

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

LAND CASE NO. 166 OF 2019

BENITHO THADEI CHENGULA.....PLAINTIFF

VERSUS

KINONDONI MUNICIPAL COUNCIL.....1ST DEFENDANT

NATIONAL HOUSING CORPORATION.....2ND DEFENDANT

Date of Last Order 22/11/2021

Date of ruling 22/12/2021

RULING

T.N. MWENEGOHA – J

The plaintiff has filed this suit claiming for, among other things, a declaration that he is lawful owner of suit land situated at Plot No. 104 Block R, Magomeni, Dar es Salaam and for an order restraining permanently the defendant from interfering in the suit land. While being served with the plaint, the 2nd defendant raised a Notice of Preliminary Objection on points of law that;

- i. This Honourable Court has no jurisdiction to hear and determine the suit.
- ii. The plaint does not disclose any cause of action against the 2nd defendant.
- iii. The suit is incompetent for failure to comply with Section 16(4) of the Governments Proceedings Act as amended by Act No. 8 of 2019 (Government Proceedings Act).

Hearing of the preliminary objection was by way of written submission where the plaintiff was represented by Mr. R.B Shirima, advocate while the 2nd defendant had the services of Mr Aloyce Sekule, advocate.

Mr Shirima submitted on the 1st preliminary objection that, the suit property was acquired in 1971 by the Government of the URT under the Acquisition Buildings Act, No. 13 of 1971 (Acquisition Act) and placed it under ownership of the Registrar of Buildings. That the Registrar of Buildings' interest, title and claims of right to the suit property including all other buildings that had been acquired by the Government were subsequently transferred to and vested unto the 2nd defendant following the repeal and re-enactment of the National Housing Corporation Act, Cap 295 R.E 2002 (NHC Act) which repealed the Office of the Registrar of Buildings.

He further submitted that the premises were sold to the said Benedict Kilimba and was returned with a condition that the said land shall not be erect with any structure until verification is done by relevant authorities which included the 1st defendant. He argued this Court has no jurisdiction since under the terms of Section 10(3) of the Acquisition Act and Section 102(1)(a) of the Land Registration Act, Cap 334, R.E 2002 (Land Registration Act), that it is the requirement under those provisions that a person aggrieved by the acquisition of any building acquired under the Act to refer of appeal to the Appeal Tribunal and not otherwise.

That the plaintiff was required to appeal to the Appeals Tribunal and not this Court. He referred this Court to the case of **Adnan Kitwana Kondo & 2 Others Vs National Housing Corporation, Land Case No. 267 of 2014 HCT Land Division (Unreported)** and the case of **Nizarali**

Fazal Gangji (as executor of the estate of the late Ashak Fazal Gangji) vs. National Housing Corporation, Land Case No. 166 of 2018, HCT Land Division (Unreported) when the Court declared it had no jurisdiction at all to determine the matter against the defendant.

He further submitted for the 3rd preliminary objection that, this suit is incompetent for non-joinder of necessary party subject to Section 37(1) and (5) of the Law of Limitation Act, Cap 89 R.E 2019 for not joining the Commissioner for Lands. Also, failure to comply with Section 16(4) of Government Proceedings Act and Section 6(3) and (4) of the same Act which gives mandatory requirement for any suit brought against the Government or government department, institution, ministry, agency, public corporation or company to join the Attorney General as a necessary party. He cited the case of **MSK Refinery Ltd vs. TIB Development Bank Ltd and Yono Auction Mart Co. LTd, Misc. Civil Application No. 307 of 2020 (unreported)** and the case of **Coseke Tanzania Ltd vs. The Board of Trustees of the Public Service Social Security fund, Commercial Case No. 143 of 2019 (Unreported)**.

Submitting for the 2nd preliminary objection that the plaint does not disclose any cause of action against the 2nd defendant he stated that, plaintiff has failed to comply with requirement of Order VII Rule 1(e) of the Civil Procedure Code, Cap 33, R.E 2019 (CPC). He cited the case of **JEM International Company Ltd and Jonas Ephraim Mchome vs. National Microfinance Bank and LJ International Ltd, Land Case No. 13 of 2019 HCT District Registry (Unreported)**. He therefore prays for this suit to be dismissed with costs.

In reply Mr. Shirima submitted that the pecuniary value of the suit land is Tshs. 320,000,000 hence falls within the jurisdiction of this Court. He further argued that the suit land is undeveloped/vacant due to the disturbances by the 1st defendant and that the plaintiff had purchased the suit land from one Peter Andrew Athuman while the 1st defendant is alleging it to belong to the 2nd defendant without justification. Since the suit land has no building, he submitted the Acquisition Act does not apply to the suit land. Also, he submitted that there is nowhere in the plaint plaintiff has submitted that he bought the suit land from Benedict Kilimba as mentioned by the 2nd defendant in his submission. That the suit land was sold by the 2nd defendant to one Peter Andrew Athuman who sold the same to Benedict Kilimba. Therefore, there is no issue of acquisition of building as there is no building on suit land and the cases cited by the 2nd respondent's counsel are irrelevant to this case.

