



THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT SONGEA

(CORAM: HON. UPENDO MADEHA)

LAND APPEAL NO. 000000517 OF 2024

**MUSTAFA SHABAN NGELANGELA COMPLAINANT / APPELLANT /
APPLICANT / PLAINTIFF**

VERSUS

HENRY ELIKO TWEVE RESPONDENT / DEFENDANT

JUDGMENT

Fly Notes

Nil

Facts

This appeal has preferred by the Appellant after been dissatisfied by the decision given by the District Land and Housing Tribunal for Songea (the trial Tribunal) in Land Application No. 127 of 2023, in which the Appellant's application was dismissed for failure to join the Village Council as necessary party.

Ratio Decidendi

Nil

30th of May 2024

Hon. MADEHA.:

It is worth considering the fact that, this appeal has preferred by the Appellant after been dissatisfied by the decision given by the District Land and Housing Tribunal (the trial Tribunal) in Land Application No. 127 of 2023. In fact, before the trial Tribunal, the Appellant was the Applicant and he claimed to be declared the lawful owner of forty (40) acres of the land located at Luhimba Village within the Songea District. The Appellant claimed that the disputed land was allocated to him by Luhimba Village Council in 2014.

In reply to the Appellant's application, the Respondent filed his written statement of defence (WSD) claiming to be the lawful owner of the disputed land being given by Mohamed Kiboko Nchimbi who was allocated the disputed land by Mtyangimbole Village Council in 1997. He further stated that, in 2011 he gave party of the disputed land to Castory Eliko Tweve.

It was from the reply made by the Respondent that the trial Tribunal Chairman in *suo moto* raised an issue on whether the application was competent before it for non-joinder of necessary party. Having heard the submissions



from both parties, the trial Tribunal found it was necessary for Luhimba Village Council, Mohamed Kiboko Nchimbi and Castory Eliko Tweve to be joined as parties and proceeded to struck out the application with leave to refile it before the Court with competent jurisdiction subject to time limitation.

Being dissatisfied with the decision of the trial Tribunal, the Appellant filed this appeal on the ground that, the trial Tribunal erred in law and facts in striking out the application on the reason that it was incompetent for failure to join necessary parties.

This appeal was disposed by way of written submissions. The Appellant was represented by Mr. Edson Mbogoro, the learned advocate whereas the Respondent enjoyed the services of Mr. Edmund Mnyawami, also the learned advocate.

Submitting in support of the appeal, Mr. Edson Mbogoro faulted the trial Tribunal for striking out the application for the reason that it was incompetent for the failure to join necessary parties while in civil claims the plaintiff is the one who has the right to choose who should be the defendant or defendants since is the one who knows her/his wrongdoer. To cement his argument, he referred this Court to Order 1 Rule 3 of the *Civil Procedure Code* (Cap. 33 R. E. 2019), which provides for the parties to the suits as who may be the defendant. He emphasized that, non-joinder of parties is not fatal as it is provided under Order 1 Rule 9 of the *Civil Procedure Code* (supra). He contended that, in the circumstances of this suit, it was not necessary for Luhimba Village Council, Mohamed Kiboko Nchimbi and Castory Eliko Tweve to be joined as necessary parties basing merely on the exhibits which were attached by the parties in their pleadings which needed proof by way of evidence during trial and the village government would have called as witnesses.

To strengthen his submission, Mr. Mbogoro stated that, the Court of Appeal of Tanzania faced the similar scenario to this case in the case of **Amina Maulid Ambali & Two Others vs. Ramadhan Juma**, Civil Appeal No. 35 of 2019 (unreported) in which it was held that if a party is alleging or suspecting foul play which may adversely affect his right on another person who is not a party in the suit, he is at liberty upon filing his written statement of defense to come out with counter claim by joining such other person or relevant authority so that the allegation or suspicion may be proved or disapproved and not to strike out the application as it happened in this suit.

Finally, as it was argued before the trial Tribunal, the Appellant is not resisting for Mohamed Kiboko Nchimbi and Castory Eliko Tweve to be joined as parties if the Respondent wishes to join them as third-party or through an application made by those parties before the trial Tribunal and not for the Appellant to join them as parties to the suit. He prayed that this appeal to be allowed and the decision given by the trial Tribunal be quashed and its orders set aside and the original records be remitted back before the trial Tribunal for hearing.

On the other hand, the Respondent resisted the appeal. He submitted that, the trial Tribunal was correct in striking out the application for being incompetent for failure to join necessary parties. He contended that, the term necessary parties defined by *Black's Law Dictionary*, 8th Edition to mean; "a party who, being closely connected to a lawsuit, should be included in the case if feasible, but whose absence will not require dismissal of the proceedings". He added that, the same is also reflected in Order 1 Rule 10(2) of the *Civil Procedure Code* (supra). He also made reference to the decision of the Court of Appeal in the case of **Musa Chande Jape vs. Moza Mohamed Salim**, Civil Appeal No. 141 of 2018(unreported), sitting at Zanzibar, in which the Court emphasized



that a person may be added as a party to a suit if: *One*, he is ought to have joined as plaintiff or defendant. *Two*, where without his presence, the questions in the suit cannot be comply decided; and *three*, where such a person, who is necessary or proper party to a suit has not been joined as a party, the court is empowered to join him.

