

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 521 OF 2022**

*(Arising from the decision of the District Land and Housing Tribunal for Temeke at Temeke in Land Application No. 136 of 2017 Hon. A. R. Kirumbi-Chairperson)*

**EDWARD PASTORY MAGETA KALENDERO.....APPLICANT**

**VERSUS**

**CHRISTINA THOMAS ITENDA**(the administratrix of the estate of the late  
**ITENDA JIMMY MANONI .....1<sup>ST</sup> RESPONDENT**

**TEMEKE MUNICIPAL COUNCIL.....2<sup>ND</sup> RESPONDENT**

*Date of last order: 4/10/2022*

*Date of ruling: 18/10/2022*

**RULING**

**A. MSAFIRI, J.**

This is a ruling on preliminary objections raised by the 2<sup>nd</sup> respondent the notice of which was filed in court on 22<sup>nd</sup> September 2022 to the effect that;

- 1. The application is incompetent since its subject matter is not in the jurisdiction of the 2<sup>nd</sup> respondent.* *Adelle*

*2. This honourable court lacks jurisdiction to entertain the matter for non-joinder of attorney General as a necessary party.*

When the matter was placed before me for hearing of the above preliminary objections on 4<sup>th</sup> October 2022, the applicant appeared through Mr. Alexander Kyaruzi learned advocate, the 1<sup>st</sup> respondent was represented by Mr. Alphonse Katemi learned advocate while the 2<sup>nd</sup> respondent was represented by Ms. Fidelia Kyando assisted by Anna Shabani learned state attorneys.

Arguing the 1<sup>st</sup> preliminary objection Ms. Kyando contended that the application is incompetent since the subject matter is not in the jurisdiction of the 2<sup>nd</sup> respondent. According to the learned state attorney, the subject matter of the dispute is a land situated on Plot No. 90 Block C, Kigamboni Municipal Council. She contended that Kigamboni is an independent Municipal which was formed by GN No. 462 of 2015 and started in 2016. It is an autonomous authority as it can sue and be sued.

She contended further that the land in dispute is at Kigamboni and Temeke Municipal has no any mandate over the land in Kigamboni

*Alls.*

therefore any order issued by this court against the 2<sup>nd</sup> respondent will not be executed.

On reply Mr. Kyaruzi for the applicant contended that the objection raised by the 2<sup>nd</sup> respondent does not have merits because the application emanates from the judgment and decree in Land Application No. 136 of 2011 at the District Land and Housing Tribunal at Temeke. Mr. Kyaruzi contended further that this is an application for extension of time and not a suit. On further submission the learned advocate for the applicant stated that even if Kigamboni Municipal Council was established by law it has not been specified on the status of the matters previously instituted against the predecessor Temeke Municipal Council.

On rejoinder Ms. Kyando contended that after establishment of the Kigamboni Municipal Council, assets and liability of Temeke Municipality were clearly defined. On further submission, it was stated that as per GN No. 435 of 2020, Temeke Municipal ceased to have jurisdiction over the land located at Kigamboni.

It is not in dispute that in the instant application the applicant is seeking for extension of time to lodge an appeal against the judgment and decree of Temeke District Land and Housing Tribunal in Land Application No. 136

*Allg.*

of 2011. It is also not in dispute that subject matter of dispute is situated at Kigamboni. It is on record that the Application was between the applicant herein (as applicant therein) against the respondents. The said Application was determined to finality on 30<sup>th</sup> October 2017. No doubt Kigamboni Municipal was established before the conclusion of the matter before the trial tribunal. It is common knowledge that Kigamboni prior being declared Municipal vide GN No. 462 of 2015 was part of Temeke Municipal. It is unfortunate that Ms. Kyando could not address the court on the status of the matters that were pending before the trial Tribunal whose subject matter are located at Kigamboni after being declared a Municipal.

The applicant cannot therefore be faulted in preferring the present application because the application arises from the decision with the parties herein. I do not think if it would be proper for the applicant to introduce Kigamboni Municipal Council to the instant application because it was not a party to the application against which the applicant seeks to appeal. For now the 1<sup>st</sup> preliminary objection lacks merits and therefore it is accordingly overruled. *Alls.*

On the second preliminary objection Ms. Kyando contended that the court lacks jurisdiction to entertain the present application as the Attorney General has not been joined as necessary party. According to Ms. Kyando in all proceedings against the Government, the Attorney General must be joined as a necessary party. Temeke Municipal is a Government institution hence failure to join the Attorney General renders the application incompetent and therefore it should be struck out.

On reply, Mr. Kyaruzi was of the view that the 2<sup>nd</sup> preliminary objection has no merits because the Attorney General was not a party to the original suit hence he cannot be added at the stage of an application for extension of time. It was further submitted that the anomaly of non-joinder of a party cannot be determined at this stage but on appeal hence the objection is prematurely filed.

On rejoinder Ms. Kyando reiterated her submission in chief.

It is not in dispute that the Attorney General was not a party to the original application. The said application was determined to finality before coming into force of Misc. Written Laws Misc. Amendment Act No. 1 of 2020 referred to me by Ms. Kyando. I am of the settled opinion that as the

*Alls.*

matter before the trial Tribunal commenced and determined to finality the issue of non-joinder of the Attorney General cannot be raised at this stage.

However if the Attorney General thinks he has any interest in the present matter he should have resorted to Section 6A of the Government Proceedings Act [CAP 5 R.E 2019]. The said Section gives powers to the Attorney General to intervene in any matter instituted against any local government authorities.

In upshot and for the foregoing all the preliminary objections raised by the 2<sup>nd</sup> respondent are hereby overruled. No order for costs.



**A. MSAFIRI,**

**JUDGE**

**19/10/2022**