

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

**AT DAR ES SALAAM**

**MISCELLANEOUS CIVIL APPLICATION NO. 190 OF 2022**

*(Originating from Land Case No. 9 of 2021 before Hon. Masabo, J)*

- |                             |                           |
|-----------------------------|---------------------------|
| 1. HEMED J. MFINANGA .....  | 1 <sup>ST</sup> APPLICANT |
| 2. HONORIS MWASHUBILA ..... | 2 <sup>ND</sup> APPLICANT |
| 3. ABEDI JAHA .....         | 3 <sup>RD</sup> APPLICANT |
| 4. SADI SELEMANI .....      | 4 <sup>TH</sup> APPLICANT |

**VERSUS**

**THE REGISTERED TRUSTEES OF MOROVIAN**

<b>CHURCH IN SOUTHERN TANZANIA .....</b>	<b>RESPONDENT</b>
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**RULING**

11<sup>th</sup> October & 11<sup>th</sup> November, 2022

**BANZI, J.:**

The Applicants, Hemed J. Mfinanga, Honoris Mwashubila, Abedi Jaha and Sadi Selemani filed this Application praying to be joined in Land Case No. 9 of 2021 as necessary parties. The Application is supported by affidavits of the Applicants. The Respondent, through the counter affidavit of Rev. Emanuel Peter Mahembo opposed the Application.

The Application was heard by way of written submissions. The Applicants were represented by Ms. Athanasia Soka, learned Advocate, while the Respondent enjoyed the services of Mr. Barnabas Luguwa, learned Advocate.

Arguing in support of the Application, Ms. Soka submitted that, the first, second, third and fourth Applicants as former employees of Tanzania Zambia Railway (TAZARA) are owners of Plots No. 182, 181, 161 and 176 respectively, located at Kinyerezi area after being sold to them by their employer. According to her, all four plots are subject of Land Case No. 9 of 2021 ("the main case") which is pending before Hon. Nkwabi, J. It was further her submission that, when the Applicants were making follow up on finalisation of ownership process, they were informed by the Municipal Director about existence of the main case and nothing can be done before final determination of the said case. She added that, the Respondent despite being aware that disputed plots in the main case are owned by the Applicants, but they chose not to join them for reasons best known to themselves. Furthermore, she submitted that, it was important and necessary to join the Applicants in the main case in order to determine the issue of ownership once and for all and to avoid multiplicity of suits as

stipulated under Order 1, Rule 10 (2) of the Civil Procedure Code [Cap. 33 R.E. 2019] ("the CPC"). She cited the case of **Tanzania Railways Corporation (TRC) v. GBP (T) Limited**, Civil Appeal No. 218 of 2020 CAT at Dar es Salaam (unreported) which emphasised on joining of necessary party in a suit. To conclude, she prayed for the Application to be allowed with costs since the Applicants are owners and claim interest over the plots which are subject matter of the main case.

In his reply, Mr. Luguwa, learned Counsel was of the view that, the Application is unmerited and should be dismissed. Explaining further, he submitted that, the disputed land in the main case was originally owned by the late Mohamed Kiponda, Halima Mohamed Kiponda and Simwana Mwinyimkuu who sold the same to the Respondent. He added that, there was a legal battle since 2008 between TAZARA and the Respondent in respect of Plots No. 162, 177 and 180 which were registered in the name of the Respondent whereby, the last case was withdrawn in 2020 with leave to refile but up to this juncture, nothing was refiled. According to him, the right of the Applicants is subject to the right of TAZARA. In that view, the Applicants are trying to revive the case of TAZARA over the suit property from the back door. However, their efforts are fruitless because they are out

of time. It was further his submission that, this Application is incompetent for not joining Dar es salaam City Council, the Commissioner for Lands and the Attorney General who are Defendants in the main case. Moreover, he submitted that, the Applicants have failed to prove their interests in the disputed plots because, through their affidavits, the first, second, third and fourth Applicant claimed to buy Plots No. 182, 181, 161 and 176 Kinyerezi but the attached receipts show that, they bought Plot No. 15, 14, 10 and 11 Kinyerezi, respectively. Thus, they have no interest in the main case which concerns Plots No. 160, 161, 163, 176, 181 and 182 Tabata Lawiti which is different from their plots located at Kinyerezi. To conclude, he submitted that, the Applicants do not fit to be joined as necessary parties because their claims are on other plots of land different from the disputed ones in the main case. Thus, he prayed for the Application to be dismissed with costs.

