

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

CIVIL REVISION NO. 27 OF 2022

(Originated from Application No. 503 of 2020 District Land and Housing Tribunal for
Kinondoni at Mwananyamala)

ZAHARANI SAID YUSUPHAPPLICANT

VERSUS

KASINDA TEMBELIUS MDEMU1ST RESPONDENT
FINCA MISCROFINANCE BANK LTD2ND RESPONDENT
GADAU AUCTION MART & COMPANY3RD RESPONDENT

R U L I N G

Date of last Order:03/10/2022

Date of Ruling:06/10/2022

K. D. MHINA, J.

By way of chamber summons, the applicant has moved this Court under Section 43(1) (a) of the Land Disputes Court Act, Cap. 216 R. E. 2019 (The LDCA) for revision.

He is seeking an order of this Court to give directions in respect of the order of the District Land and Housing Tribunal ("the DLHT") for Kinondoni at Mwananyamala in Application No. 503 of 2020.

The Application is supported by the Affidavit of Tenzi Antony Nyunulwa, holding the power of Attorney for the Applicant.

The Applicant is seeking directives of this Court on whether;

- i. An amendment that changes the nature of the suit or defence itself is allowed;
- ii. An amendment which prejudice or causes injustice to the other side by taking away from the other side a legal right or defense in his favour is allowed;
- iii. An amendment not made in good faith or made to circumvent the other party's defence or attempt to outwit the opponent is allowed.

What triggered this Application is not too complex to narrate.

On 17th November 2020, the Applicant filed Application No. 503 of 2020 at the DLHT for Kinondoni against the respondents, seeking a declaration that he was a lawful owner of the land located at Monduli, Mabwepande within Kinondoni Municipality.

On 30th November 2020, the 2nd Respondents, opposing the application, filed the written statement of defence (WSD), which contained a notice of a preliminary objection that the matter was res-judicata.

On 23rd June 2021, the counsel for the 2nd Respondent, in the presence of Mr. Tenzi Antony, who held a power of attorney for the applicant, prayed to amend the WSD, particularly the preliminary objection.

The Tribunal granted that prayer and ordered the 2nd Second to file the Amendments within 14 days.

When the matter was scheduled for the hearing of preliminary objection on 8th October 2021, the Applicant objected to the amended WSD.

The reason for the objection was that in the amended WSD, the 2nd Respondent had abandoned his earlier point of preliminary objection on res-judicata and raised the new point that the application was improperly brought before the tribunal.

Upon hearing the arguments for and against the objection, the Tribunal found no merit and dismissed the objection.

At the hearing of this application, Mr. Robert Massey, learned Counsel, appeared for the 2nd Respondent while Mr. Tenzi Antony holding a power of

attorney, appeared on behalf of the Applicant. The 1st and 3rd Respondents were absent despite being dully served by affixation.

When addressing the Court in support of the Application, Mr. Tenzi stated that the order of the Tribunal allowing the amendment did not specify by giving reasons in writing as to why it allowed the amendments. In connection with that, the amendment was allowed without specifying the limits of what was supposed to be amended.

In his further argument, he said the amendment, which affects the nature of the suit or defence, is not allowed. At the Tribunal, the 2nd Respondent point of preliminary objection was res-judicata, but when the WSD was amended, it completely changed the nature of the defence.

He went on by stating that the amendment done by the 2nd Respondent was malafide with the aim to circumvent the Applicant's defense and infringes his rights.

In conclusion, he cited **Sarkar on Code of Civil Procedure**, 11th Vol at page 1068 and **Morgan Law of Pleadings** at page 150 and said the texts set parameters within which the amendments are allowed. Therefore, the amended version of the WSD violates the law.

In reply, Mr. Massey advocate submitted that the amendment was done in respect of the preliminary objection and not the written statement of defence. Further, the amendment was properly filed and could dispose of the matter. To cement his argument, he cited **A/S Noremco Construction vs. Dawasa** (HC -Commercial Division) Commercial Case No. 47 of 2009.

In his further submission, Mr. Massey stated that the amendment of the preliminary objection was on point law and was done in good faith without contravening any law.

He further argued that Order 6, Rule 16 of the CPC allows the amendment of the WSD, and the Chairman of the Tribunal properly allowed the amendments.

In rejoinder, Mr. Tenzi stated that what the counsel for the 2nd Respondent submitted was on the preliminary objection and powers to grant amendment. But the issue before this Court is that the amendment was granted improperly.

Further, he said the counsel for the 2nd Respondent conceded that the amendments were granted without any limit.

Having heard both parties, the issue of controversy is the amendments of the WSD granted by the Tribunal.

