

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND DIVISION

(ORIGINAL JURISDICTION)

LAND CASE NO. 20 OF 2021

YUNUS S/O SEIF KADUGUDA (Administrator of the
Estate of the late **SEIF S/O KADUGUDA**)**PLAINTIFF**

VERSUS

MARIETHA D/O YALASEMEYE (as administratrix of the
estate of the late **TOMASI S/O NSANZUGWANKO**)**1st DEFENDANT**

KASULU TOWN COUNCIL.....**2nd DEFENDANT**

THE ATTORNEY GENERAL**3rd DEFENDANT**

R U L I N G

25/02/2022 & 31/03/2022

L.M. MLACHA, J.

This is a ruling on preliminary points of objection raised by the first defendant Marietha Yalasemeye (*as an administratrix of the estate of the late **THOMAS NSANZUGWANKO***). She has the services of Mr. Method Kabuguzi advocate. The Plaintiff Yunus Seifu Kaduguda (*as administrator of the estate of the late **SEIFU KADUGUDA***) was represented Ms. Machilda Mpeti advocate. Mr. Allan Shija state attorney appeared for Kasulu District Council

and the Attorney General (*second and third defendants respectively*). The points raised read thus;

- i. The Commissioner for Land who registered the suit land in the names of the late Thomas Bhalanshikiye Nsanzugwanko (the first defendant's late husband) and the same issued a certificate of occupancy with Title No. 4122 LR Tabora; L.O. No. 219544; TLO/KSL/C/18 & 20 to the deceased has not been pleaded as a necessary party.*

The suit is legally and fatally vitiated in terms of section 6(1) and (2) of the Government Proceedings Act, Chapter 5 R.E. 2019.

Hearing was done by oral submissions, and both Mr. kabuguzi and Ms Machilda Mpeta had a chance to address the court. As the objection did not touch Mr. Allan, he had nothing to say.

Submitting for the first defendant, Mr. Kabuguzi said that the Plaintiff is defective for failure to join the Commissioner for Lands who is a necessary party because he is the one who issued the title deed. He referred the court to para 5 of annexure Y-2K of the Plaintiff which reads, 'that, apart from the vagueness in the process of acquiring Plot No. 18 Block 'C' and Plot No. 20 Block 'C' Kasulu urban area by the late **TOMAS NSAZUGWANKO** as elaborated above using unlawful means the late Emili Thomas Nsazugwanko

a son to the late **TOMAS NSAZUGWANKO** on 15/4/2017 succeeded to be granted Right of Occupancy for Plot No. 18 Block 'C' and Plot No. 20 Block 'C' Kasulu Urban area in the name of **THOMAS BALANSHIKIYE NSANZUGWANKO** through the alleged certificate of title No. 4/22LR Tabora'. He referred the court to **Shaibu Salimu Hoza v. Hellena Muhacha** (Legal representative of **Marina Muhacha**), Civil Appeal No. 7 of 2012, page 7 where the judgment and proceedings of the lower courts were nullified for failure to join Dar es Salaam City Council who was a necessary party. Counsel proceeded to submit that the Commissioner cannot be joined by an order for amendment because he was not served with the 90 days' Notice. He argued the court to struck out the case.

Ms. Machilda submitted that the objection is baseless. She said that the case of **Abdulalif Mohamed Hamisi v. Mahboob Yusufu Osman**, CAT Civil Revision No. 6 of 2017 set 2 tests for joining a party as a necessary party namely; the Right to relief against the party and whether a decree can be executed against such a party. She said that there cannot be a relief directly to the Commissioner because he works through land officers in the Local Government. They are the ones who confer titles. She referred the court to the decision of the court in **Christina Jalison Mwamlima and another**

v. Henry Jalison Mwamlima, Land Case No. 19 of 2017 saying it is the second defendant who issue titles.

Counsel proceeded to submit that the Assistant Commissioner Confessed that he issued the title deeds wrongly making them null and void. The second defendant failed to comply with the directives given to rectify the situation. Counsel had the view that a decree can be passed in the absence of the Commissioner.

Mr. Kabuguzi made a rejoinder and joined issues with counsel for the plaintiff. He reiterated his earlier position that the commissioner for land is a necessary party.

I had time to peruse the pleadings. I could read all the documents closely. Indeed, the parties are litigating over a parcel of land which is now registered as Plots Nos. 18 and 20, Block 'C' Kasulu urban area in the name of **THOMAS BHALANSHIKIYE NSANZUGWANKO** according to a copy of the title deed signed by the Assistant Commissioner for Lands on 28/2/2017. It was registered on 2/3/2017. The Plaintiff wants the first defendant to vacate from this land. He does not recognize the title deed.

If this is the fact, with respect to views of the counsel for the plaintiff, there is no way in which the title deed can be nullified by this court without giving the Commissioner for Lands a right to be heard. He is a necessary party because he is the one who issued the title deed. Land Officers in the council work for him but they cannot replace him. The mere fact that they deal with matters at early stages does not give them powers to issue title deeds or be deemed to have those powers. The powers of the commissioner for lands are distinct and reserved for him under the Land Act No. 4 of 1999. It was therefore wrong to sue the council on issues regarding the validity of the title deed without the commissioner for lands. He was supposed to be a party. A party can have a right for relief against the Commissioner for Lands. The court can pass a decree against him. He qualifies the two tests pointed out by Ms. Machilda in the case cited.

What then should be done? The usual practice could be to order an amendment of the plaint. But as was pointed out by Mr, Kabuguzi, there is the requirement of the 90 days' Notice which is mandatory because this is a case against the government which is regulated by the Government Proceedings Act, Cap. 5 R.E. 2002. The court cannot order an amendment to join him in the absence of proof of service of the 90 days' notice. There

is no such a proof. The proper way as suggested by Mr. Kabuguzi is to strike the suit. I order so. Costs to follow the event.

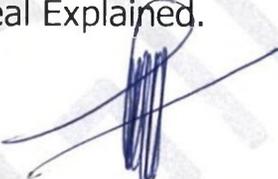


L.M. MLACHA

JUDGE

31/03/2022

Court: Ruling delivered in the presence of the parties through the virtual court services. Right of Appeal Explained.



L.M. MLACHA

JUDGE

31/03/2022