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

LAND CASE NO. 459 OF 2017

ERICK MWIMBO.....1ST PLAINTIFF
MEDARID MIZIMBWI.....2ND PLAINTIFF
MAJDI K. MOMBO.....3RD PLAINTIFF
ABDALAH SELEMANI MAGURU.....4TH PLAINTIFF
& 87 OTHERS

VERSUS

MOROGORO MUNICIPAL COUNCIL.....DEFENDANT

Date of Last Order: 23.06.2021
Date of Judgment: 13.08.2021

RULING

V.L. MAKANI, J

This suit is by ERICK MWIMBO, MEDARID MIZIMBWI, MAJDI K. MOMBO and ABDALA SELEMANI MAGURU representing 87 other peasants who according to the plaint have been in peaceful occupation and ownership of the land in dispute described as Kihona Mgulu wa Ndege, Kihonda Msembe and Kihonda Lukobe in Morogoro Region (the suit land) until when the Morogoro Municipal Council (the defendant herein) decided to rellocate the land to other people.

According to the plaint the plaintiffs acquired the suit land at different times including Ujamaa Village and Nguvu Kazi. The plaintiffs allege that the government of Tanzania forfeited part of the suit land which was previously a sisal estate whose owners abandoned it for a long time. Part of the forfeited land was then allocated to the plaintiffs during the period of 1974 to 1990. The plaintiffs allege that sometimes in 2006 the Defendant started issuing residential licences in the same area in a 4000 Project where the plaintiffs filed Land Cases No. 266, 265 and 83 of 2007 which were withdrawn with leave to refile hence this suit. The plaintiffs are praying for the following orders:

a) *Declaration order that the plaintiffs are the rightful owners of the disputed land.*

b) *A declaration that all title deeds issued covering the land in dispute against the interest of the plaintiffs is nullity and void.*

c) *A declaration that the plaintiffs' farms deserve proper assessment, prior to interference to their lawful occupation.*

d) *Payment of damages for interference and destruction of the plaintiff' properties.*

e) *Deems fit to grant (sic!).*

f) *Cost of the suit to be provided by the defendant.*

The matter went for mediation but failed and hearing took place where the plaintiff presented 4 witnesses and the defendant also presented 4 witnesses. The parties all tendered 4 exhibits to prove their case. The court made a visit to the land in dispute. However, during the visit and even in the final submissions by Counsel namely Mr. Mururu and Mr. Elikarim for the plaintiffs and defendant respectively, it came to the attention of the court that there is before the Court of Appeal, appeals by the peasants in respect of the same suit land. In essence there is an appeal before the Court of Appeal in respect of the same subject matter though the appellants may not all be the same as they are many. Upon the discovery, Counsel were summoned to address the court whether the suit before this court is viable vis a viz the appeals pending in the Court of Appeal in respect of the same subject matter.

Mr. Mururu for the plaintiff submitted that in Land Case No. 307 of 2010 out of the 421 plaintiffs only 61 filed an appeal to the Court of Appeal. Similarly there was Land Case No. 378 of 2015 with 104 plaintiffs out of which all went to file an appeal at the Court of Appeal. He said in this Land Case No. 459 of 2017 there are 101 plaintiffs. In all cases the defendant is the same the Municipal Council of Morogoro

but in these cases the plaintiffs are not the same in names or in any other manner whatsoever. He said the piece of land which is claimed is different but found in the same locality. He thus said the present case is not similar to Land Case No. 307 of 2010 and Land Case No. 387 of 2015. He said in these two cases there were objections on the similarity of the parties and the court was satisfied that they were different.

Mr. Ellykarim pointed out that there is a Notice of Appeal in respect of Land Case Mo. 307 of 2010. He said in all the three cases the main complaint is ownership of land by the plaintiffs who are peasants of Kihonda Lukombe, Kihonda Msembe and Kihonda Mgulu wa Ndege. They are all claiming against Morogoro Municipal Council. He said the record shows that the claims in all these cases was also in respect of land under the 4,000 Plots Project located in in the same area Kihonda Msembe, Kihonda Mgulu wa Ndege and Kihonda Lukobe. He said the plaintiffs may not be the same, but the suit land is the same and the decisions of the Court of Appeal and in this court may be conflicted.

I have listened to the rival submissions by Counsel. I have also had an opportunity of going through the decisions mentioned

hereinabove, that is Land Case No. 307 of 2010 and Land Case No. 387 of 2015. There is no dispute that there are appeals arising from these cases. All these cases are in respect of land within the 4000 Plots Project located in Kihonda Msembe, Kihonda Mgulu wa Ndege and Kihonda Lukobe. The parties may not be the same but the area that is in dispute is basically the same. Mr. Mururu alleged that the subject land is not the same but it is in the same locality. But looking at the judgments of the previous cases the land in dispute is in Kihonda Msembe, Kihonda Mgulu wa Ndege and Kihonda Lukobe and that is the same land which is the subject of this case. I have also noted that some of the exhibits which have been tendered in those cases and admitted are also the same documents in this case such as **Exhibit D1** in the present case (the letter by the District Commissioner to Makatibu Kata, Makatibu Tarafa, Wenyeviti wa Vijiji and Wenyeviti wa Matawi dated 11 January, 1983) is also **Exhibit D1** in Land Case No. 378 of 2015. The plaintiffs in all these cases are many and there is nowhere we can state for sure if they are the same or not or if they even exist. However, the suit land which is the subject of the cases is the same and within the same locality as agreed upon by both Mr. Mururu and Mr. Ellykarim.

I have given this matter a considerable thought and I was wondering whether this court has jurisdiction to hear and determine the suit while there are appeals at the Court of Appeal on the same subject matter even though the plaintiffs are not the same? Indeed, the issue of res judicate as argued by Mr. Mururu cannot stand. But we can borrow that principle of law that once a Notice of Appeal has been filed under Rule 83(1) of the Court of Appeal Rules, 2009 the High Court is seized of its jurisdiction. This is according to the case of **Matsushita Electric Co. Ltd v Charles George t/a C.G. Travers, Civil Application No. 71 of 2001** (unreported) and **Aero Helicopter (T) Limited vs. F.N. Jensen [1990] TLR 142.** This principle relates to that case which the appeal has originated, but it is of great assistance to the peculiar circumstances of the present case. That is, if this court continues to determine the matter whose subject matter is also on appeal it may bring about contradicting decisions and may even result to chaos. There is evidence on record by **DW2** that peasants decided to file many cases to confuse the court. This shows that if indeed this court gives it decision and the Court of Appeal also gives its decision while the suit land is the same or almost the same, then if at all there would be conflicting decisions this may lead to confusion and public unrest. In that respect, I am of

a considered view that the best option and for interest of justice the matter is not a fit case for determination by this court considering that there is a Notice of Appeal at the Court of Appeal on cases whose subject matter is also the subject matter of this present case, doing so may result to contradictory decisions resulting to chaos. In other words, this court is seized of jurisdiction to determine the matter considering that there are notices of appeal filed in respect of the subject matter.

In view thereof, this suit is hereby struck out for want of jurisdiction. Since the matter was raised by the court, there be no order as to costs.

V.L. MAKANI
JUDGE
13/08/2021

THE HIGH COURT OF TANZANIA
LAND DIVISION