The starting point for this is to peruse the two WSDs, and the order of the Tribunal granted the amendment.

Upon perusing the two WSDs, I found that the first one was filed on 30/11/2022, and the amended one was filed on 05/07/2021. The difference between the two was on the filing dates and the part which contained the notice of preliminary objections.

In the first WSD, the notice of Preliminary Objection raised was:-

"The Application was res- judicata"

While in the amended WSD, the Notice of Preliminary Objection raised was:-

"The Application was improperly brought as the same had already been dismissed by the Tribunal."

Flowing from above, the question is whether the DLHT has the mandate to allow amendment of pleadings and if yes, what are the parameters.

In exercising its powers, the DLHT is governed and regulated by the Land Disputes Courts (The Land and Housing Tribunal) Regulations 2003 (The Regulations).

Concerning pleadings, the Regulations are silent on powers to amend; therefore, the Regulations are inadequate.

In case of inadequacy, Section 51(2) of the LDCA offers a "leeway" in the event of a lacuna in the Regulations. That leeway is to resort to the Civil Procedure Code [Cap. 33 R. E. 2019] ("the CPC").

The CPC, precisely Order 6, Rule 17, is relevant to the amendments of pleadings.

"17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in a such manner an on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question of in controversy between the parties."

As I said earlier, what was amended was a Notice of Preliminary Objection. All facts remained the same between the first and the amended WSD.

In **Jovent Clavery Rushaka & Another vs. Bibiana Chacha**, Civil Appeal, No. 236 of 2020 (Tanzlii), the Court of Appeal Tanzania held that:-

"Once pleadings have been filed, they can only be altered or amended with leave of the Court. The Court will set the parameters within which the alteration or amendments will be made, hence the manner and terms which ensure justice to the parties.

Therefore, from the above-cited provision of law and the case law, there are some principles set out governing the amendment of pleadings.

These are;

One, the amendments are allowed at any stage before Judgment.

Two, the amendment shall aim to achieve justice for the parties, and

Three, the Court is required to set parameters within which the amendment will be made.

I will go through each principle to test its applicability in the application by looking at the reasons and submissions for and against it.

One, the question is when did the 2nd respondent prayed for the amendment.

The answer is clear; the record indicates that it was before the hearing commenced and when the applicant had yet to file a reply to WSD.

Therefore, though amendments are allowed at any stage of the trial but in this matter, the counsel for the 2nd Respondent requested the same at the earliest moment.

Two, the applicant submitted that the amendment affects the nature of his defence, and it was done with malafide. While on the other hand, the counsel for the 2nd Respondent stated that what was amended was the question of law and was done in good faith.

Having gone through the arguments for and against this issue, I don't think raising a question of law in a case amount to bad intentions. That is allowed by the law, and it is a normal procedure.

Furthermore, the applicant did not state either how the amendment of a notice of Preliminary Objection aimed at infringing his rights or affecting the nature of his defence or how the amendment was done with malafide

Therefore, there is no prejudice proved by the Applicant, which will affect achieving justice to the parties or cause injustice to the parties.

Three, the applicant argued strongly that while granting the order of amendment, the Tribunal did not set the parameters of what should be amended.

For this, I let the Tribunal proceedings date 23rd July 2021 speak for itself:-

"23/07/2021

Akidi – Mwenyekiti – L. R. Rugarabamu

Muombaji/ Hayupo/Tenzi Anthony (Ndugu)

Wajibu maombi 1. Hayupo

2. Hussein Jeremia (Wakili)

3. Hayupo

Tenzi Anthony

Wadaiwa wa kwanza na tatu wamepelekewa wito.

Wakili Jeremia (Wakili)

Tunaomba kufanya marekebisho ya WSD ili niweze kuleta pingamizi la awali ambalo ni sahihi.

BARAZA

- i. Mdaiwa wa 1 na 3 wito utangazwe kwenye gazeti*
- ii. Mdaia wa pili alete marekebisho ya utetezi ndani ya siku 14 kuanzia leo*
- iii. Kutajwa.*

28/07/2021

SAHIHI

MWENYEKITI

It is clear from the record that what was prayed to be amended by the counsel was the preliminary objections, and the Tribunal granted as it is within 14 days.

Therefore, the perimeters were on the;

- i. Amendment of the notice of preliminary objection
- ii. Time limit of 14 days to amend

In complying with that order, the 2nd Respondent filed the amended WSD with amendments on the notice of preliminary objection, and it was within 14 days.

Therefore, the allegations by the applicant are unmeritorious, considering that the amendments were correctly granted.

In the final analysis, this application lacks merit, and the intervention of this Court is to dismiss it with costs.

It is so ordered.




K. D. MHINA
JUDGE
06/10/2022