On the issue that this suit is incompetent for failure to comply with Section 16(4) of the Governments Proceedings Act, he submitted that he has gone through the Law of Limitation Act, and in nowhere did he find Section 37 as cited by Mr. Sekule. He added that the law **Written Laws (Miscellaneous Amendments) Act, Act No. 1 of 2020** came into operation on 14th February 2020 which is the date of publication on the government gazette and therefore the date which it came into operation (**Section 14 of the Interpretation of Laws Act, Cap 1 R.E 2019**) However, this case was filed on 27th December, 2019 two months prior the date of operation of the said Act hence it cannot apply retrospectively. He submitted the cases cited by the Mr Sekule were filed on 2020 after the amendment of the **Government Proceedings Act, Cap 5 R.E 2019** through the **Written Laws (Miscellaneous Amendments) Act,**

Act No. 1 of 2020 therefore these are two different scenarios which should not be equated.

On the point that the plaint does not disclose cause of action against the 2nd defendant, he submitted that at paragraph 11 of the Plaint it states "... the 2nd defendant wrote a letter alleging the title over the disputed plot was revoked" and plaintiff attached the said letter as Annexure A4 to the plaint. That, from the contents of paragraph 4 of the plaint and the said Annexure A4 plaintiff did disclose the cause of action against the 2nd defendant. He submitted the case of **JEM International Company** (supra) is irrelevant to this case at hand. He therefore prays for this Court to overrule the preliminary objections with costs.

In rejoinder, Mr Sekule reiterated what he submitted in his submission in chief and further attached the Law of Limitation Act for purpose of showing Section 37 is available at the Act.

Having gone through both parties' submissions, the issue for determination is whether the objections as raised by the defendant has merits.

I will start addressing the 3rd preliminary objection which tests the competence of the suit. I have noted that both parties are not contentious on the issue of joining the Attorney General as the necessary party to this suit. However, plaintiff's counsel contented that the requirement for joining the Attorney General in all suits against government institutions, agencies etc has been introduced by section 25 (a) and 33 of the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020- G.N No. 8 Vol. 101 dated 14th day of February 2020 while this suit was filed on 27th December 2019 and hence the legal requirement as provided under the said section

cannot operate retrospectively. The said section which provides the amendment reads as follows;

"The principal Act is amended in section 6, by (a) deleting subsection (3) and substituting for it the following-

*"(3) All suits against the Government **shall**, upon the expiry of the notice period, be brought against the Government, ministry, government department, local government authority, executive agency, public corporation, parastatal organization or public company that is alleged to have committed the civil wrong on which the civil suit is based, and the Attorney General shall be joined as a necessary party. (4) Non-joinder of the Attorney General as prescribed under subsection (3) shall vitiate the proceedings of any suit brought in terms of subsection (3).";*

From the above excerpt, the interpretation of the word 'shall' means any suit against Government, Ministry, government department, urban authority etc it is mandatory rule for the Attorney General to be joined as a necessary party. The reasons for joining the Attorney General are, among other things, to allow amicable settlement between parties suing the government before a suit is adjudicated in Court.

In the case of **SALIM O. KABORA v KINONDONI MUNICIPAL & 3 OTHERS, High Court of Tanzania Land Division at Dar es salaam in Land case No. 10 of 2020**, Kalunde J, outlined the reasons for joining the Attorney General as necessary party to a suit.

"one, to enable the Attorney General and the solicitor General to consult the relevant authorities and mobilize the relevant information in organizing further discussions and preparing a

formidable defense, two, service permits the Attorney General and the Solicitor General to engage the would- be plaintiff in seeking an amicable settlement of the dispute with relevant entity where possible; three, it affords the Attorney General, a necessary party, an opportunity to be heard when the suit is finally filed."

In the case of **Lala Wino vs. Karatu District Council, Civil Application No. 132/02 of 2018**, the CAT observed with approval the position in the case of **Benbros Motors Tanganyika Ltd vs. Ramamlal Haribhai Patel [1967] HCD no. 435** which held that;

*"When a new enactment deals with the rights of action, unless it is so expressed in the Act, an existing right of action is not taken away, **but when it deals with procedure only, unless the contrary is expressed, the enactment applies to all actions, whether commenced before or after the passing of the Act.**"* Emphasis added.

Simply put the amendment which requires the Attorney General to be joined as necessary party to a suit is the procedural requirement and therefore the amendment applies to all suit instituted after and before the amendment.

Now the question is whether non joinder of the Attorney General vitiates the whole proceedings. I will answer this in the affirmative as joining the Attorney General is a mandatory requirement. I therefore find the 3rd objection has merit. This finding suffices to struck out the whole application and hence I will not dwell into discussing the remaining

preliminary objections. I hereby struck out the application and parties may on their own choice institute a proper suit subject to the law of limitation.

It is so ordered

Dated at Dar es Salaam this 17th day of December, 2021.




T. MWENEGOHA

JUDGE

17/12/2021