

IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)  
DAR ES SALAAM

COMMERCIAL CASE No 113 of 2013

BETWEEN

WENGERT WINDROSE SAFARI TANZANIA LIMITED -----PLAINTIFF

VERSUS

1. THE MINISTER FOR NATURAL RESOURCES  
AND TOURSIM

2. GREEN MILES LIMITED

3. ATTORNEY GENERAL

] ]-----DEFENDANTS  
]  
]

JUDGMENT

Date of the hearing : 25/2/2015  
Date of the Judgment: 31/3/2015

SONGORO,J

This is a "default judgment" applied by Wengert Windrose Safari (Tanzania) Limited, the plaintiff following defendants failure to file the Written Statement of Defence to oppose the plaintiff claims and suit

In the "plaint" filed to this court on the 28th day of August, 2013, plaintiff stated that, it is a limited liability company engaging in the business of wildlife conservation, and tour operator in Tanzania.

Then in February 2011, he claim was allocated and licensed to own, and manage hunting block known as Lake Natron Game

Controlled Area (North-South) also known as Lake Natron Game Controlled Area (East). After being allocated, they widely advertised it for commercial purposes.

Then the plaintiff claim that, in September 2011, without his knowledge and being consulted, the Ministry for Natural Resources and Tourism, the first defendant, wrongly and unilaterally divided his hunting block into two parts, re-named and made re-allocation.

The first part was re-named as " Natron Game Controlled Area (North-South) or Lake Natron Game Controlled Area (North) was re-allocated to the plaintiff

The second part was re-named as Natron Game Controlled Area (East ) was re-allocated to the 2<sup>nd</sup> defendant.

The plaintiff then contested that, since the partition and re-allocation of his hunting block was wrongly done, he instituted the instant suit against the Minister for Natural Resources and Tourism , Green Miles Limited, and the Attorney General, the first, second and third defendants respectively claiming among others declaratory orders and other reliefs.

In the filed suit the plaintiff key complaint is that, the 1<sup>st</sup> defendant wrongly and improperly purported to change, re-name his allocated hunting block, subdivide it, and re-allocate it to him and to the second defendant.

Further, the plaintiff claimed that,, the first defendant's acts of changing the name of hunting block, sub-divide it, and re-allocation was null and void. He therefore prayed for the following declaratory orders against the defendants.

- (a) A declaratory order that, the plaintiff is a licensee and therefore in lawful occupation of a hunting block namely Lake Natron Game Controlled Area (North-South) also known as Lake Natron Game Controlled Area (East);
- (b) A declaration that, the 1<sup>st</sup> defendant purported name change and reallocation of the plaintiff allocated block namely lake Natron Game Controlled Area (north –South) also known as Lake Natron Game Controlled Area East to Lake Natron game Controlled Area North is illegal and null void.
- (c) A declaration that, the 1<sup>st</sup> defendant purported to name change of the block known and geographically described as Lake Natron Game Controlled Area (North-South) to lake Natron Game Controlled Area East and the allocation of the same to the 2<sup>nd</sup> defendant is illegal and null and void;
- (d) A declaration that, 1<sup>st</sup> defendant purported name change of the lake Natron Game Controlled Area North to Lake Natron Game Controlled Area East is null and void;
- (e) A declaration that, the plaintiff is entitled to peaceful occupation and conduct of hunting business in the block known and geographically described as lake Natron Game controlled Area

North South also known as lake Natron Game Controlled Area East and that, the 2<sup>nd</sup> defendant is entitled to occupation of the block known and geographically described as Lake Natron Game Controlled Area North.

(f) A perpetual injunction restraining the defendants their agents or assignees from interfering with the plaintiff occupation of the Lake Natron Game Controlled Area North South also known Lake Natron Game Controlled Area East or asserting any rights over the Lake Natron Game Controlled Area North South also known as Lake Natron Game Controlled Area East Block.

(g) Cost of the suit; and

(h) Any other order in favour of the plaintiff the court deems fit.

On the part of the defendants, the Court record indicated that, the first and third defendants Ministry for Natural Resources and Tourism, and the Attorney General were served with the Court Summon and a copy of the plaint, but they did not file a Written Statement of Defence to oppose the suit.

Further, the court record indicates that, the Green Miles Limited, the second defendant was granted an extension of time to file a defence, but did not file it, until the requisite time of filing a Written Statement of Defence expired.

For reasons known to the second defendant, he filed his defence late and it was struck out by Hon Nyangarika J on the 27/1/2015,

on the ground that, it was filed after the expiry of requisite time of filing a defence

Then on the 13 /2/2015, the plaintiff filed the instant application under Rule 22 (1) of the High Court (Commercial Division) Procedure, Rules , 2012 applied for default judgment and requested the court to grant all prayers contained in paragraph 26 (a)-(h) of the Plaint.

The same prayer was reiterated by Mr Gaspar Nyika, the Learned Advocate of the plaintiff.

