

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

Land Case No. 2027 of 2024

(Arising from Land Case No. 64 of 2015: Raphael Nzomuvura Rwsa vs the
Commissioner of lands, Hon. Attorney General and Dorisia Morris)

DORISIA MORRIS APPLICANT

VERSUS

**RAPHAEL NZOMUVURA RWASA (Administrator of the estate of the late
STAPHANIA PELAGIA MINANI) 1ST RESPONDENT**

COMMISSIONER FOR LANDS..... 2ND RESPONDENT

HON. ATTORNEY GENERAL..... 3RD RESPONDENT

RULING

Date of Last Order: 08/04/2024.

Date of Ruling: 27/06/2024.

NGUNYALE, J.

The Applicant herein moved this court through a chamber summons supported by affidavit sworn by Dorisia Moris under Section 95 and 96 of the **Civil Procedure Code** Chapter 33 R.E. 2019 and any other enabling provisions of the law praying the court for the following orders:



1. *That the Honourable Court be pleased to order the 1st Respondent who was the Plaintiff in the Land Case No. 64 of 2015 to correct an error on page 4 of its Plaint by removing the word 34A that appears between number 317 and the word situated and replace it with the word E so as to describe the plot in dispute as Plot 317 Block E situated at Salasala Area in Kinondoni Municipality, Dar es Salaam Region instead of Plot 317 Block 34 A situated at Salasala Area in Kinondoni Municipality, Dar es Salaam Region and to refile an amended Plaint.*
2. *That the Honourable Court be pleased to correct an error on page 3 of the judgment and page 1 of the decree of Honourable Judge Mlyambina in Land Case No. 64 of 2015 between the parties herein by removing the word 34A that appears between number 317 and the word situated and replace it with the word E so as to describe the plot in dispute as Plot 317 Block E situated at Salasala Area in Kinondoni Municipality, Dar es Salaam Region instead of Plot 317 Block 34 A situated at Salasala Area in Kinondoni Municipality, Dar es Salaam Region .*
3. *That the Honourable Court be pleased to correct an error on the top of page 1 of the judgment and page 1 of the decree of Honourable Judge Mlyambina in Land Case No. 64 of 2015 between the parties herein by removing the name of the plaintiff displayed as (RAPHAEL NZOMUVURA RWASA (Administrator of the Estate of the Late STAPHANIA PALEGIA MINANI) and be replaced by RAPHAEL NZOMUVURA RWASA (Administrator of the Estate of the Late STEPHANIA PELEGIA MINANI TURANO RWASA) as written in the plaint.*
4. *Cost of this application to follow the event.*
5. *Any other relief that the Honourable Court deems just and fit to grant.*

Upon being served with the application, the respondents never filed any counter affidavit. The matter was set for hearing and the applicant was



represented by Mr. Gerald Riwa, Advocate and the 1st respondent was represented by Ms. Fausta Daniel, advocate. The 2nd and 3rd respondents were absent.

Before going to the merits of the application, this court when composing the ruling wanted the parties to address whether it was proper to proceed with hearing in absence of the 2nd and 3rd respondents who neither entered appearance nor filed any subsequent document (counter affidavit or submissions) regarding the application as per the court order. In addressing the court Mr. Riwa submitted that it was proper for the court to proceed with the hearing in absence of the 2nd and 3rd respondents because they happened to appear, but they decided to abandon the application and they did not file counter affidavit. Ms. Fausta Daniel for the 1st respondent submitted that the 2nd and 3rd respondents were properly served with summons and they happened to appear one. It was her view that, they were aware of the application pending before the court. Their failure to file counter affidavit means they have abandoned the case the act which is against the orders of the court.

Having heard the parties, I have made a thorough perusal of the court proceedings. There is nowhere the applicant proved to have served the 2nd



and 3rd respondents, but also there is no any date which indicates that the 2nd and 3rd respondent did entered appearance in court. What is seen in the proceeding is only the assumptions by Mr. Riwa stating that "*I do not think if the respondent will object but they may be given time to respond*", "*..... 2nd and 3rd respondent do not oppose the application*".

Again, throughout the proceedings there is nowhere Mr. Riwa had prayed for an order of *ex parte* hearing as against the 2nd and 3rd respondents.

In the case of **Mbeya - Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma** [2003] T.L.R.251 in which the English case of Ridge v. Baldwin [1964] AC 40 was considered, the Court emphasized that:

"In this country, natural justice is not merely a principle of common law; it has become a fundamental constitutional right. Article 13 (6) (a) includes the right to be heard among the attributes of equality before the law, and declares in part: (a) Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi wa Mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu"



The same position was held in the case of **Anthony M. Masanga versus Penina (mama Mgesi) & another**, Civil Appeal No. 118 of 2014 (CAT) held that:

"It appears therefore that the respondents were not afforded the right to be heard (audi alteram partem) on that aspect. In fact, nowadays, courts demand not only that a person should be given a right to be heard, but that he be given an "adequate opportunity" to be heard so as to achieve the quest for a fair trial". (Emphasis added)

Therefore, being guided by the principle above, the right to be heard is a fundamental principle of natural justice, thus summoning the 2nd and 3rd respondent was obligatory regardless of whether they will either be prejudiced by the outcome of the application or not.

On the other hand, this court had once invited the parties to address on the competence of the application in hand taking into consideration that what is before the court is a miscellaneous application seeking for rectification order but through the e-CMS (Electronic Case Management System) the case has been registered as a Land Case instead of Miscellaneous Civil Application. When the parties addressed the court on the anomaly Mr. Gerald Riwa for the applicant politely prayed the court to



stand for the interest of justice and order for the rectification the defects. In her side Ms. Fausta Daniel for the 1st respondent comprehensively stood to the point that the court was not properly moved, she prayed the court to dismiss the application with costs.

It is my humble view that this matter lacks competence before the court for it being registered in a wrong register where it cannot be rectified since the information are already in the electronic system. I therefore agree with the 1st respondent Counsel that the court has been wrongly moved. In the circumstance the only remedy is for the applicant to refile a fresh application in a proper electronic register.

Consequently, the application is hereby stuck out for want of competence. Since the issue was raised by the court, I grant no order as to costs. Order accordingly.

Dated at Dar es Salaam this **27th** day of **June, 2024**.

 
D. P. Ngunyale
JUDGE

Ruling delivered this **27th** day of **June, 2024** in presence of Ms. Fausta Daniel for the 1st respondent and hold brief for Mr. Gerald Riwa for the applicant.



A handwritten signature in blue ink, appearing to read "D. P. Ngunyale".

D. P. Ngunyale

JUDGE