

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 114 OF 2022

ABUU SADIKI LEMA PLAINTIFF

VERSUS

ILALA MUNICIPAL DIRECTOR 1st DEFENDANT

THE DIRECTOR GENERAL

TANZANIA AIRPORTS AUTHORITY 2nd DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

Date of last Order: 13.10.2022

Date of Ruling: 24.10.2022

A.Z.MGEYEKWA, J

On 24th October, 2022, the Plaintiff herein, instituted this suit against the Defendants seeking the following eight reliefs as follows:-

- a) An Order compelling the Defendants to physically hand over Plot Numbers 773 and 782, Block "H" situated at Pugu Mwakanga in Ilala Municipality, in Dar es Salaam unconditional;

- b) Compensation of the loss of use of the land to the tune of Tanzania Shillings Five Hundred Million (TZS. 500,000,000.00);
- c) An order compelling the Defendants jointly and severally to pay interest on item (a) herein above at the rate of 21% from February, 2020 till the date of payment;
- d) Declarations that the acts of the 1st and 2nd Defendants were illegal;
- e) Payment of General Damages is to be assessed by Court.;
- f) Payment of interest on the decretal sums at the Court rate of 12% p.a. from the date of Judgment to the date of full and final satisfaction of the decree;
- g) Costs of the suit;
- h) Interest on costs at the rate of 7% annum from the date of Judgment till full and final payment thereof and;
- i) Any further or other reliefs, as this Honourable Court deems fit, proper, and just.

The suit stumbled upon preliminary objections from the Defendants who raised four points of Preliminary Objection as follows:-

1. The suit is bad in law and unmaintainable for impleading wrong parties contrary to Section 14 of the Local Government (Urban Authorities) Act, Cap. 288 R.E. 2002,

2. The suit is bad in law and unmaintainable for suing a non-existent party contrary to the Government Notice No. 1045 A published on 22nd December, 2020.
3. The verification clause is bad in law for failure to disclose the name, place, and date of verification contrary to the provisions of Order VI, Rule 15 (3) of the Civil Procedure Code, Cap. 33 [R.E. 2019].
4. The suit is bad in law and unmaintainable for non-joinder of parties contrary to Order 1 Rule 3 of the Civil Procedure Code, Cap. 33 [R.E. 2019].

When the matter was called for hearing of the preliminary objection on 21st September, 2022, the Plaintiff enlisted the legal service of Mr. Innocent, learned counsel in the absence of the Defendants. By the consent of this court, the parties argued the application by way of written submissions whereas, the Defendants filed their submission in chief on 28th September, 2022, and the Plaintiff filed his reply on 5th October, 2022. The Defendants waived their rights to file a rejoinder.

As the practice of the Court has it, we had to determine the preliminary objection first before going into the merits or demerits of the suit.

The learned State Attorney opted to submit on the first and second points of objection and abandoned the third and fourth objections. The learned counsel for the Defendants combined the two points of objection and

started his onslaught by submitting that both the Ilala Municipality Director and the Director General of Tanzania Airports Authority have been sued as 1st and 2nd Defendants. However, they are wrong parties and non-existent legal persons in the eyes of law. He submitted that Ilala Municipal is a corporate body capable of suing or being sued in its own name, likewise, the Tanzania Airports Authority is a corporate body capable of suing and being sued in its own name. He went on to submit that Ilala Municipal Council, is a corporate thus it has the right to sue and be sued in its own name. To support his submission he cited the provision of section 14 (1) (b) of the Local Government (Urban Authorities) Act, Cap. 288 of 1982.

The learned State Attorney invited this Court to make reference to the case of **Dotto Dofu v The District Executive Director**, Civil Case No. 233 of 2016, High Court of Tanzania at Dar es Salaam (unreported). He submitted that the Court at page 2 while citing with approval the case of **Deonatus Mkumbo and Another** stated that:-

"The plaintiff has sued District Executive Director. This is not a legal person capable of being sued. It is the District Council itself which ought to have been sued."

He also referred this Court to the case of **Respicius Emilian Mwijage v The Municipal Director, Ilala Municipal, and 2nd others**, Land Case No. 27 of 2021. HC (unreported). He continued to submit that Ilala Municipal Council, is a non-existing legal person in law since the same was duly dissolved by

Notice in a Gazette dated 22nd December, 2020. He added that the said GN conferred the Ilala Municipal Council with a City status. To support his submission he cited Order 2 of the Local Government (Urban Authorities) (Conferment of City Status on Ilala Municipal) Notice, 2020 which reads:-

"Notice is hereby given that after the expiry of this Notice it is intended to confer on the urban area under the Ilala Municipal Council as described in the Schedule to the Certificate of establishment of Ilala Municipal Council, reproduced in the Schedule to this Notice, a City Status under the jurisdiction of a City Council."

The learned counsel for the Defendants invited this Court to strike out the Land Case for being incompetent in the eyes of law. The learned counsel went on to submit that there is no other remedy to save the Plaintiff with an immediate redress other than striking out the suit. He added that even the notice which is required under the Government Proceedings Act in suing a Government is defective because it was directed to Ilala Municipal Council which does not exist in the context of the laws of Tanzania. to buttress his contentions he referred this Court to the case of **Director NSSF v Consolata Mwakisu** No. 329 of 2017 [2018] TZ CA (unreported) which was cited in the case of **Respicius Emilian Mwijage** (supra) where the Court at pages 6-7 said the following:-

"It is stated that proper position is to dismiss only competent application, those which suffer from material defects are to strike out."

In his reply, the learned counsel for the Plaintiff, contended that the objection is baseless. Mr. Tairo argued that the persons who are sued are the corporate bodies and the Plaintiff did not sue the Director of the first and second Defendant's personally rather are mentioned as chief accounting officers of the first and second Defendants.