The court considered the applicant application for default judgment, the plaintiff claim in the plaint and annexed documents such as

- 1. *Uncertified Copy the Guardian Newspaper dated Thursday February 10, 2011, which has the title of Invitation for application for Tourist Hunting Blocks Allocation for the period of 2013 -2018 which shows several companies were allocated hunting block as Annexure 1.***
- 2. *Uncertified Copy of the plaintiff's application for allocation of hunting block dated 10/3/2011 Annexure II plus Uncertified Copy of Hunting Block Application Form ARS /084/07/03/2011/0/F dated 10th March 2011***
- 3. *Uncertified Copy of the letter reference CHA.79/519/01/126 dated 6/9/2011 with the Title : Hunting Blocks Allocation for the Hunting Term 2013-2018 signed by N.H M. Millao the Ag Permanent Secretary Ministry of Natural Resources, and Tourism which shows the plaintiff was allocated with hunting block Mwoyowosi GR. S and Lake Natron GCA NS***
- 4. *Uncertified Copy of the Letter reference GD/T.80/79/59/120 dated 7/1/2013 with the title: Change of the name of the Lake Natron Game Controlled Area (North) to Lake Natron Game Controlled Area (East) signed Prof Jafari R. Kideghesho for the Director of Wildlife Division Annex B3 of the Plaint.***
- 5. *Uncertified Copy of a letter Reference No GD/T 80/66/111 dated 8/5/2013 signed by Prof J,R Kidegesho from the Ministry of Natural Resources and Tourism addressing and informing the plaintiff that, his block was changed its name to reflect the exact position and the boundaries , location, category and size remain unaltered***

and find the plaintiff has just annexed to the plaint uncertified copies of letters of allocation which shows that, he was allocated a hunting block in the area called Lake Natron GCA NS .

Further perusal of the plaint, and other documents annexed to the plaint indicates, that, there are no original documents which were annexed to the plaint or annexed to application for default judgment.

Next, the Court found there is no any credible and convincing exhibit, and evidence which was tendered to support the plaintiff claim of allocation of the hunting block.

The court was expecting that,, since the plaintiff claim was on the hunting block and it involves interests on big piece of land thus before or at the moment was praying for default judgment would have at least annexed in his application an affidavit which forward to this court credible, and convincing exhibits such as "approved map" or "approved drawings" and other original documents which establishes his allocation of hunting block with clear boundaries of his hunting block.

Honestly, I find presentation of credible evidence was necessary, in order to establish his claim on the balance of

probability as required by law and to prove the geographical location. The above two matters their determination depends on evidence, and not the silence of the defendant.

With that, position in mind I revisited the plaintiff's application for default judgment and find the key issue for consideration in the plaintiff's prayer for judgment for default judgment is whether there is sufficient and credible evidence for the court to make declaratory orders prayed in paragraph 26(a) to (h) of the plaint.

In addressing the above, the court found Rule 22 (1) of the High Court (Commercial Division) Procedure, Rules GN 250 OF 2012 states that,;

*"Where any party required to file Written Statement of Defence fails to do so within the specified period or where such period has been extended in accordance with sub-rule (2) of Rule 19 within the period of extension, the court shall upon proof of service, and application by the plaintiff in Form No 1 set out in the schedule to these Rules enter judgment in favour of the plaintiff"*

Now looking at Rule 22 (1) of GN 250 of 2012, it only insists that, in case of default to file Written Statement of defence 'Default Judgment' has to be entered. The Rule is silent if all reliefs, orders, and prayers in the plaint has to be granted, or the Court should consider reliefs which it deems fit.

In view of the above, I revisited the plaintiff prayers, and find is seeking for declaratory orders on hunting block on which he considers has a right.

The court is mindful that, power to make declaratory orders on any interests even on hunting block which touches land has to be exercised with great caution and in the circumstances where the court is satisfied that,, that, right of a party on land, or lease or on licensee exists, and have been furnished to the court.

In view of the above , the court revisited the plaint, its Annexure and application for default Judgment, and find the plaintiff did not tendered as exhibits original documents of letters of allocation to prove his interests on the claim.

Further, I noted that, the plaintiff did not even tender as exhibits "an approved map" or "approved drawings" of the place from the relevant authorities showing the area, and boundaries of his allocated hunting block .

The court is of the view that, in the absence of original letters of allocation, and "approved map" or "drawings" from the relevant authority showing the geographical area which the plaintiff was allocated, it is difficult for the court to make

declaratory orders sought in the plaint because the actual plaintiff interest on the area has not been fully established in the plaint.

I am of view that, declaratory order may only be made where the interest of the party, has been fully established by credible and convincing evidence .

In the circumstances where there is no "approved maps" from the relevant authorities showing the exact position of the so called plaintiff hunting, any court declaratory order may create a risk of land, and other disputes with villages and other people in the same, or adjacent area.


For reasons which I have explained, I decline to make declaratory Orders sought in paragraph 26 (a)(b) (c) (d) ( e) (f) and (h) of the plaint, for reasons that, plaint, its Annexure`s , and application for default judgment did not establish to the required standard the geographical area of plaintiff hunting block. Such, declaratory Orders may be given only when the real interests has been ascertained as explained above. The above-mentioned prayer has not been fully established. In respect of item (g) I noted that, defendants did not contest the claim, therefore, I grant the plaintiff half of the costs he incurred in pursuing the suit.

Dated at Dar es Salaam this 31st day of March, 2015



H.T. Songoro  
JUDGE

Delivered at Dar es Salaam this 31st day of March, 2015



H.T. Songoro  
JUDGE

The Judgment was delivered in the presence of Ms. Sama Salah, the Learned Advocate for the plaintiff and Mr. Edwin Webiro, the Advocate for the Second defendant and absence of the first and second defendant.