

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPLICATION NO. 3 OF 2022

(C/O Land Case No. 1 of 2020)

ATTORNEY GENERAL APPLICANT

VERSUS

KANG'WINA MATINDE & 228 OTHERS RESPONDENTS

RULING

Date: 31/03 & 06/04/2022

NKWABI, J.:

In this application, the applicant is applying for orders as follows:

1. That, this honourable Court be pleased to join the Attorney General as a party in Land Case No. 1 of 2020 in the High Court of Tanzania (Sumbawanga District Registry) since the matter calls for public interest which need to be protected.
2. Any other relief(s) this Honourable Court may deem fit and just to grant.

The application is brought under section 17 (1) (a), (b) and (3) of the Office of the Attorney General (Discharge of Duties) Act, Cap 268 R.E. 2019, section

95 of the Civil Procedure Code, Cap 33 R.E. 2019 and section 6A (2) of the Government Proceedings Act, Cap 5 R.E. 2019. The application is supported by the affidavit duly sworn by Mjahidi Kamugisha, learned State Attorney. The application is briskly resisted by some of the respondents who filed a counter affidavit duly sworn by their learned advocate one Baltazar Sichilima Chambi.

On the hearing date, the applicant was represented by Mr. Mjahidi Kamugisha, learned State Attorney, while some of the respondents were represented by Mr. Baltazar Chambi, learned Counsel.

Advancing the application, Mr. Kamugisha adopted the contents of the affidavit as part of his submission and added that the application is based on paragraphs 5, 7 and 9. He stated, there is a controverse that the land was allocated by the land allocating committee of Stalike Village, but the counter-affidavit shows that the land was allocated by the villagers themselves and occupied it under deemed right of occupancy. It is due to the controverse, he argued, calls for the applicant to be joined to the suit so

that the matter is determined to its finality. There is controversy as to the ownership of the land, he insisted.

Mr. Kamugisha further contended that it is a Constitutional right to be heard under Article No. 59(4) of the United Republic of Tanzania Constitution. He urged, the respondents will not be prejudiced with the joining of the applicant to the main suit. He referred me to section 8 (1) (f) of the Attorney General Discharge of Duties Act, to represent the Government where the Government has ... interest.

Section 17(1) (a) of the Attorney General (Discharge of Duties) Act, Cap 268 R.E. 2019 provides as to right of audience, Mr. Kamugisha stated. He called upon me to invoke the Overriding Objective Principle so that the applicant is joined to the suit. Mr. Kamugisha also observed that the paragraphs which were noted by the respondent amounts to admission to those paragraphs which are (6, 8, and 11) in the affidavit of the applicant. He further said, the admission affects paragraphs 2, 3, 4, 5, 7, 9, 12, and 15 as they relate. He was of the view that the respondents are estopped from denying the

correctness of the related paragraphs as per section 123 of the Evidence Act, Cap 6 R.E. 2019.

He also urged that paragraph 8 of the counter affidavit is false and urged me to follow the decision in **Damas Assey & Another v. Raymond Mgonda Paula & 8 others**, Civil Application No. 32/17 of 2018, (CAT) (unreported) at P. 18.

Mr. Kamungisha finalized his submission by arguing that Order 1 Rule 10 of the Civil Procedure Code, Cap. 33 R.E. 2019 empowers the Court to sou motu to order a party to be joined at the discretion of this Court. He prayed the application be granted with costs.

Contesting the application by way of submission, Mr. Chambi pressed that section 17(2) of Cap 268, R.E. 2019 is relevant. Interest ought to be established in an application of this nature. He said, Order 1 Rule 3 of the Civil Procedure Code provides who could be joined to a suit.

Mr. Chambi further argued that in the main case, the matter in controversy is ownership of land. There is no document to show that the land was

allocated by the Village land allocating committee. He added, the village affirmed the sale of the piece of land between two individuals. In the main case the defendants do not show that they were allocated the land by the village land allocating committee. He prayed their counter affidavit be adopted as part of their submissions.

He further said the affidavit on paragraph 3 is false in particular as some of them are public servants who have allocated land for themselves. The applicant has not shown any public interest to be protected by the Attorney General.

He also observed that it appears that the State Attorney did not understand what paragraphs are admitted. This is because the controversy is between individuals, they are not disputing the authorities of the villages. The land is owned by individuals, the village council cannot take a land from one person and give it to another, he cited **Amani Rajabu Njumla v Thomas Amri** [1990] TLR 58 (HC). Mr. Chambi, for definition of what is public interest, he referred me to **Agro Industries Ltd v. Attorney General** [1994] TLR 43 the decision of the Court of Appeal of Tanzania.

Mr. Chambi concluded his submission by arguing that the respondents will be prejudiced if the applicant will be joined to the main case. He prayed that the application should not be allowed. He added that the affidavit be dismissed as it contains falsehood.

Mr. Kamugisha had a rejoinder, in which he stated that their affidavit has no defect and urged it be used by this court. There is a matter in controversy as the pieces of land were owned by the village authority which in turn allocated to individual. Their concern is found in paragraph 9 of the affidavit, he pointed out.

