

**THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT – LAND DIVISION
(MUSOMA SUB REGISTRY AT MUSOMA)
LAND CASE NO. 20 OF 2023**

SAMSON MRIMI GESASE & 151 OTHERS PLAINTIFFS

Versus

NORTH MARA GOLD MINE LIMITED DEFENDANT

RULING

19.06.2024 & 19.06.2024

Mtulya, J.:

Mr. Stephen Ndila Mboje, learned counsel for the plaintiffs and **Mr. Faustin Malongo**, learned counsel for the defendant are contesting on the springiness and extent of application of section 97 of the **Civil Procedure Code [Cap. 33 R.E. 2019]** (the Civil Code). According to Mr. Mboje, the section is applicable in proceedings which are recorded by the court and not pleadings which are prepared by the parties in disputes. In his opinion, faults in complaints or written statement of defence are caused by the parties hence cannot be cured by invoking of section 97 of the Civil Code.

In substantiating his submission, Mr. Mboje cited the practice of this court in **Raimond Nicholaus Changalla & Twelve Others v. Nambogo Village Council & Three Others**, Land Case No. 9 of 2022 and **Jowhara Castor Kiiza v. Acer Petroleum (T) Limited & Three Others**, Misc. Land Application No. 269 of 2021. On the other hand, Mr. Malongo thinks that section 97 of the Civil Code may be invited to correct errors in complaints, written statements of defence,

proceedings, judgments, decrees and any other necessary documents. According to Mr. Malongo, the section is broad to cover several pigeon holes in documents filed in court for interest of justice. In his opinion, rectifications of faults may be employed at any stage of proceedings, provided that the opposite parties are not prejudiced.

In support of his submission, Mr. Malongo cited precedents in **CRDB PLC** [formerly known as CRDB (1996) Limited] **v. George Mpeli Kilindu** [as an Administrator of George Mathew Kilindu] **& Another**, Misc. Civil Application No. 340 of 2023 and **JV Tangerm Construction Co. Limited & Techno Combine Construction Limited (A Joint Venture) v. Tanzania Ports Authority**, Commercial Case No. 117 of 2015.

I have read the above indicated decisions of this court and found distinct views on the interpretation of the indicated section. This court at page 19 of the Ruling in **Raimond Nicholaus Changalla & Twelve Others v. Nambogo Village Council & Three Others** (supra), has resolved that the provision of section 97 of the Civil Code deals with amendment of any part in the court's proceedings and not pleadings. The move was impliedly supported in the decision of **Jowhara Castor Kiiza v. Acer Petroleum (T) Limited & Three Others**, (supra), where this court, at page 3 of the

Ruling, had rectified its own previous order which was reflected in proceedings of the court by use of section 97 of the Civil Code.

On the other hand, this court in the precedent of **CRDB PLC** [formerly known as CRDB (1996) Limited] **v. George Mpeli Kilindu** [as an Administrator of George Mathew Kilindu] **& Another** (supra), at page 14 of the Ruling, had categorically decided that section 97 of the Civil Code applies in rectification of proceedings, judgments, decrees and other necessary documents. Similarly, the decision in **JV Tangerm Construction Co. Limited & Techno Combine Construction Limited (A Joint Venture) v. Tanzania Ports Authority** (supra), at page 9 of the Ruling, thought that section 97 of the Civil Code may be invited to cure defects in a reply to the written statements of defence, which is part of pleadings.

It is this confusion or conflicting decisions of this court which has brought Mr. Mboje and Malongo into exchanging horns. It is unfortunate that upon perusal of the available precedents, I could not find a Court of Appeal decision resolving the practice in section 97 of the Civil Code. The complained provision of the Civil Code was enacted in the following words:

*The court may at any time, and on such terms as to costs or otherwise as it may think fit, **amend any defect or error in any proceeding in a suit**; and all necessary amendments shall be made for the purpose of*

determining the real question or issue raised by or depending on such proceeding.

(Emphasis supplied).

The contest of the present learned counsels is based on the words: ***any proceeding in a suit***. According to Mr. Mboje, it is the proceedings recorded by the court and not pleadings produced by the parties whereas Mr. Malongo thinks that complaints and written statements of defence are covered by the enactment of the section.

I am conversant that the enactment was ferried to Tanzania via commonwealth country of India. In India the thinking on the enactment is that: *the section can permit amendment of the complaint to enable a proper description of the plaintiff in order to assist court to determine the real question between the parties* (see: **Purushottam v. Manilal**, A (1961) SC 1267). The position is also supported by a well-known writer in civil procedure issues (see: **Sarkar Code of Civil Procedure 12th Edition**, Vol. 1 Section 1, LexisNexis, at page 941).

I think, in my considered opinion, *any proceedings in a suit* as per enactment of section 97 of the Civil Code has no limitation to the proceedings recorded by the court. In the enactment proceedings may include complaint, written statements of defence, judgments, decrees and any other necessary documents. However, this court is required to consider two (2) important clauses, before resolving in

favor of the applicant, namely: first, whether the requested amendment will alter the real question which brought the parties to the court; and second, whether the opposite party will be prejudiced by the intended alterations.

In the instant case, Mr. Mboje and Mr. Malongo are in dispute as to whether wrong description of the year in the Amended Written Statement of Defence (the defence) on filing date signed by a court registry officer, which displays the filing date 10th June 2023 distinct with verification clause showing 10th June 2024, can be cured by section 97 of the Civil Code. In my considered opinion, such error in the defence is minor. The error does not prejudice the plaintiffs in any way. The sought amendment does not alter the real issue which has brought the parties in this case. The real issue is whether the plaintiffs are the legal owners of the disputed land.

Having said so, I hereby amend the year 2023 to read 2024 on the signing part of court registry officer at page 7 of the defence filed on 10th June 2024. As the parties were in contest to put record right, I see no any reason to order costs. It is so ordered.

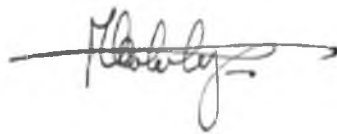


F.H. Mtulya

Judge

19.06.2024

This Ruling was delivered in Chambers under the Seal of this court in the presence of **Mr. Stephen Ndila Mboje**, learned counsel for the plaintiffs and in the presence of **Mr. Faustin Malongo**, learned counsel for the defendant.

A handwritten signature in black ink, appearing to read 'F.H. Mtulya', with a long horizontal stroke extending to the right.

F.H. Mtulya

Judge

19.06.2024