

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(BUKOBA DISTRICT REGISTRY)
AT BUKOBA**

CIVIL CASE No. 03 OF 2022

JOEL NATHANAEL NKINGA PLAINTIFF

VERSUS

Dr. JOHN KEVIN BGOYA DEFENDANT

RULING

2nd & 11th November 2022

OTARU, J.:

This is a Ruling in respect of an application by the Plaintiff for the court to order the Defendant to allow the Plaintiff and his men to enter the suit land for purposes of evaluating it. No legal provisions have been cited to move this court.

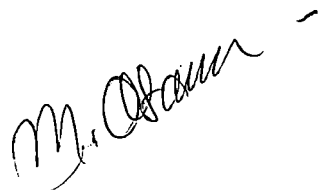
The facts of the case are such that the Plaintiff sued the Defendant for compensation for breach of contract for sale of land of about five hundred Acres (500 Acres) he claims to have purchased in 2006 from one Ian Richard Bgoya, now deceased. He attached to the Plaint an *ex-parte* Judgment of 2016 declaring BG's RICHARD Tz Ltd as the lawful owner of the suitland, and ordering him to vacate.

M. Otaru

Both parties engaged legal representation. The Plaintiff is represented by learned Advocate Joseph Madukwa while the Defendant is represented by Advocate Peter Joseph Matete.

On 29th September 2022, the court allowed the Plaintiff to file Notice of Additional Exhibits, as requested, by 13th October 2022. On 2nd November 2011 when the matter was coming for hearing, the Plaintiff informed the Court that they were not allowed to enter the suitland for purposes of doing evaluation, unless there was a court order. The learned Advocate therefore prayed for this court to issue such an order. The learned Advocate for the Defendant resisted the application stating that it is not the courts' duty to create evidence to the parties.

I have gone through the record and the law as I am trying to understand the validity of the Application before me. I have not been able to see any suggestion in the pleadings necessitating evaluation of the suitland to be done. Further, the court order dated 29th September dealt with filing of Notice of Additional Exhibits as requested by the Plaintiff himself, nothing was said about evaluation of the suitland. The Notice has not been filed. The Plaintiff's explanation for not filing the Notice is that they were not allowed to enter the suitland to do evaluation.



The *ex-parte* Judgment of 2nd December 2016, declared BG's Richards Tz Ltd as the lawful owner of the suitland and ordered the Plaintiff to vacate the suitland. The Plaintiff has also been '*permanently restrained from interfering with the suit premises*'. No appeal has been preferred from this Judgment. As we speak therefore the Plaintiff's restraint order is still valid.

I am in agreement with the Counsel for the Defendant that the Plaintiff has not pleaded anything in relation to valuation of the suitland. Order VI Rule 7 of the **Civil Procedure Code**, Cap 33 is relevant as it provides that: -

'No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same'

Also see the **National Insurance Corporation vs. Sekulu Construction Company** [1986] T.L.R. 157 where it was held that; parties to dispute are not, during trial, allowed to depart from pleadings by adducing evidence which is extraneous to the pleadings.

Evidently therefore, the evidence the Plaintiff tries to rely on is not founded on pleadings as such, the application cannot be allowed. Not only that, the Plaintiff has a permanent restraining order against the suitland.

Further, the court has not been properly moved. All that aside, I am not able to understand what the Plaintiff intends to evaluate as, ownership of the suitland has been under BG's RICHARD Tz Ltd since 2016.

Consequently, this application has no legs to stand on and is therefore dismissed. Costs to follow the event.

It is so ordered.



M.P. Otaru

JUDGE

11th November 2022