

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

CIVIL CASE No. 6 OF 2021

RAMADHAN SEMBEJO MONGU PLAINTIFF

Versus

**1. DISTRICT EXECUTIVE DIRECTOR-
OF MUSOMA MUNICIPAL COUNCIL**

2. MARTINE KOROGO

DEFENDANTS

3. ANTONY EDWARD ETUTU

4. THE ATTORNEY GENERAL

>

RULING

03.02.2022 & 04.02.2022

F.H. Mtulya, J.:

Mr. Ramadhan Sembejo Mongu (the plaintiff) sued the **District Executive Director of Musoma Municipal Council** (the first defendant) and three (3) other persons in this court for compensation of monies to the tune of Tanzanian Shillings Seventy Million (70,000,000/=) comprising of both special and general damages for trespass over his land. Before hearing of the suit, the District Executive Director of Musoma Municipal Council (the first defendant), Mr. Martine Korogo (the second defendant) and Attorney General (the fourth defendant) protested the suit at preliminary stages contending briefly that:

1. the suit is not maintainable as it contravened mandatory provision of Order VII Rule 1 (f) & (i) of the **Civil Procedure Code** [Cap. 33 R.E.

2019] (the Code);

2. the suit is hopeless and unmaintainable under section 14(1) (b) of the **Local Government (Urban Authorities) Act** [Cap. 288 R.E. 2002] (the Local Government Act); and
3. the suit is hopeless and time barred under Item 1 Part I of the Schedule to the **Law of Limitation Act** [Cap. 89 [R.E. 2019] (the Law of Limitation).

The points of preliminary objection were argued by way of written submissions and both parties adhered to the scheduling order. However, in the submissions of the parties, the parties agreed to drop the first point of objection and argued on the second and third. In explaining the second point of objection, the defendants argued that the plaintiff sued the employer instead of corporate body as per requirement of the law in section 14 (1) (b) of the Local Government Act, which recognises the urban authorities as corporate bodies capable of suing or sued. In order to bolster their argument, the defendants cited the authority of this court in **Municipal Council v. Philibert Rwegoshora**, Civil Appeal No. 14 of 2008.

On the third limb of preliminary objection, the defendants submitted that the main claims of the plaintiff were trespass to his parcel of land without compensation and according to Item 1 of Part I of the Schedules to the Law of Limitation, the claim was supposed to be registered in this court within a year. However, the plaintiff had filed the suit after a

lapse of one (1) year. To their opinion, the suit should be dismissed under the provision of section 3(1) of the Law of Limitation.

In reply of the limbs of objections, the plaintiff contended that the points of objection have no merit as the second limb of objection is not purely point of law per requirement of the famous precedent of **Mukisa Biscuits Manufacturing Company Ltd v. West End Distributers LTD** (1969) E.A 696. To his opinion, the plaintiff thinks that even if the objection is proper, the remedy is to make amendments of the pleadings as per authority in **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017. On the third limb of the contest the plaintiff argued that the pleadings display two (2) interrelated issues on ownership of the land and compensation to the land, which fall within the ambit of Item 22 of Part I of the Schedule to the Law of Limitation.

To my opinion, I think, this court is invited to determining two issues, namely: first, whether the misjoinder of parties in a suit

defeats the suit, and second, whether the suit is time barred. With regard to the first issue, I understand, the first & fourth defendant complained on the name of the first defendant and cited the authority of section 14 (1) (b) of the Local Government Act and precedent in **Municipal Council v. Philibert Rwegoshora** (supra).

I agreed with the cited provision and precedent that the plaintiff was supposed to sue the council as per provision of the law but sued the first defendant, which was not proper. However, the law in Order I Rule 9 of the **Civil Procedure Code** [Cap. 33 [R. E. 2019] (the Code) provides that: *a suit shall not be defeated by reason of the misjoinder or nonjoinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it.*

The provision has already received precedent of this court in the decision of **NBC Holding Corporation v. Shirika la Uchumi na Kilimo Ltd (SUKITA) & 63 Others**, Commercial Case No 24 of 2001, where it was held that: *a suit cannot be defeated for misjoinder of parties.* This court will follow its previous course for the sake of certainty of decisions emanated in this court. In that end, it is obvious that this court cannot dismiss this case for misjoinder or non-joinder of the parties because the current practice allows amendment of pleadings to conform with the law. In any case, the

enactment of section 3A & 3B in the Code via **Written Laws (Miscellaneous Amendments) (No.3) Act, No. 8 of 2018** obliges parties and their learned minds in civil suits to: *facilitate the just, expeditious, proportionate and affordable resolution of all matters by avoiding technicalities and give effect to the overriding objective*. Similarly, this court is also required to exercise its powers in interpreting disputes brought to its attention by inviting the principle of overriding objective, which is commonly known as *Oxygen Principle*. The principle has already received precedents of the Court of Appeal and this court in **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017 and **Alliance One Tobacco Tanzania Limited Si Another v. Mwajuma Hamis & Another**, Misc. Civil Application No. 803 of 2018. To my opinion, the error committed by the plaintiff was based on a technical error and this court cannot vitiate his rights to sue proper parties.

I am aware that the third limb of the preliminary objection relates to the limitation of time. However, this court cannot be detained by the protest. It is obvious that the prayers of the plaintiff in the plaint cannot be granted without establishing ownership of the land claimed to have been trespassed. This is justified further by the Written Statement of Defence of Mr. Antony Edward Etutu (the third defendant), who declined all claims of the plaintiff, including

ownership of the land, save for the names of the parties. This suit is therefore based on two contests, ownership and compensation of the land and may fall within the ambits of Item 22 of Part I of the Scheduler to the Law of Limitation. Having said so, I have decided to overrule all points of preliminary objection raised by the defendants with costs. I therefore grant the plaintiff fourteen (14) days leave to amend his plaint for want of proper parties in this case.

It is so ordered



F.H. Mtulya

Judge

04.02.2022

This ruling was delivered in Chambers under the seal of this court in the presence of the plaintiff, Mr. Ramadhani Sembojo Mongu and in the presence of the second and third defendants, Mr. Martine Korogo and Mr. Athony Edward Etutu, respectively.



F.H. Mtulya

Judge

04.02.2022