

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MBEYA**

**AT MBEYA**

**LAND APPEAL NO. 77 OF 2021**

*(Originating from the District Land and Housing Tribunal for Mbeya at  
Mbeya in Land Application No. 188 of 2016)*

**MBEYA CITY COUNCIL .....APPELLANT**

**VERSUS**

**JAMES KASATI MWAKALINDILE.....1<sup>ST</sup> RESPONDENT**

**AHMED HASSAN.....2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

Date of last order: 12.10.2022

Date of Ruling: 18.11.2022

**Ebrahim, J.**

This is the first appeal. The appellant, MBEYA CITY COUNCIL challenged the decision of the District Land and Housing Tribunal for Mbeya, at Mbeya (the trial Tribunal) in Land Application No. 188 of 2016 the judgment dated 09/07/2021. In essence the decision declared JAMES KASATI MWAKALINDILE the 1<sup>st</sup> Respondent as the owner of the suit land.

Before the trial Tribunal, the 1<sup>st</sup> Respondent sued the Appellant and AHMED HASSAN (the 2<sup>nd</sup> Respondent) jointly and together for a piece of land located at Ivumwe area in the City of Mbeya. It was alleged that

previously the disputed land was un-surveyed, then the Appellant surveyed it. It thus became Plot No. 421 Block A, Ivumwe area. After being surveyed the Appellant allocated it to one Naomi Mwakyoma who then sold it to the 2<sup>nd</sup> Respondent. According to the 1<sup>st</sup> Respondent, he was unaware of all these processes since he was neither involved nor compensated for the improvements he had already effected. The Appellant and the 2<sup>nd</sup> Respondent vehemently disputed the claim.

In his evidence the 2<sup>nd</sup> Respondent claimed that he purchased a suit land from Naomi Mwakyoma on 5<sup>th</sup> December, 2015. The Appellant's evidence adduced by DW2 admitted the fact that having surveyed the disputed land they allocated to Naomi Mwakyoma in 1998. DW2 further said that they recognize the 2<sup>nd</sup> Respondent as the legal owner of the disputed land as he legally purchased it from Naomi Mwakyoma. Also, DW3 testified that the disputed land was surveyed in 1994 that at the time of survey it had no any property on it. He however, said that compensation for the improvements made on the suit land if any were to be paid by a person whom the land was allocated (in the circumstance, Naomi Mwakyoma).

Having heard all parties, the trial Tribunal found that there was no evidence showing that the allocation of the suit land to Naomi was made

according to the law. The trial Tribunal further observed that there was no evidence to show whether Naomi was allocated the land as the original owner or she paid compensation to the original owner as per the dictates of the law. The trial Tribunal at the end declared the allocation by the Appellant to Naomi a nullity and that the sale agreement between Naomi and the 2<sup>nd</sup> respondent was unlawful since Naomi did not legally own the suit land.

The appellant was not amused by the decision .hence the present appeal. The appeal was argued by way of written submissions. The file was left to the court to compose a judgment. However, in the course of considering the facts available; I observed that a certificate of occupancy held by Naomi Mwakyoma was nullified while she was not a party to the case. Thus, this court found that there was a non-joinder of a necessary party (i.e Naomi Mwakyoma) the effect of which would have vitiated the decision of the DLHT. The court thus, invited the parties to address it on the appropriateness of the recourse taken by the DLHT.

In addressing the issue raised by the court, the Appellant was represented by Mr. Davis Mbembela, learned State Attorney, whereas the 1<sup>st</sup> Respondent was represented by advocate Barnabas Pomboma and the 2<sup>nd</sup> Respondent had the service of advocate Daniel Muya. The

point raised was argued by way of written submissions, but counsel for the 2<sup>nd</sup> respondent did not make his submission.

Mr. Mbembela submitted that it was improper for the DLHT to nullify the ownership of Naomi Mwakyoma without affording her right to be heard. He referred to **Article 13(6)(a) of the Constitution of the United Republic of Tanzania of 1977** and the case of **Rev. Christopher Mtikila vs Attorney General** [1995] TLR 31 on the account that the principle of natural Justice of (*Audi Alterum Partem rule*) demands that before any action is taken, the affected party must be given a notice to show cause against the process or action and seek his explanation. He also argued that the rule is there for the purpose of ensuring good and lawful governance. To cement on his argument, he referred to the case of **Felix Bushaija & Another vs Institute of Development & Others** cited in **Rukwa Auto-parts and Transportation Ltd vs Jestina George Mwakyoma** [2003] TLR 25.

He also argued that the DLHT committed a miscarriage of justice by nullifying Naomi's ownership without giving her an opportunity to be heard the effect of which renders the proceedings and the resulted order a nullity. To support his argument, he referred to the case of **IPTL**

**vs Standard Chartered Bank (Hong Kong) Ltd**, Civil Revision No. 1 of 2009 CAT (unreported).

On his part, advocate Pomboma for the 1<sup>st</sup> Respondent submitted that there was no dispute that the suit land was allocated to Naomi Mwakyoma by the Appellant. That the glaring issue was whether reasons for nullification of Naomi's ownership required her presence. According to him her presence was not necessary since she had already sold the suit land to the 2<sup>nd</sup> respondent who was a party to the case. He referred to the case of **Mexons Investment Limited vs CRDB Bank Plc**, Civil Appeal No. 222 of 2018. He submitted further that Naomi's right was nullified due to the fact that the Appellant neither gave the right to the 1<sup>st</sup> respondent as an original owner nor paid compensation. He concluded thus that the recourse taken by the DLHT was proper since there is neither substantive nor procedural illegalities.