Mr. Kamugisha was of the view that there is an admission in the counter-affidavit which proves their claim of the allocation and public interest. He cited section 60 of the Tanzania Evidence Act to back up their position. Mr. Kamugisha further contended that the respondent is speaking for the applicant, that denies a right to be heard of the applicant. That has nothing to do with whether he has no substantive matter. He added that their affidavit has no falsehood. He insisted that the basis of this application is in

paragraph 5 and 9 which the respondents contest. He observed, the public interest is based there.

He also submitted that the claim that the respondents will be prejudiced that the matter will go back step, that is not a prejudice as the Attorney General intervenes at any stage. That is envisaged in the Government Proceedings Act section 19. He urged this court to use its discretion as this is a Court of law and a Court of equity. He was of the view that the cases cited by the counsel for the respondents are distinguishable in the circumstances of this application. He prayed the application be granted.

I should start to note the obvious, though Mr. Kamugisha sought to distinguish the case law referred to by Mr. Chambi, he did not explain how they are distinguishable. Be that as it may, the law is established that once the village land allocating committee allocates a piece of land to an individual, it has no power to allocate that piece of land to another individual as per **Amani Rajabu Njumla** (supra).

I should also note here that the affidavit of Mr. Kamugisha is contradictory in material particular and worse still, his submission contradicts some of his averments in the affidavit. Mr. Kamugisha is alleging controversy as to the ownership of the land. Such contradictions go to the root of the matter and affects the veracity of averments in the affidavit. As the contradictions go to the root of the matter, therefore the applicant has failed to prove the application. In the situation, one can see **Mathias Timoth v. R. [1984] TLR 86** HC Lugakingira, J., as he then was where it was held:

"In testimony of a witness, where the issue is one of false evidence, the falsehood has to be considered in weighing the evidence as a whole; and where the falsehood is glaring and fundamental its effect is utterly to destroy confidence in the witness altogether, unless there is other independent evidence to corroborate the witness."

Further, as per the evidence Act, contents of documents ought to be proved by the document itself, if a public document, then the same may be proved by secondary documentary evidence. In my view, affidavit evidence is equal to oral evidence as it stands in place of oral evidence save where documents

are attached to the affidavit. It is also trite law that failure to attach documents where there could be one or some to prove averments in affidavit amounts to failure to prove such averments in the affidavit see **Regional Manager TANROAD Kagera v Ruaha Concrete Co. Ltd, CAT Civil application No. 96 of 2007, at DSM (Unreported)** and **James Anthony Ifunda v Hamis Alawi**, Civil Application No. 482/14 of 2019, (unreported) (CAT) where it was held:

"In addition, the alleged sickness is not supported by a medical report or medical chits which could be acted upon by the Court. In the circumstances, I am satisfied that the first reason for the delay advanced by the applicant is untenable."

In this application, the applicant did not support his allegations that the pieces of land were allocated to the villagers by Nsimbo District council and Village Executive Council of Sitalike and Igongwe with documents to prove such allegations. Even if the applicant would have proved the allocation through those local authorities, still such pieces of land would be private properties hence a private matter and not public property to entail a public interest. It should be noted that among the definitions of the phrase "public

interest" that was accepted in the case of **The Attorney General v Sisi Enterprises Ltd**, Civil Appeal no. 30 of 2004 (CAT) (unreported) is:

1. *"The general welfare of the public that warrants recognition and protection.*
2. *Something in which the public as a whole has a stake; esp. an interest that justifies governmental regulation."*

The Court of Appeal, after it had defined public interest as such it went on to hold that:

*"Therefore, the validity of any acquisition under the Act depends on whether the land is required for a public purpose. In the instant matter, the acquisition for purpose of foreign embassy was not in line with "public purpose" or "public interest" envisaged under the **Act**. We will, therefore, find nothing to fault the trial Judge in his findings and conclusions on the point in issue."*

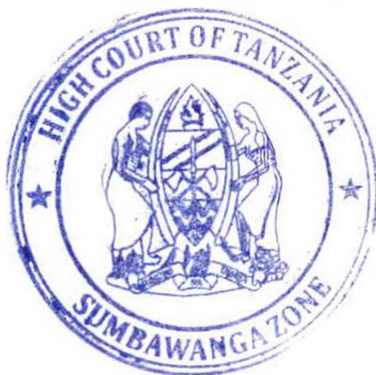
So, the pertinent issue, in this application, is whether the applicant has proved public interest to entitle him to be joined in the Land Case No. 1 of 2020 now pending in the High Court of Tanzania, Sumbawanga District

Registry. With profound respect to Mr. Kamugisha, I answer the issue in the negative. This is because, first, if one looks at paragraph 2 and 3 of the affidavit in support of the application one will find that Land case no. 1/2020 is between individuals in their individual capacity. Secondly, be it that the land was allocated, or even if it was acquired by the respondents through clearing it (deemed right of occupancy), that becomes a private land and hence the Attorney General has no right of audience. If at any time the Government so deems fit would acquire the land for public purpose as alluded above in accordance with the law of the land.

Finally, the application is dismissed with no order as to costs as the respondents did not pray for the same.

It is so ordered.

DATED at SUMBAWANGA this 6th day of April, 2022




J. F. NKWABI
JUDGE