of joinder of and /or failure to implead the Attorney General and Registrar of Titles being necessary parties as per the mandatory provisions of sections 6 and 10 of the Government Proceedings Act ( Cap.5.R.E 2019).

This Ruling is in respect of the above mentioned points of preliminary objections. I ordered the same to be argued by way of written submissions. Mr. Kanga's arguments in support of the 1<sup>st</sup> point of preliminary objection are to the effect that the nature of the reliefs prayed by the plaintiff entails nullification of the title in respect of the Plot No. 54, Block "G" Area "F" Arusha Municipality ,( Henceforth "the suit property") and a declaration that the plaintiff is the lawful owner of the same, thus, it is imperative to join Arusha City Council and Registrar of

Titles in this case because they are necessary parties. No effective decree can be passed by this Court without according Arusha City Council and Registrar of Titles the right to be heard to enable them to give explanations on how the suit property was transferred to the defendant. He went on submitting that Arusha City Council and Registrar of Titles will enlighten this Court on the propriety or otherwise of the transfer of the suit property from the original owner to the defendant herein.

Relying on the decision of the Court of Appeal in the case of **Abdullatif Mohamed Hamis Vs Mehboob Yusuf Othman & Another , Civil Revision No.6 of 2017**, Mr. Kanga submitted that a necessary party is one in whose absence no effective decree or order can be passed. Also, he cited the case of **Stanslaus Masunga Nkoia & others Vs The Board of Directors, Nyarugusu Mine Company Limited & others , Misc Civil Cause No.1 of 2021** to support his contention.

Furthermore, Mr. Kanga contended that non-joinder of a necessary party is a fatal error which renders a suit unmaintainable and has to be struck out. To cement his arguments he cited the case of **Ngerengere Estate Company Limited Vs Edna William Sitta, Civil Appeal No.209 of 2016** and **Efratha J. Mlay ( Administratrix of the estate of the late William Jacob Ngowi) Vs Josephin Rasieli Mremi and two others , Land case No.31 of 2019**, and **Leonard Peter Vs Joseph Mabao & 2 others , Land Case No.4 of 2020** ( All unreported).

With regard to the 2<sup>nd</sup> point of preliminary objection, Mr. Kanga submitted that since the Registrar of Titles is a necessary party, then ,the Attorney

General has to be made a party too, pursuant to the provisions of section 6(3) of the Government proceedings Act, Cap 5 R.E. 2019. Short of that the proceedings will be vitiated. He cited the case of **The Attorney General Vs Trustee of Tanzania National Park, Machanya Nemba Singu & Ugumba , Civil Revision No.1 of 2021.** (unreported).

In conclusion of his submission, Mr. Kanga maintained that this suit is incompetent for non-joinder of necessary parties. He urged this Court to strike it out.

In rebuttal, Mr. Mkindi started his submission by distinguishing the case of **Abdulatif** (supra) from fact of this case on the ground that the same was concerned with non-joinder of the administrator of the deceased estate. He went on submitting that in this case the plaintiff has no any claim whatsoever against the Government. The plaintiff's claim is that Hamis Abdallah (deceased) before his death unlawfully claimed ownership of plot No 54 Block "G" and "F" Arusha Municipality. That is what is pleaded in paragraphs 7, 8 & 10 of the amended plaint. On the reliefs sought in this case, Mr. Mkindi submitted that the plaintiff prays for declaration that, the suit property forms part of the estate of the late Abdallah Mwalimu. This Court is called upon to determine who is the rightful owner of plot No. 54 Block "G" and "F" Arusha Municipality. He contended that the provision of Government Proceedings Act cited by Mr. Kanga are not applicable in this case.

Furthermore, it was Mr. Mkindi's contention that it is a settled law that non-joinder or misjoinder of parties should not defeat the ends of

justice. This Court has powers to order a name of any party to be joined where it finds just and necessary to enable it to effectually and completely adjudicate upon and settle all questions involved in a suit. To fortify his arguments he referred this Court to Order 1 Rule 9 , 10 (2) of the Civil Procedure Code , Cap 33 R.E 2019, ( "CPC") and the case of **Mussa Chande Jape Vs Moza Mohamed Salim, Civil Appeal No.141 of 2018**, and **Godfrey Nzowa Vs Selemani Kiva & Tanzania Building Agency, Civil Appeal No.183 of 2019** ( Both unreported).Mr. Mkindi prayed for the dismissal of the points of preliminary objections.

In rejoinder, Mr. Kanga reiterated his submission in chief. He insisted that in the case of **Abdullatif** ( supra), the Court of Appeal defined the term "necessary party" and made it clear that the provisions of Order 1 Rule 9 of the CPC is only applicable in case of misjoinder and non- joinder of a non-necessary party.

In addition, Mr. Kanga distinguished the case of **Mussa Chande** (supra) from this case on the ground that the party who was not joined in that case was an individual, not a government institution which requires to be served with 90 days' notice before joining it in a suit as per section 6 of the Government proceedings Act. He refuted Mr. Mkindi's contention that non-joinder of a party should not be used to defeat the ends of justice. He maintained that such a view is a misconception since in the case of **Mussa Chande**, (supra) , the Court of Appeal cited with approval the case of **Tang Gas Distributors Limited Vs Mohamed Salim Said & 2 others, Civil Application No.68 of 2011** ( unreported) ,in which it held that "*it is now accepted principle of law that it is material irregularity for a court*

*to decide a case in absence of a necessary party. Failure to join a necessary party, therefore is fatal"*

I have taken into consideration the rival arguments made by the learned advocates and in my opinion, the issue for determination in this matter is whether Arusha City Council and the Registrar of Titles are necessary parties in this case. It is a common ground that the term necessary party is not defined in our statutes. However, in the case of **Abdullatif** (supra) the Court of Appeal defined a necessary party as "*one in whose absence no effective decree or order can be passed*".

