

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA
LAND CASE NO. 6 OF 2019**

KAHAMA LAND HOLDING LTDPLAINTIFF

VERSUS

MICHAEL JOHN NJOROGE & 7 OTHERS..... DEFENDANTS

RULING

22 March, 2022

A. MATUMA, J.

When this suit came for 1st Pre Trial-Conference, I noted that the 8th defendant has been absent throughout. She has even not filed any statement of defence.

I asked Mr. Mvungi learned advocate who appeared for the plaintiff holding brief of Mr. Andrew Akyoo learned advocate as to whether they effected service to the 8th defendant. He explained that Mr. Andrew Akyoo learned advocate has told him that the 8th defendant was served. He had however no proof of service whatsoever.

I have gone through the records and have not seen any return of summons to reflect that the 8th defendant was served.

This suit was instituted in this court way back on 12/09/2022 which is almost 2 years and seven months.

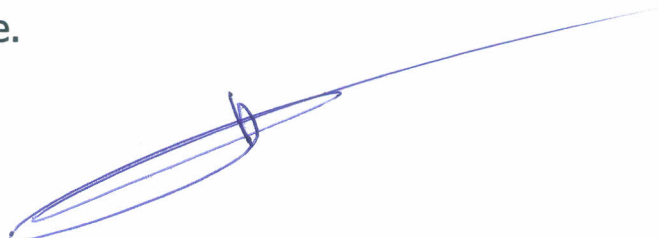
In that service it has become a backlog case without any progress. On 23/10/2020 my learned brother Justice Mdemu ordered on record in the presence of the plaintiff's advocate one Kibogo;

"The 8th defendant be served and file written statement of defence. It is so ordered"

Since then, there is not proof of compliance to the Court's order for service to the 8th defendant. Any failure to effect service to the apparent party amounts to failure to prosecute the claim see Matias Luhana versus Mufizi Mpuzu, Miscellaneous Land Case appeal no. 2 of 2019.

As the plaintiff sued the 8th defendant along with the rest defendant, I have no power to exclude the 8th defendant from the suit as it is only the plaintiff who knows how her claim is tied to all the defendants. In that respect, we cannot proceed with the suit in the absence of the defendant. The only remedy hereof is to dismiss this suit for want of prosecution. I therefore and hereby dismiss this suit for want of prosecution.

The averments by Mr. Mvungi learned advocate that the 8th defendant was served have no support on record. If so, they shall apply for restoration of this suit accompanying vivid evidence that they had actually effected such service.



This suit is dismissed for want of prosecution, and the 1st, 2nd, 3rd, 4th and 7th defendants who are present are awarded costs of this suit from its beginning to its end today.

It is so ordered.



A. MATUMA
JUDGE
22/03/2022