I have considered the submissions by the parties' counsel. The issue for determination is whether Naomi Mwakyoma was a necessary party thus the decision against her in her absence was proper. In determining the posed issue I find it incumbent to firstly explain who is a necessary party in law. There is no any legislation in the land which defines the term "necessary party". However, case law has strived to plug the *lacuna*.

**The Civil Procedure Code, Cap. 33 R.E. 2019 (the CPC)** also gives a guidance on who may be joined in a suit as plaintiff and as defendant.

The CPC provides under **Order I Rule 3** that, all persons may be joined as defendants against whom any right to relief which is alleged to exist against them arises out of the same act or transaction; and the case is of such a character that, if separate suits were brought against such person, any common question of law or fact would arise. The provisions of the CPC cited above were emphasised by the Court of Appeal of Tanzania in the cases of **Farida Mbaraka and Another vs Domina Kagaruki**, Civil Appeal No. 136 of 2006, CAT at Dar es Salaam (unreported) and **Abdullatif Mohamed Hamisi v. Mehboob Yusuph Othman and another**, Civil Revision No. 6 of 2017, CAT at Dar es Salaam (unreported).

Deriving from what the law describes about a necessary party it entails a person who has to be joined in the suit whose presence before the court is necessary for it to effectively and completely adjudicate upon the questions involved in the suit. In other words, a court can effectively and completely adjudicate upon the dispute between the parties even in the absence of a non-necessary party. Nonetheless, the court cannot do so without the necessary party. The Court of Appeal of Tanzania in the

**Abullatif case** (supra) for example, defined a necessary party in the following words:

*"...a necessary party is one in whose absence no effective decree or order can be passed. Thus, the determination as to who is a necessary party to a suit would vary from a case to case depending upon the facts and circumstances of each particular case. Among the relevant factors for such determination include the particulars of the non-joined party, the nature of the relief claimed as well as whether or not, in the absence of the party, an executable decree may be passed."*

From the above meaning, the only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action; and the question **to be settled therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.**

The rationale here is that, persons not parties to suits cannot be bound by court orders for fear of deciding their rights or their interests in their disfavour and without them being heard first. It is thus, improper and against principles of natural justice for courts to make orders condemning persons who are not parties to court proceedings; see the case of **Philip Anania Masasi vs Returning Officer, Njombe North Constituency**, Misc. Civil Cause No. 7 of 1995, HCT of Tanzania, at Songea (unreported).

In the matter at hand therefore it is my conviction that the DLHT giving the decision against Naomi Mwakyoma was not only a matter of non-joinder of a necessary party but it also involved curtailing her the right to be heard as a fundamental principle in adjudication processes. Naomi was to be made a party to answer whether she compensated the 1<sup>st</sup> Respondent and if the Appellant told her on the course. Also, whether at the time she was allocated the land she found any property worthy for compensation the facts which were decided against her. Thus, her right to be heard was offended.

Now, it follows the question what is the effect of the omission made by the DLHT. In accordance with **Order I Rule 9 of the CPC** non-joinder or misjoinder of parties in itself does not vitiate the proceedings. It provides that; *no suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may, in every suit, deal with the matter in controversy so far as regards the right and interests of the parties actually before it.* However, in interpreting the provisions of the cited law above; the law does not talk on the absence of necessary parties. This is due to the fact that in the absence of necessary party the court may fail to deal with the suit and would



eventually not be able to pass an effective decree. It was held in the case of **Juma B. Kadala vs Laurent Mnkande [1983] TLR 103** that, in a suit for the recovery of land sold to a third party, the buyer should be joined with the seller or vendor as a necessary party/defendant; **otherwise, his non-joinder will be fatal to the proceedings.**

In **IPTL vs Standard Chartered Bank (Hong Kong) Limited** (supra) the Court of Appeal when discussing the effect of violating the right to be heard had this to say:

*"We take it to be an immutable truth that there can be no equal justice when one, for no compulsive reason, is condemned unheard."*

It further illustrated that:

*"... it is clear that failure to afford a hearing to a person whose rights, duties, etc, are to be adversely affected by the decision, unless such violation is mandated by the legislation, shall vitiate the proceedings."*

In that regard the DLHT nullifying the Naomi Mwakyoma ownership of the disputed land in her absence as a party to case vitiated the proceedings. Her right would have been protected if made a part and know that her certificate of occupancy has been cancelled which would help her to have a claim against the allocating authority i.e the Appellant.

That said and done, I hereby invoke the revisional powers of this court under **section 43(1)(a) of the Land Disputes Courts Act, Cap. 216 R.E. 2019** to nullify the proceedings and decision of the DLHT as well as quash and set aside the resultant orders. Any party still wishing to pursue his/her right may go back to the DLHT institute a fresh suit and involve all necessary parties. As the issue was raised by the court suo-motto, I give no order as to costs.

Ordered accordingly.



A handwritten signature in black ink, appearing to read "R.A. Ebrahim", is written over the printed name.

**R.A. Ebrahim**

**JUDGE**

**Mbeya**

**18.11.2022.**