Before embarking on the determination of the merits of the points of preliminary objections, I think it imperative to state the facts of this case, albeit briefly. In a nutshell, the plaintiff's claim against the defendant is that the suit property forms part of the estate of the late Abdallah Mwalimu. The plaintiff is the son and administrator of the estate of the late Abdallah Mwalimu. The defendant's father, the late Hamisi Abdallah is also the son of the late Abdallah Mwalimu. It is alleged in the plaint that the transfer of the suit property to the late Hamisi Abdallah after the death of Abdallah Mwalimu is unlawful because the same was not bequeathed to him. He was just appointed to be the administrator of the estate of the late Abdallah Mwalimu and entrusted take care of the suit property because by then his siblings were young, and he was the elder brother in the family. The plaintiff's prayers in this case are as the follows;

- i) A declaration that the late Hamisi Abdallah was not the lawful owner of the disputed land.

- ii) The transfer of the disputed land/house between the late Hamisi Abdallah and one Amon Benjamini was unlawful.
- iii) The declaration that the disputed house is among the estate of the late Abdallah Mwalimu.
- iv) The defendant to bear the costs of this suit
- v) Any other relief this Honourable Court deem just and equitable to be granted.

In his defence the defendant alleges that his father, the late Hamisi Abdallah was duly appointed as the administrator of the estate of the late Abdallah Mwalimu and distributed the deceased's estate in accordance with the will left by the deceased (the late Hamis Abdallah). He was bequeathed the suit property. The administration processes of the estate of the late Abdallah Mwalimu were done and completed in 1969. The late Hamisi Abdallah was issued with a letter confirming him as the heir of the suit property.

From the foregoing, the pertinent question here is whether Arusha City Council and the Registrar of Titles are necessary parties in this case. In other words, whether or not this Court cannot make any effective decree or order without joining Arusha City Council and the Registrar of titles in this case. The key words in the definition of the term "necessary party" as stated in the case of **Abdullatiff** (supra) are "*effective decree or order*". So, what is an effective decree or order? To my understanding an effective decree or order is the one that is can be executed and determines of the core dispute between the parties in a case.

Having said the above, first of all let me point out that I am in agreement with Mr. Mkindi that in this case the plaintiff is not claiming anything against Arusha City Council and the Registrar of Titles . His claims are basically concern with the administration of the estate of the late Abdallah Mwalimu and that Hamisi Abdallah was not bequeathed the suit property. The plaintiff is challenging the lawfulness of the documents submitted to the Registrar of Titles and used to effect the transfer of the suit property into the late Hamis Abdallah . The facts of the case reveal that neither the Registrar of Titles nor Arusha City Council will be affected by the outcome of the case in any way. Thus, Mr. Kanga's contention that they deserves to be accorded right to be heard is unfounded. This is notwithstanding the fact that, depending on the outcome of the case the Court decree/orders might be submitted to the Registrar of Titles. The proposition made by Mr. Kanga that without joining Arusha City Council and Registrar of Titles this Court cannot make an effective decree or orders is misconceived. The Registrar of Titles / land allocation authorities act in accordance with the documents submitted before them including Court Orders. ( See the provisions of Part V , sections 73-74 of the Land Registration Act). In my considered opinion, what determines as to the whether the Registrar of Titles/ land allocation authorities should be joined or not is the nature of the claim. If the claims filed in Court implicate them then , they must be joined in the case so as to give them the right to be heard.

With regard to the authorities cited by Mr. Kanga on the necessity of joining the Registrar of Titles in matters involving dispute over registered



land, the decision of the Court of Appeal in the case of **Ngerengere Estate Company Limited** ( supra) is completely irrelevant in this case since it has nothing to do with issues concerning joining the Registrar of Titles or land allocation Authorities in land cases involving registered land .In that case the Court Appeal dealt with issues concerning missing documents in the record of appeal. The case of **Efratha J. Mlay** (supra) and **Leonard Peter** ( supra) are not binding to me but persuasive. It is noteworthy that each case has to be decided on its own merit. As alluded herein above, in my considered view looking at the facts of this case and the dispute between the parties, this Court can issue effective decree without joining Arusha City Council and the Registrar of Titles in this case.

Having made a finding that the non-joinder of the Registrar of Titles and Arusha City Council are not necessary parties in this case, then, automatically the second preliminary objection has become redundant since it is based on the requirements of issuing a 90 days' notice prior to instituting a case against the government and joining the Attorney General in the case.


In addition to the above , it is noteworthy that with the advent of the principle of overriding objectives , this Court is required to deal with the substantive dispute between the parties. As I have alluded earlier in this Ruling, in this matter the plaintiff have no any claim against Arusha City Council and the Registrar of Titles. Whether or not there is anything wrong in the transfer of the suit property to the late Hamisi Abdallah, the same is concern with the documents presented to the Registrar of Titles/ Arusha

City Council by the parties themselves. The fact that execution of the Court Order might involve the administrative action of the Registrar of Titles /land allocation authorities cannot be a reason for joining them in this case.

The above aside, it is also noteworthy that each party in this case is free to call any witness , including the Registrar of Titles. In the upshot, the points of preliminary objection are hereby dismissed for lack of merit. Costs will be in course.

Dated this 5<sup>th</sup> day of August 2022



  
**B.K.PHILLIP**  
**JUDGE.**