

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**ARUSHA DISTRICT REGISTRY**  
**AT ARUSHA**

**LAND CASE NO. 42 OF 2021**

**EVA NICOLAO MOSHI (Suing as Administratrix of  
the Estate of the late James Nderasio Mtei) ..... PLAINTIFF**  
**VERSUS**  
**LUCY MOSES SHAYO ..... DEFENDANT**

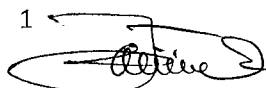
**RULING**

5<sup>th</sup> & 28<sup>th</sup> April, 2023

**TIGANGA, J.**

This ruling emanates from a prayer raised by the plaintiff regarding the amendment of the plaint. Initially, the plaintiff sued the defendant claiming five different pieces of land located at Megamsi, Kigongoni, Sangawe, Dadiye, and Migungani all within Babati District in Manyara Region. She claimed that the said pieces belonged to the late James Nderasio Mtei whom she is administering his estates.

During the hearing of the prayer, the plaintiff was represented by Mr. Sabato Ngogo whereas the defendant was represented by Mr. Godfrey Mringi, all learned Advocates. According to Mr. Sabato, paragraph 4 of the plaint shows that some of the disputed pieces of land which are surveyed

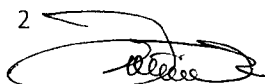
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but were pleaded as unsurveyed. He prayed that this court grants the plaintiff leave to amend the plaint to assist the court to deal with the matter in controversy diligently.

Opposing the prayer, Mr. Mringi submitted that, the learned counsel has not given even a single reason as to why the plaintiff did not plead the disputed land in question as surveyed in the first instance. He argued that since the plaintiff was not specific and parties have to be confined under the principle of best practice in the realization of justice. The learned counsel prayed that the plaintiff's prayer be denied.

Rejoining briefly, Mr. Sabato submitted that, amendments can be made at any time and even though, there was already a scheduling order in place. That, the law does not prevent the court to grant leave for such amendment and that, the defendant will still have the right to file the amended written statement of defence hence, will not be prejudiced anyhow.

After deliberating on the submissions made by the parties, I agree with the plaintiff that, it is settled law that, amendments of pleadings can be made at any stage of the proceedings. However, such amendments should only be to determine the real questions in controversy between the parties and can

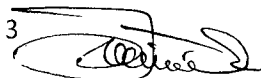
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be made without causing injustice to the other side. Order VI rule 17 of the **Civil Procedure Code**, Cap 33 R.E. 2019 provides that;

*"17. The court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for determining the real questions in controversy between the parties."*

As the above provision provides, amendment of pleadings can be allowed only to justly determine the issues of controversy between the parties. See; **Dr Fortunatus Lwanyantika Marsha vs. Dr William Shija and AG**, Misc. Civil Cause No 15 of 1995, High Court of Tanzania at Mwanza (Unreported); **Juma B. Kadala vs Laurent Mkande**, [1983] TLR, 103; **Suryakant D. Ramji vs. Servings and Finance Ltd & Others**, [2002] TLR, 121, etc.

Although the defendant objected that, the parties should be confined to the best practice and procedure, I am of the considered opinion that, even though the matter has already reached the hearing stage, the speed track can be adjusted because substantive justice is maintained. Facing a similar scenario in respect of adjusting speed track, the Court of Appeal in the case

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of **Airtel Tanzania Limited vs. Ose Power Solutions Limited**, Civil Appeal No. 206 of 2017, CAT at Dar es Salaam (unreported) had this to say;

*"This Court had occasions to address this concern and in the case of **National Bureau of Statistics vs NBC and Another** (supra), confronted with a similar situation, we held:*

*"... the spirit embraced in assigning a suit to a certain speed track is only to facilitate the expeditious disposal and management of the case. It is thus not expected that failure to adhere to a scheduled speed track will have consequences of having a suit struck out. Instead, a judicial officer presiding over the suit is enjoined to ensure that substantive justice is done to the parties by affording them the opportunity to be heard and the matter to be determined on merit Cognizant of that right, Order VIIIA did not directly impose any legal consequence in the event the scheduled speed track expires... That said, we need not overemphasize that the inescapable inference and conclusion is that, striking out a suit is not a resultant effect envisaged by the law, for, had it been the intention, it would have expressly stated so. Instead, the trial court, either upon being moved by either of the parties or suo motu has to amend the scheduling order where the highest speed is attained, and yet the case is yet to be finalized to enlarge the time frame until the case is*

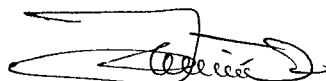
*concluded. It is only by doing so, that we shall be according to due regard to the dictates of the law"*

I fully subscribe to the above position that, as long as amendment of the pleadings will yield better results and assist the court to properly and justly determine the land disputes between the parties, scheduling order can conveniently and justly be amended. I am of the firm view that, in the application at hand, proper amendment of the plaint on information or documentation regarding the mistakenly pleaded un-surveyed land will ease the court's work in determining matters of controversy between parties.

In this circumstance, I allow the plaintiff's prayer to amend the plaint. However, since this matter has been in Court since 2021, I grant her only 7 days to file the amended plaint and the defendant to file an amended written statement of defence if any within 14 days after being served the amended plaint.

It is so ordered.

**DATED** and delivered at **ARUSHA** this 28<sup>th</sup> day of April 2023.

A handwritten signature in black ink, appearing to read 'J.C. Tiganga', is written over a horizontal line.

**J.C. TIGANGA**

**JUDGE**