

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**MBEYA SUB – REGISTRY**  
**AT MBEYA**  
**LAND APPEAL NO. 60 OF 2023**

*(From District Land and Housing Tribunal of Mbozi at Vwawa, Application No. 15/2022).*

**STANSLAUS FRANCIS KUNAMBI.....APPELLANT**  
**VERSUS**  
**MGEMA EMMANUEL NHINDILI.....RESPONDENT**

**RULING**

*Date: 23 March 2024 & 16 April 2024*

**SINDA, J.:**

This is an appeal from the judgment of the District Land and Housing Tribunal of Mbozi at Vwawa (the **DLHT**) in Land Application No. 15 of 2022, delivered on 30 March 2023, in favour of the respondent (the **Judgment**).

After the appellant lodged the memorandum of appeal, the respondent raised a preliminary objection (**P.O.**) to the effect that:-

*1. The appeal filed before this honourable court is time-barred and*

*2. The appeal filed before this honourable court is defective on the fact that the original case was not decided by the trial tribunal, and the petition had omitted other respondents who were tried before the DLHT.*

It was thus upon this court to determine the Preliminary Objection before deciding whether or not to continue with the main suit.

The hearing of P.O. was by way of written submissions, and both the appellant and the respondent represented themselves. The respondent raised two preliminary objections but wished to argue only on the second objection.

The respondents stated that there were seven respondents at the DLHT. However, the appellant omitted the following: Elias Simbeye, Salomi D. Sikanyika, Amos Izukanji Sinyangwe, Eliud Izukanji Sinyagwe, Getrudi Isukanji Sinyangwe and Eliko Izukanji Sinyagwe in his appeal without the leave of the court. He referred to the cases of ***Salim Amour Diwani vs The Vice Chancellor Nelson Mandela African Institution of Science and Technology and The Attorney General*** Civil Application No. 116/2021 CAT at Dar es Salaam, ***Hellena Adam Elisha @ Hellen Silas***

***Masui versus Yahaya Shabani and Another*** Civil Application No. 118/2019 (unreported) and ***Isaack Wilfred Kisanga versus Standard Chartered Bank (T) Limited*** Civil Appeal No. 435/2019 to support his argument.

In reply, the appellant argued that Order I Rule 7 of the Civil Procedure Code, Cap 33 R.E 2019 (the **CPC**), a plaintiff is at liberty to choose whom to sue as a defendant.

The appellant added that in the present appeal, he had less interest in Elias Simbeye, Salomi D. Sikanyika, Amos Izukanji Sinyangwe, Eliud Izukanji Sinyagwe, Getrudi Isukanji Sinyangwe, and Eliko Izukanji Sinyagwe, so he omitted them.

He further stated that non-joinder of persons in civil cases is not fatal to the extent of dismissing the appeal, as stated under Order I Rule 9 of the CPC.

In rejoinder, the respondent insisted in his contention that since there were seven respondents in the trial case, they should have appeared in this appeal. The fact that he omitted them without seeking leave makes this appeal incompetent.

I have considered the preliminary objection raised and the submissions of parties thereto. It is important to note in the case at hand, Elias Simbeye, Salomi D. Sikanyika, Amos Izukanji Sinyangwe, Eliud Izukanji Sinyagwe, Getrudi Isukanji Sinyangwe, and Eliko Izukanji Sinyagwe did not wish to appeal the DLHT's decision.

The right of appeal is usually explained at the end of every trial, explaining the way forward in case any party to the case is not satisfied with the decision of the court. As a result of that right, the appellant brought this appeal, showing his dissatisfaction.

In deciding whether the raised objection has merit, I have referred to the case of ***Mexons Investment Ltd versus CRDB Bank PLC*** Civil Appeal No. 222 of 2018, where the CAT cited the case of ***Farida Mbaraka and Farid Ahmed Mbaraka v. Domina Kagaruki***, Civil Appeal No. 136 of 2006 (unreported).

In this case, the appellant did not wish to join Elias Simbeye, Salomi D. Sikanyika, Amos Izukanji Sinyangwe, Eliud Izukanji Sinyagwe, Getrudi Isukanji Sinyangwe and Eliko Izukanji Sinyagwe as respondents. The question is whether is it necessary to join them as necessary parties.

In ***Farida Mbaraka and Farid Ahmed Mbaraka vs. Domina Kagaruki*** (supra), the Court, after observing that the necessary party was not joined into the suit, remitted the suit to the High Court with directions that the hearing should proceed after joining the necessary party. The Court observed that the respondent as plaintiff could not be compelled to sue a party she did not wish to sue, but still, the determination of the suit would not be effective without the Tanzania Housing Agency being joined; hence, the order directing the High Court to proceed upon joining the necessary party.

Further, the CAT in the case of ***Tang Gas Distributors Limited vs. Mohamed Salim Said & Two Others***, Civil Application For Revision No. 68 of 2011 (unreported), when considering circumstances upon which a necessary party out to be added in a suit, stated that:

*"...an intervener, otherwise commonly referred to as a Necessary Party, would be added in a suit under this rule.. even though there is no distinct cause of action against him where:*

(a) N/A

*(b) His proprietary rights are directly affected by the proceedings and to avoid a multiplicity of suits, his joinder is necessary so as to have him bound by the decision of the court in the suit."*

Therefore, from the above, it is important to join them as necessary parties to adjudicate and effectively settle all questions related to the suit. Subsequently, all parties would be bound by the decision, hence avoiding the multiplicity of suits.

In ***Abdullatif Mohamed Hamis vs. Mehboob Yusuf Osman and Another***, Civil Revision No. 6 of 2017 (unreported), the Court stated that:

*"The determination as to who is a necessary party to a suit would vary from 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-joinder party, the nature of relief claimed, and whether or not, in the absence of the party, an executable decree may be passed."*

The above case should be read together with the case of ***Stanslaus Kalokola vs Tanzania Building Agency and Another***, Civil Appeal No. 45 of 2018 CAT (unreported): -

*"...there are non-joinders that may render a suit unmaintainable and those that do not affect the substance of the matter and are, therefore, inconsequential."*

I, therefore, agree with the appellant that non-joinder of persons in civil cases is not fatal to the extent of dismissing the appeal. Order I Rule 9 of the CPC states that:

*"A suit shall not 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"*

Based on the above, I order the appellant to amend his memorandum of appeal and include Elias Simbeye, Salomi D. Sikanyika, Amos Izukanji Sinyangwe, Eliud Izukanji Sinyagwe, Getrudi Isukanji Sinyangwe, and Eliko Izukanji Sinyagwe as respondents. There is no order as to costs.

It is so ordered.

The Right of Appeal was explained.

Dated at Mbeya on this 16 day of April 2024.



A. A. Sinda

**A. A. SINDA  
JUDGE**

The Ruling is delivered on this 16 day of April 2024 in the presence of the appellant and respondent, who appeared in person.



A. A. Sinda

**A. A. SINDA  
JUDGE**