

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

AT DAR ES SALAAM

LAND CASE NO. 21 OF 2020

JAMES WINGIA KIMARO.....1st PLAINTIFF

GASTON RAPHAEL GIKARO2nd PLAINTIFF

ALOYCE A. NGOWI.....3rd PLAINTIFF

ELIZABETH BAHATI LUKAZA4th PLAINTIFF

ROSE MICHAEL KYANDO.....5th PLAINTIFF

VERSUS

MARTHA JOSEPH KATEMBA.....DEFENDANT

RULING

MRUMA, J.

Together with her written statement of defence, the Defendant filed a counter claim against all plaintiffs in the claim alleging that the plaintiffs had trespassed into Defendant's land and illegally surveyed it, she accordingly prayed this court to declare her lawful owner of the land situated on plot No. 130 Block E Kunduchi Salasala area in Kinondoni Dar es Salaam. The counter claim was met with preliminary objection in that

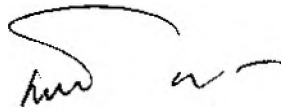
it contravened the provisions of Rule 1(1) (i) of Order VII of the Civil Procedure Code [cap 33 RE2019] as it lacked a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees.

In its ruling delivered to the parties by hon. Kiwonde, Deputy Registrar on 10.08.2022, this court (Dr. Laltaika J who had the conduct of this matter before he was transferred to another working station), sustained the preliminary objection and struck out the counter – claim. Today, counsel for the Defendant is seeking leave of the court so that the can amend the Defendant’s written statement of defence and include a counter – claim in which the main prayer would be (like the previous one) a declaration that she is the lawful owner of the suit land.

I have carefully considered the Defendant’s prayer to amend the written statement for purposes to accommodate a proper counter – claim which will comply with requirement of Order VII rule 1(1) (i) of the Civil Procedure Code and state the value of the suit land. In my view the subject matter of the counter – claim that is the ownership of the land can be disposed of in the same suit without necessarily having it by way of counter- claim because the kernel of this dispute is owners of the same suit land.

Thus despite of the fact that the counter claim has been struck out but the issue raised therein will definitely be the key issue in the suit between the Plaintiffs and the Defendant. In the circumstances I decline a prayer for amendment of the written statement of defence. If the Defendants feels that she has any claim against the plaintiff or is entitled to any relief or remedy against the plaintiffs, which could have entitled her to a counter – claim in terms of Rule 9(1) of Order VIII of the Civil Procedure Code, she may file a separate suit therefore separate trial of that counter – claim as provided for under rule 12 of the same order.

Order accordingly.



A.R.MRUMA

JUDGE

26/8/2022