

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND CASE NO. 4 OF 2021

JOHARI IBRAHIM CHATA 1st PLAINTIFF

DAVID KAGOMA BAHANGAZA 2nd PLAINTIFF

VERSUS

MPANDA MUNICIPAL COUNCIL 1st DEFENDANT

DONALT LESSERY TARIMO 2nd DEFENDANT

THE ATTORNEY GENERAL 3rd DEFENDANT

Date: 15/07 & 16/09/2022

RULING

NKWABI, J.:

This is a ruling in respect of preliminary objections raised by the defendants. The defendants are sued by the plaintiffs for the following reliefs:

1. An order that the act of the 1st respondent (defendant) allocating the parcel of land to the 2nd respondent (defendant) is unlawful,
2. An order that the disputed land belongs to the Plaintiffs,
3. That the defendants be ordered to pay T.shs 45,000,000/= to the plaintiff as a loss of earnings from the invaded parcel of land from the time they invaded to the time justice is met.
4. Costs of this case be borne by the defendants.

5. Such other relief as this honourable Court may deem fit and just to grant.

The land case was vehemently resisted by the defendants. They also raised preliminary objections on points of law as I have intimated above. At the outset, I find it apposite to point out that, there are some litigants who still overly rely on preliminary objections despite the clear decision of **Musika Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd. [1969] EA 696.**

Mr. Sindamenya laments, and I agree with him to some extent, in my view, against the present preliminary objections in the following words:

"That a counsel who prefers preliminary objections to every case in front of him/her to hunt for a shortcut winning of any case put to him is a sort of cowardism, a success which obvious is an out-dated sort of winning not warranted by any means in contemporary law arena to stand. That is why so much discouraged by the overriding principle ..."

The 1st and 3rd defendants had two related legal point of objection in respect of the verification clause. The second one reads:

"That the suit is defective on verification clause for being verified by a single party in lieu of both plaintiffs contrary to the governing law on verification."

It is worthy to note here that the preliminary objections were argued by way of written submissions, indeed, this Court ordered the preliminary objections be argued by way of written submissions. The submissions were duly filed.

My determination of the second point of legal objection will determine the fate of the 1st one. On that ground of objection, Mr. Fortunatus Mwandu, learned State Attorney, who submitted for the 1st and 3rd defendants, observed that the 1st plaintiff acted contrary to the law as it indicated she was verifying for both plaintiffs. That is a defective verification which is incurably defective and the Court cannot rely on it. Mr. Mwandu pointed out that that verification contravened Order VI Rule 15 (2) of the Civil Procedure Code, Cap. 33 R.E. 2019 and the case of the **Registered Trustees of the Evangelistic Assemblies of God Tanzania v. Frida**

Mfuko (As administratrix of the late John Henry Felix & 2 Others, Land Case No. 150 of 2020 in which this Court relied on **Kiganga & Associates Gold Mining Company v. Universal Gold NL (2002) T.L.R.** 129 and the case of **Anatol Peter Rwebangira v. The Principal Secretary, Ministry of Defence and National Service and the Attorney General,** Civil Application No. 548/04 of 2018 CAT (unreported) while in the latter case it was ruled that:

"It is thus settled law that, if the facts contained in the affidavit are based on knowledge, then it can be safely verified as such. However, the law does not allow a blanket or rather a general verification that facts contained in the entire affidavit are on what is true according to the knowledge, belief and information without specifying the respective paragraphs."

Mr. Mwandu went on to submit that the plaintiffs are represented by an advocate ... but the same did not sign on the pleading despite being aware of the requirement of the law, while the 1st and 3rd defendant counsel equate it to professional negligence. He then pressed that this was the

plaintiffs' last chance to make amendment of their pleading as they were ordered and he invited this Court to consider the same.

I will start with the last sentence as quoted above which is about the prayer as to the last chance to do amendment of the plaint, if it were so ordered by this Court, the 2nd plaintiff is not included as in the prior ruling of the preliminary objection, the 2nd plaintiff was not a party yet. In fact, I remember to have ruled therein as follows:

"If the plaintiff does not amend the plaint, she should be prepared of whatever outcome if she fails to join properly describe the suit land. The limb of preliminary objection is held not to be sufficient to strike out the suit."

The general claim by the counsel for the 1st and 3rd defendant that I had restricted the plaintiff to further amend the plaint is uncalled for.

Then, I proceed to observe that the case of **The Registered Trustees of the Evangelistic Assemblies of God Tanzania** (supra) is distinguishable to this case as the counsel for the 1st and 3rd defendants did not claim blanket verification in the legal point of objection they raised. The distinction to this case too befalls the case of **Anatol Peter Rwebangira** (supra). Because of the above reasons and in view of the overriding

objective principle, the 2nd limb of the preliminary objection preferred by the 1st and 3rd defendants crumbles to the ground, so does the 1st one. For avoidance of doubt, the case, the decision of this Court cited in rejoinder submission by the counsel for the 1st and 3rd defendants which is **Emmanuel Mlela & 218 Others v Mpanda District Council & 2 Others**, Civil Application No. 3 of 2022 is also distinguishable since the fatal defect therein was on the jurat of attestation which affects the evidence as opposed to the plaint which can be easily amended in accordance with the law.

