

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB REGISTRY

AT ARUSHA

LAND CASE NO. 19 OF 2023

REGISTERED TRUSTEE OF EVANGELICAL

LUTHERAN CHURCH TANZANIA (ELCT)..... PLAINTIFF

VERSUS

HUSSEIN ALLY KITILINGA.....1ST DEFENDANT

DON ROBERT RTOHBLETZ.....2ND DEFENDANT

RULING

26/09/2023 & 7/11/2023

MWASEBA, J.

This is the ruling in respect of the preliminary objection raised by the counsel for the 2nd defendant to wit:

1. That, the suit is bad in law for contravening the provisions of Order I Rule 3 of the Civil Procedure Code, [Cap 33 R.E 2019] for bad joinder of the Defendants.

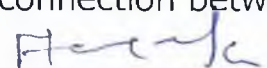
During the hearing of the application Ms. Ikoda Kazzy, Learned Counsel represented the 2nd defendant whereby Mr. Fortunatus Muhalila, also learned counsel represented the Plaintiff. The hearing proceeded by way of written submission.

Submitting in support of the application, Ms. Ikoda stated that the plaintiff herein combined two causes of action against the 1st defendant when he wanted him to vacate Plot No. 291 Block D Njiro and the 2nd defendant to vacate Plot No. 292 Block D Njiro. The said action is contrary to **Order I Rule 3 of the CPC**.

She argued further that, different causes of action were just against different defendants which is a misjoinder led to technically multifariousness. Thus, the plaint is defective for that, and she prayed for the suit to be struck out with costs for misjoinder of defendants and misjoinder of causes of action.

Opposing the raised point of objection, Mr. Muhalila, firstly, argued that the raised PO does not qualify to be raised as PO since it calls for evidence hence need to ascertain facts. He supported his argument with the case of **Mukisa Biscuits Manufacturing Co. LTD v. West End Distributors Limited** [1969] EA 696.

As for the merit of the raised PO, Mr. Muhalila submitted that as per **Order I Rule 3 of the CPC**, the plaintiff is allowed to join several defendants in respects of several and distinct cause of action. He submitted further that as there is a common question of law which is "trespass" to both defendants, then there is a direct connection between

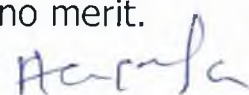


them and the same need to be disposed of at the same time to avoid multiplicity of cases. His argument was supported with the case of **Payene v. British Time Recorder** [1921] ALLER 388.

It was his further submission that as both defendants were sued for trespassing the Landed Property of the plaintiff, so filing a separate suit will just cause a multiplicity of a suit. He supported his argument by Citing **Order I Rule 5 of the CPC** and the case of **Abdul Mohamed Hamis v. Mahboud Yusuf Osman & Another**, Civil Revision No. 6 of 2017 (CAT at DSM, Unreported). He prayed for the raised PO to be overruled as the joining of defendants did not prejudice the 2nd defendant in anyhow.

Having gone through the rival submission from the counsels of the parties, the issue for determination by this court is whether the raised PO has merit or not.

Starting with the issue raised by Mr. Muhalila that the raised PO did not meet the criteria of being raised as a Point of Objection as per the **Mukisa Biscuit's** case. This court is of the firm view that the raised PO met all the criteria of being raised as a point of PO as it is based on the provision of the law, thus, the raised issue has no merit.



Coming to the merit of the raised PO, **Order I rule 3 of the CPC** provides that:

"All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where, if separate suits were brought against such persons, any common question of law or fact would arise."

Based on the above cited law, the defendants simply may be jointly sued if the relief sought arose from the same transaction or series of acts. Under paragraph 11 and 12 of the plaint, it is pleaded that:

"11. That, the 1st Defendant did trespass to Plot No 291 Block D, Njiro and started to build house therein, despite being contacted by the plaintiff to stop the said construction, he did continue with the construction.

12. That, the 2nd defendant did trespass to plot No. 292 Block D Njiro, and started to build a house therein, despite being contacted by the plaintiff to stop the construction, he has neglected to vacate the same to date."

Based on the cited paragraphs, the defendants are different persons and everyone is alleged to trespass to the plaintiff's land on his own time

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and with different motive. Hence the same cannot be said that they are arising out of the same transaction.

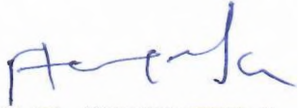
In the suit at hand, the counsel for the 2nd defendant alleged further that there is also a misjoinder of causes of action which causes multifariousness. Mr. Muhalila did not dispute the fact that there are two causes of action and he was of the view that it is allowed in law. With due respect to the learned counsel for the plaintiff, misjoinder of causes of action is not applicable in law and this has been well settled by this court in various decisions. See the case of **Victor Nestory Ndabagoye and Another v. Sinda Geteba**, Commercial Case No. 4 of 2021 (Unreported).

In the upshot, I hold that the preliminary objection is found with merit, accordingly, the same is hereby sustained and the suit is struck out with costs.

It is so ordered.

DATED at **ARUSHA** this 7th day of November, 2023.




N.R. MWASEBA
JUDGE