

**IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPLICATION NO. 580 OF 2020

ELIZABETH SIMON MWAKAPANGALA (Administratrix of
The Estate of the Late SAID SHOMARI LOKO).....**APPLICANT**

VERSUS

**MUNICIPAL DIRECTOR,
ILALA MUNICIPALITY.....1ST RESPONDENT
ATTORNEY GENERAL.....2ND RESPONDENT**

Date of Last Order: 06.12.2019
Date of Ruling: 18.02.2020

RULING

V.L. MAKANI, J

This ruling is in respect of preliminary objection that was raised by the
1st and 2nd respondents as follows:

*That, the application is bad in law for impleading a wrong
person.*

It is of essence to know that the application before the court is for the
maintenance of the status quo in respect of the occupation and use
by the applicant of her matrimonial home and the suit property (six
acres parcel of land) located within Mgelule Street, Buyuni Ward, Ilala

District claimed to be the property of Ilala Municipality, pending the hearing and determination of the main suit to be filed.

With leave of the court the preliminary objection was argued by way of oral submissions. The applicant was represented by Mr. Odour, Advocate while the 1st and 2nd respondents were represented by Mr. Kalokola, State Attorney and Mr. Aloyce Lyimo, Solicitor.

Submitting in support of the preliminary objection, Mr. Kalokola said that, the Municipal Director has been wrongly impleaded. He said that the Director cannot be impleaded on behalf of the Municipal Council. He relied on section 14 (1) (b) of the Local Government (Urban Authority) Act, CAP 288 RE 2002 which requires that the Municipal Council be sued in its own name since it has been established as a corporate entity. He said that the Director is a mere employee of Ilala Municipal Council thus it is not proper to sue an employee instead of a corporate entity. He relied on the case of **Temeke Municipal Director vs. Nixon Njola and Mariam Chimbala, Revision No.564 of 2019 (HC-Labour Division)** (unreported). He prayed for the court to strike out this application with costs.

In reply, Mr. Odour said that, the preliminary objection is not proper. He said that the Municipal Council has been time and again sued through the Director who is the CEO. He said that it is him who is answerable. He said that the authorities cited by the respondents are High Court decisions which have not laid any principle whatsoever and it depends on the circumstances faced by each Judge. He said that they would have been comfortable if there was a case by the Court of Appeal on this issue. He further said, the omission is not fatal because it does not go to the root of the application and if fatal the remedy is amendment rather than striking out the application. He said that the applicant is seeking immediate and expeditious justice therefore if the objection raised is fatal then the application ought to be amended not struck out.

In rejoinder, Mr. Kalokola reiterated his main submission and added that, this is a point of law and requires that the Municipal Council itself be sued. He said that the reasons are obvious that the Municipal Council is a legal entity with perpetual succession; it can sue and be sued. He said that the averments by the counsel for applicant that suing Director is proper are not supported by the law. He insisted that the High Court is the court of record and further that there is nothing

from the applicant's Counsel to suggest departure from the cited authorities. He maintained that this application should be struck out with costs.

Having gone through submissions from both sides, the issue for determination is whether the preliminary point of objection raised has merit.

The pertinent issue here is who is the proper party to be sued is. Is it the Municipal Director Ilala Municipality or Ilala Municipality in its own name? Mr. Kalokola maintained that the proper party is Ilala Municipal Council and not the Director of Ilala Municipal Council. The reason advanced was that the Director is merely an employee of Ilala Municipal Council. On the other side, Mr. Odour insisted that suing the Director is proper. He was of the view that even the authorities which were cited by Mr. Kalokola's to support his position are from High Court and not the Court of Appeal. However, he seemed to impliedly concede to the objection as he state:

"The omission is not fatal because it does not go to the root of the application. If it is found it is fatal, the remedy is not striking out but amendment".

Section 14(1) the Local Government (Urban Authority) Act provides:

"Every urban Authority established or deemed to have been established under this Part, and in respect of which

there is in existence a certified or establishment furnished under section 9, shall, with effect from the date of commencement of the established order, be a body corporate and shall:

(a) have a perpetual succession and an official seal;

(b) In its corporate name, be capable of suing and being sued;

(c) subject to this Act, be capable of holding and purchase; or

(d) acquiring in any other way and disposing of any movable or immovable property.

The position of the law as stated above is very clear, and as submitted by Mr. Kalokola the Municipal Council being a body corporate must be sued in its own name. In the case of **Temeke Municipal Director** (supra) The Temeke Municipal Director had sued Nixon Njola and Mariam Chimbala. In that case, my sister Hon. Z.G.Muruke, J stated at page 6 that:

"....it is clear that Temeke Municipal Council is a legal entity which can sue and be sued on her own name. That being the case, I find that respondents sued a wrong party since the Director is just the representative of the Council. The director is just executing his duties on behalf of the Council. It is the Council as the legal entity whom even the award will be executed against."

Indeed, as correctly stated by Mr. Kalokola the Director is a mere employee of Ilala Municipal Council; and the Director and Ilala Municipal Council are two distinct entities. Ilala Municipal Council in law can enter in contract and can sue and be sued in its own name.

Since the Director of Ilala Municipality is not a legal personality then he was not a proper party and in case a decree is preferred against him it cannot be effective.

Mr. Odour argued this court to order an amendment and not strike out the application. In the past I had the same view, however, I am now convinced that since this requirement has not been adhered to and considering it is purely a point of law and statutorily provided for, an amendment would not be the best option.

In view of the above, I hold that the Municipal Director Ilala Municipality has been wrongly sued in this application. The proper party should have been Ilala Municipal Council. The preliminary objection on the point of law raised is therefore upheld, and the application is hereby struck out with costs.

It is so ordered.



V.L. Makani

**V.L. MAKANI
JUDGE
18/12/2020**