Next, I consider the legal point of objection raised by the 2nd defendant to the effect that the suit of the 2nd plaintiff is res-judicata against the 2nd defendant. Mr. Simon R. Buchwa, learned counsel for the 2nd defendant, submitted while citing section 9 of the Civil Procedure Code, Cap. 33 R.E. 2019. He explained, that in 2016 the 2nd plaintiff filed an application against the 2nd defendant before the District Land and Housing Tribunal for Mpanda claiming for the every same disputed land, (which actually is false, as it is the 2nd defendant who sued the 2nd plaintiff herein without joining any other person) it was decided in favour of the 2nd defendant herein, the 2nd plaintiff appealed and the appeal was decided in favour of the 2nd

defendant and the 2nd plaintiff herein never challenged the said decision. He implored this Court to restrain the 2nd plaintiff from misuse of the Court and prayed his suit be dismissed as it is devoid of merit.

In reply submission against the submission of the counsel for the 2nd defendant, Mr. Sindamenya, while citing the case of **Karsam v. Critoprogha** [1953] EACA 74 where it was held that in order a case to qualify as res judicata the parties should be the same in the past case and the subsequent one, then, proceeded to argue that:

"... the above provision ... this case is not a res judicata, since it does not refer to the same parties since the annexed case one Daudi Kagoma Bahangaza was a party to the case while on the instant case there are two parties one Johari Ibrahim and Daudi Kagoma Bahangaza therefore by this mixed grill the requirement of matter directly and substantially in issue in a former suit between the same parties totally fails."

I will start considering the relief prayed by the counsel for the 2nd defendant that I dismiss the suit for lack of merit. That is not tenable at this stage where no evidence has been received and analysed by this Court.

In respect of whether the suit is res judicata, I am of the view that, this suit and the alleged one by the 2nd defendant are quite different for several reasons, just as Mr. Sindamenya concise submission. Firstly, it was the 2nd defendant who sued the 2nd plaintiff herein, only. It could have been that the 2nd defendant did it with ill intention. Secondly, in this case there are more parties to the suit than in the prior application. Thirdly, it is the law that the necessary party should be joined. That is even the gist of the argument of the 1st and 3rd defendants in the first set of the preliminary objection which this Court decided on 23/02/2022. I paraphrase the gist of their submission for easy of reference as follows:

"... the suit is incurably defective as the plaintiff has no locus standi to sue the defendants as a result, has no cause of action against the defendants. He stated, she has no locus standi to sue the defendants since she has no any land to claim against the defendants as the land was disposed to Daudi Kagoma Bahangaza on 07/12/2015, and advanced that the right person to sue the defendants is Daudi Kagoma Bahangaza, alternatively, the plaintiff ought to join Daudi Kagoma Bahangaza as co-plaintiff to protect the interest of the purchaser as per Order 1 rule 1 of the Civil Procedure Code, Cap 33, R.E. 2019. He insisted as the land was disposed of to Daudi Kagoma

Bahangaza, it is Daudi who had the locus standi to sue and not Johari Ibrahim Chata."

Further, I find the position of law correct and relevant here as it was stated in **Juma B. Kadala vs. Laurent Mnkande [1983] TLR 103** HC where this Court held:

"... in a suit for the recovery of land sold to the third party, the buyer should be joined with the seller as a necessary party ... non-joinder will be fatal to the proceedings."

It would appear to me, with respect, that the counsel for the 2nd defendant did not appreciate my ruling in the prior preliminary objection that was delivered on 23/02/2022 in this very land case. Had he appreciated it, I believe, he would have not raised the current legal point of objection. It, therefore, fails.

It is for the above reasons and the authoritative case law in **Yakobo Magoiga Gichere v. Peninah Yusuph, Civil Appeal No. 55 of 2017** (CAT) (unreported) where it was held that:

With the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous Amendments)

(No. 3) Act, 2018 [ACT NO. 8 of 2018] which now requires the courts to deal with cases justly, and to have regard to substantive justice; section 45 of the Land Disputes Courts Act should be given more prominence to cut back on over-reliance on procedural technicalities.

I am of the view that the plaintiffs may amend their plaint to conform to the law if they so desire by asking the court for leave to amend the plaint so that it has a proper verification clause and that their counsel signs on the plaint. If they fail to pray for and amend the same, the land case may be struck off the Court's register.

In fine, all the preliminary objections are overruled. In the circumstances of these preliminary objections, each party shall bear their own costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "J. F. Nkwabi".

J. F. NKWABI

JUDGE

16/09/2022