He averred further that; the trial Tribunal correctly decided that there was a need to join Luhimba Village Council which was alleged by both parties to have allocated the disputed land. Thus, for proper determination of the suit Luhimba Village Council, Mohamed Kiboko Nchimbi and Castory Eliko Tweve were necessary parties. He also conceded *that, Order I Rule 9 of the Civil Procedure Code* (supra), which provides that it is not fatal for non-joinder of parties but on the circumstance of the case at hand, it is necessary for those parties to be joined and failure to join them would render the trial Tribunal's decree inoperative. To buttress his argument, he cited the decision made in the case of **Ilala Municipal Council vs. Sylvester J. Mwambije**, Civil Appeal No. 155 of 2015 in which **the Court of Appeal** referred to the decision in the case of **Chinese - Tanzania Shipping Company vs. Richard Gordon Musika (As an Administrator of estates of the Late Edna Nsambe Thom Mwakabumbe) and 3 Others**, Land Case No. 271/2022, High Court of Tanzania sitting at Dar es Salaam (unreported) and the same position was stated in the case of **Abdullatif Mohamed Hamis vs. Mehbood Yusuf Osman and Fatna Mohamed**, Civil Revision No. 6 of 2017, the Court of Appeal of Tanzania sitting at Dar es Salaam (unreported) and **Leonard Peter vs. Joseph Mabao and two Others**, Land Case No. 4/2020 (unreported).

He stated further that; the rationale of joining necessary party like the case at hand is to avoid multiplicity of suits and enable the trial Tribunal to issue an effective decree or order and he made reference to the decision made in the case of **Tang Gas Distributors Limited vs. Mohamed Salim Said and 2 Others**, Civil Revision No. 68 of 2011 (unreported), where it was stated that a necessary party, would be added in a suit under this rule, even though there is no distinct cause of action against him or where 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.

He contended that; in this suit it is true that the Respondent acquired the land in dispute from Mohamed Kiboko Nchimbi who was allocated by Mtyangimbole Village Council (currently the land in dispute is located at Luhimba Village) and soon after acquisition of the said land by the Respondent, The Village Council approved and registered the same as seen in annexure D-1 collectively and the report which was annexed in the written statement of defence. In due course, he prayed for this appeal to be dismissed with costs.

As far as I am concerned, having heard the submission made by both parties and gone through the original records, it is clear that, the decision made by the trial Tribunal that the application filed by the Appellant was incompetent for failure to join necessary parties. The trial Tribunal was of the considered view that there was a need to join Luhimba Village Council, Mohamed Kiboko Nchimbi who sold the land to the Respondent and Castory Eliko Tweve who was given party of the disputed land by the Respondent.

It seems to be true that, Mohamed Kiboko Nchimbi purchased the disputed land from the Mtyangimbole Village Council and the Appellant claimed to have allocated land the disputed land by Luhimba Village Council. Therefore, there are two village authorities which allocated the disputed land to the parties which are Mtyangimbole and Luhimba Village Councils. While Luhimba Village Council allocated the same land to the



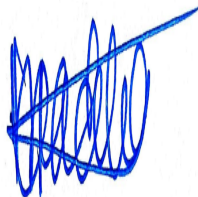
Appellant, Mtyangimbole Village Council allocated to Mohamed Kiboko Nchimbi who later sold it to the Respondent. In that circumstance, the Appellant is of the view that, he has no cause for action against the Village Authority, Mohamed Kiboko Nchimbi and Castory Eliko Tweve and if the Respondent would have found that they were necessary parties he would have joined them by filing a counter claim or calling them as third parties.

I have scrutinized the contents of the annexures which were attached by the parties in their pleadings and found they are normal sale contracts and there is no any right of occupancy issued by the government in respect to the suit land. It is my humble opinion that, the criteria of joining the village government as a necessary party in the land application which was filed by the Appellant before the trial Tribunal. A copy of contract and an agreement of handing over the disputed land cannot be the reason of joining the village government as a part to the suit since they are pieces of evidence to be relied by the parties during trial.

In my view, I find the Respondent was to file a counterclaim against the claims laid upon him if he has any claim over the disputed land. Thus, the trial Tribunal decision of striking out the application for non-joinder of parties was not justifiable because the Appellant has no cause of action against them.

Finally, this appeal is allowed, the requirement of joining the village government in this matter is devoid of merit the Respondent may file a counterclaim or file a third-party procedure if he wishes. The original records are to be remitted back before the trial Tribunal for the continuation of hearing from where it ended before writing the ruling. Each party to bear its own costs. It is so ordered.

Dated at SONGEA ZONE this 30th of May 2024.



UPENDO MADEHA

JUDGE OF THE HIGH COURT

