

IN THE HIGH COURT OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

LAND CASE NO.39 OF 2023

THE REGISTERED TRUSTEES

OF THE ASSEMBLIES OF GOD.....PLAINTIFF

VERSUS

THE SOWERS EVANGELISTIC

INTERNATIONAL CHURCH.....DEFENDANT

RULING

14th & 18th March, 2024

KAMANA, J.

During the preliminaries, the defendant raised two preliminary objections. One, since the plaintiff is a body corporate, the instant case is unmaintainable for being filed without appending the Trustees' Resolution authorizing its institution. Two, the Court lacks jurisdiction to adjudicate the matter in which the defendant lacks the legal capacity to sue or be sued.

By the order of the Court, the parties filed their written submissions. The defendant's submission was prepared by Mr. Geoffrey Kange, learned Counsel. Ms. Hidaya Haruna, learned Counsel, prepared the plaintiff's submission. For the purpose of this Ruling, I will confine

myself to the second preliminary objection as it determines the fate of the suit.

Arguing for the preliminary objection, Mr. Kange contended that the plaintiff had sued a non-existing entity or a wrong party. He amplified his contention by stating that the Sowers Evangelistic International Church in legal eyes does not exist as what was incorporated into a body corporate is the Registered Trustees of the church. Buttressing his stance, the learned Counsel cited the cases of **Moravian Church in Tanzania (South West Province) v. Adamson Mwaseba**, Revision No. 50 of 2017 (Unreported) and **Jung Hwan Kim and Another v. Tanzania Presbyterian Church**, Civil Case No. 98 of 2019. He summed up his contention by urging the Court to strike out the suit.

In her reply, Ms. Haruna did not dispute her counterpart's arguments as she argued that her efforts to find the name and legal personality of the defendant proved futile. In that case, she argued that she decided to file a suit against the defendant using the name that is common in the area where the cause of action took place. She urged the Court to invoke the oxygen principle under section 3A of the Civil Procedure Code, Cap. 33 [RE.2019] by sanctioning the amendments in

respect of the defendant's name as such amendments do not in any way prejudice the plaintiff.

In determining the preliminary objection, I feel it obligatory to restate the cardinal principle that matters must be instituted by and against the right parties. When the suit is brought by or against the wrong party or non-existing entity, the court lacks jurisdiction to entertain the suit. It is upon the plaintiff to appraise himself on various issues before instituting the suit. These include identification of the person to be sued, including his name and legal status; and the plaintiff's capacity to bring the suit.

As rightly contended by Mr. Kange, the Sowers Evangelistic International Church being a religious institution is taken to have been incorporated under the Trustees Incorporation Act, Cap. 318 [RE.2019]. That being the case, the plaintiff was required to prefer her case against the Registered Trustees of the Sowers Evangelistic International Church and not the defendant which is a non-existent entity as it has not been incorporated.

As to whether the Court can invoke the oxygen principle by allowing the plaintiff to amend the defendant's name, I hasten to state that I am not prepared to do that. In principle, the oxygen principle was

not developed to circumvent procedures that ensure, amongst other things, that courts act within their jurisdiction.

Ms. Haruna's explanation that she could not find the proper name and status of the defendant is clumsy. As I stated herein before, the plaintiff or his counsel is required to ensure that he sues the right party.

The suit is struck out with costs. Order accordingly.

DATED at MWANZA this 18th day of March, 2024.



KS KAMANA

JUDGE