

**IN THE HIGH COURT OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**  
**MISC APPLICATION NO. 417 OF 2022**  
*(Originating from Land Case No. 154 of 2021)*

**BETWEEN**

**DEODATUS R. KATABARO (As administrator of the estate of the late Severine Muhumuza Katabaro) ..... 1<sup>ST</sup> APPLICANT**

**IRENE R. KATABARO (As administratrix of the estate of the late Severine Muhumuza Katabaro) ..... 2<sup>nd</sup> APPLICANT**

**VERSUS**

**CHRISTINE HARIETH MULOKOZI (The Administrator of the Estate of the late ERNEST ABEL MULOKOZI ..... 1<sup>ST</sup> RESPONDENT**

**DAVID CAROL NCHIMBI..... 2<sup>ND</sup> RESPONDENT**

**RASHID MOHAMED SWALEHE ..... 3<sup>rd</sup> RESPONDENT**

**KAMAL IBRAHIM JAFFER ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

**A. MSAFIRI, J.**

On 26/7/2022, the applicants filed this application seeking for the orders that;

1. That this Honourable Court be pleased to join the applicants in this proceedings as a defendant/necessary party in the Land Case No. *154*

154 of 2021 between Christine Harieth Mulokozi the administrator of the estate of the late Ernest Abel Mulokozi vs. David Carol Nchimbi.

2. That the costs of this application be provided by the Respondents.
3. That this Honourable Court be pleased to make any other order it deems fit and just to grant.

At the hearing of application, the applicants were represented by Mr. Amin Mmari, learned advocate, the 1<sup>st</sup> respondent was represented by Mr. Simon Mawalla, learned advocate, and the 2<sup>nd</sup> respondent was represented by Mr. Uforo Mangesho, learned advocate. The 3<sup>rd</sup> and 4<sup>th</sup> respondents were absent despite being served with the application.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents through their advocates did not contest the application so they did not file counter affidavits.

According to the applicants' joint affidavit, the late Severino Muhumuza Katabaro was the lawful owner of the suit property which is also the subject matter in the Land Case No. 154 of 2021 pending before this Court.

The applicants stated that previously they have sued the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents in the District Land and Housing Tribunal of Temeke under *Accts.*

Application No. 247 of 2021. They averred that, while the said Application was pending before the Tribunal, they were informed that another matter has been instituted at this Court by the 1<sup>st</sup> respondent on the same subject matter. That on perusal by the applicants they discovered that indeed there was a case before this Court pertaining the same suit property where the 1<sup>st</sup> respondent had sued the 2<sup>nd</sup> respondent.

The applicants claimed that, being the necessary parties/interested parties on the subject matter in the Land Case No. 154 of 2021, they would like to be joined in the proceedings to protect their interest as lawful owners of the property. They concluded that they are likely to suffer irreparable loss if the prayers sought will not be granted. As stated earlier, the application was not contested by the 1<sup>st</sup> and 2<sup>nd</sup> respondents who are parties to the Land Case No. 154 of 2021.

The 3<sup>rd</sup> and 4<sup>th</sup> respondents were absent, and are not parties to Land Case No. 154 of 2021 on which the applicants seeks to be joined as defendants/necessary parties.

*Adls*

I have given considerable weight to the applicants' affidavit and the pertinent issue is whether the applicants are qualified to be joined as defendants/necessary parties in Land Case No. 154 of 2021.

This application is made under Order I Rule 10 (2) of the Civil Procedure Code Cap 33 among other enabling provisions cited in the chamber summons.

Order 1 Rule 10(2) of the CPC provides thus;

*"The Court may, at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or **whose presence before the Court may be necessary in order to enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit, be added**"*(Emphasis added).

From the above provision of the law, the decisive factor to consider before a person is joined as a defendant in the suit is whether his presence

*Alle*

in that suit will enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit.

In the application at hand, the applicants claims to be lawful owners of the suit property which is the subject matter in Land Case No. 154 of 2021. In the said case the plaintiff who is the 1<sup>st</sup> respondent in this application also claims to be the lawful owner of the suit property. The defendant who is the 2<sup>nd</sup> respondent in this application, also claim to be a lawful owner of the suit property. In the main case, among the reliefs sought by the plaintiff (1<sup>st</sup> respondent) is to be declared the lawful owner of the suit property. In my opinion, if this relief will be granted without joining the applicants as parties to the main suit and they claims also to be the lawful owners of the suit property, it will directly affect them and will create multiplicity of suits.

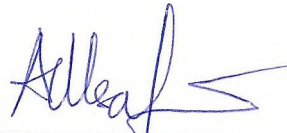
In the circumstance, the applicants have rights to seek to be joined in the main case so that they can have a right to be heard on their claims on the subject matter.

For the above reason, I find merit in the application and allows the same.

*Alle*

The applicants to be joined in the said Land Case No. 154 of 2021 as prayed. No order as to the costs.

Order accordingly.



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**A. MSAFIRI**  
**JUDGE**  
**05/10/2022**