Mr. Tairo went on to submit that addressing the Ilala Municipal Director and the Director General of Tanzania Airports Authority does not occasion any miscarriage of justice or violation of any principle of the law as the same is curable, the Court is empowered to order amendment provided the fact that the right to sue survives. To buttress his submission he referred this Court to section 97 of the Civil Procedure Code Cap.33 and the case of **Abdullatif Mohamed Hamis v Mehboob Yusuf Osman & Fatna Mohamed,, Civil Revision No.6 of 2007**(unreported). The Court of Appeal held that:-

" The joinder of a necessary party to a suit is procedural in nature and accordingly the same ought to have been done at the time of trial, through the application of Order 1 Rule 10 (2) which goes 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 a 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 to adjudicate upon and settle all the questions involved in the suit, be added.”

It was his submission that the position of the law is very clear regarding the substitution of a party with the power or necessary party as enshrined in the above-cited provision of the law. It was his submission that the objections do not conclude the matter, hence the same be disregarded. The learned counsel submitted in length on the issue of overriding principles.

He continued to submit that Courts are required to focus on substantial justice and avoid technicalities in dispensing justice. To support his submission he by referring this court to the Written Laws (Miscellaneous Amendments No.3) Act of 2018 and the case of Israel **Malegesi & another v Tanganyika Bus Service**, Civil Application No. 172 of 2020 (unreported). He urged this Court in case it will find that the names of the

Defendants are not properly captured then it can order amendment to reflect their right status in order for this Court to substantially determine the real issues in question. He insisted that the objection raised is baseless.

In conclusion, the learned counsel for the Plaintiff beckoned upon this court to dismiss the preliminary objection with costs.

I have carefully summarized the submissions made by learned counsels for the Plaintiffs and Defendant concerning the first preliminary objection that the suit is bad in law for impleading wrong parties contrary to section 14 of the Local Government (Urban Authorities) Act Cap. 288

I join hands with the Defendant's objection that Ilala Municipal Council does not exist. The same was dissolved by a Notice of Gazette dated 22nd December, 2020.

Moreover, the record reveals that the Plaintiff has sued the 2nd Defendant, Director General Tanzania Airports Authority who is the wrong party. I am saying so because he is being sued in lieu of the Tanzania Airports Authority, only the corporate body is capable to sue or being sued in their name. See section 14 (1) (b) of the Local Government (Urban Authorities) Act, Cap. 288 [R.E 2019]. For ease of reference, I reproduce section 14 of the Act as hereunder:-

14. Urban authority to be a body corporate and to be graded

(1) Every urban authority established or deemed to have been established under this Part, and in respect of which there is in existence a certificate of establishment furnished under section 9, shall, with effect from the date of commencement of the establishment order, be a body corporate, and shall—

(a) have perpetual succession and an official seal;

(b) in its corporate name be capable of suing or being sued;

[Emphasis added].

The above provision of the law is applicable in the matter at hand, as rightly pinpointed by the learned State Attorney, the 2nd Defendant is a corporate body capable of suing and being sued in its own name.

What is the consequence, Mr. Tairo urged this court to order the Plaintiff to amend the Plaint instead of striking it out. The issue Airports Authority could be amended because we believe that they were issued with a 90 days' Notice. However, the City Council must be issued within 90 days. Notice. I am guided by section 190 (1), (a), and (b) of the Local Government Proceedings Act, Cap.5, as amended by the Written Laws (Miscellaneous Amendments) Act No.1 of 2020. Section 31 of the Written Laws (Miscellaneous Amendments) Act No.1 of 2020 states that:-

*“ Section 31. The principal Act is amended in section 190, by deleting subsection (1) and substituting for it the following: “(1) **No suit shall***

be commenced against a local government authority- (a) unless a ninety days' notice of intention to sue has been served upon the local government authority and a copy thereof to the Attorney General and the Solicitor General; and (b) upon the lapse of the ninety days period for which the notice of intention to sue relates." [Emphasis added].

Applying the above provision it is clear that in any suit which involves the local government, the same must be issued with a 90 days Notice. Therefore, it is a mandatory requirement for the Plaintiffs to issue a 90 days Notice to the City Council.

For the sake of clarity, I have read the case of **Abdullatif Mohamed Hamis** (supra) issue for discussion was the joinder of necessary parties to a suit. Unlike the cited case of **Abdullatif Mohamed Hamis** (supra), the matter hand involves a party who is not summoned to appear in Court. The City Council is not served at all. Therefore, the overriding objective principle cannot be applied in the circumstances of this case. I understand that this principle is a vehicle for the attainment of substantive justice, however, the same should not be applied to circumvent the mandatory rules of the Court. See the cases of **Stanely Ng'ethe Kinyanjui v Tony Ketter & 2 others** [2015] eKLR, and **Martin D. Kumalija & 117 Others v Iron and Steel Ltd**, Civil Application No. 70/18 of 2018 (unreported).

Consequently, I am not in accord with Mr. Tairo's submission that the omission can be cured by invoking the overriding principle.

As all is said and done, I sustain the first preliminary objection and proceed to strike out Land Case No. 11 of 2022. Based on the Defendant's counsel attendance on record, the Plaintiffs will pay half the costs of the case taxable by the Taxing Master.

Order accordingly.

DATED at Dar es Salaam this 24th October, 2022.




A.Z.MGEYEKWA

JUDGE

24.10.2022

Ruling is delivered on 24th October, 2022 via video conferencing whereas Mr. Innocent Tairo, learned Counsel for the Plaintiff, and Acra Bene, learned State Attorney were remotely present.




A.Z.MGEYEKWA

JUDGE

24.10.2022