In her rejoinder, Ms. Soka submitted that, the purpose of this Application is to join the Applicants in the main case which is pending so that the trial court can determine the rights of each party at once in order to avoid multiplicity of suits. She urged the Court to grant the orders sought by using its inherent powers under section 95 of the CPC. Replying on the issue of the Applicants being time barred, she submitted that, there is nothing that



hinders the Applicants to be joined in the main case because they are the owners of Plots which is the subject matter in the main case. On the issue of disparity on Plot numbers and location, she submitted that, the Respondent is very much aware that, when the Applicants bought the Plots in question, the area was commonly known as Tabata Kinyerezi but it was later changed to Tabata Liwiti. Likewise, the Respondent is also aware that, number 15 appearing in the attached receipts was used before surveying but after same Plot was given number 182 which is also the subject matter of the main case. She concluded by stating that, if the Applicants have no interest over the disputed land why should they waste their valuable time and resources seeking to be joined in the main case.

Having carefully considered the affidavits and submissions of both sides, the main issue for determination is whether *the Applicants have established their interest over the disputed land in Land Case No. 9 of 2021.*

It is worthwhile noting here that, according to Order I, Rules 1 and 3 of the CPC, any person claiming interest in a suit property may be joined in that suit as a plaintiff or defendant. On the one hand, it is the contention of the Applicants that, they are the owners of Plots number 182, 181, 161 and 176 which is the subject matter of the main case. On the other hand, it was

the contention of the Respondent that, the plots in question are not owned by the Applicants.

I have carefully perused the affidavits of both parties. It is clear from paragraphs 4 of the affidavits of the Applicants that, the first, second, third and fourth Applicant are claiming ownership of the land located at Plots No. 182, 181, 161 and 176 respectively. It is undisputed that, these are among the plots subject of the main case because according to his submission, learned Counsel for the Respondent stated that, the subject matter in the main case concerns Plots No. 160, 161, 163, 176, 181 and 182. This in itself suffices to hold that, the Applicants have established sufficient interest over the subject matter in the main case entitling them to be joined in order to be heard and defend their interests over the suit property. The argument by Mr. Luguwa that, the Applicants' plots are different with the plots in the main case does not hold water because according to annexure A of the affidavits, the City Director acknowledges existence of the main case concerning the same plots. The same letter was copied to the Applicants. If the Applicants had no connection with the plots in question, they would not have been copied with that letter. The issue of change of name from Kinyerezi to Tabata Lawiti is not relevant at this juncture. In that regard, it is the finding of this

Court that, the Applicants have established their interest over the disputed land in Land Case No. 9 of 2021. This concludes the main issue which is answered in affirmative.

For the reasons stated above, I grant the Application and order that, the Applicants Hemed J. Mfinanga, Honoris Mwashubila, Abedi Jaha and Sadi Selemani be joined in Land Case No. 9 of 2021 as the fourth, fifth, sixth and seventh Defendant respectively. I make no orders as to costs.

It is accordingly ordered.

  
  
**I. K. BANZI**  
**JUDGE**  
**11/11/2022**

Delivered this 11<sup>th</sup> November, 2022 via video link in the presence of Ms. Athanasia Soka, learned Counsel for the Applicants and Mr. Barnabas Luguwa, learned Counsel for the Respondent.

  
  
**I. K. BANZI**  
**JUDGE**  
**11/11/2022**  
Page 7 of 7