

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

MISC. LAND CASE APPLICATION NO. 769 OF 2022

RUTH JACKSON MPUNDA..... APPLICANT

VERSUS

**THE COMMISSIONER FOR LANDS, MINISTRY OF LANDS AND
HOUSING AND HUMAN SETTLEMENT**

DEVELOPMENT.....1ST RESPONDENT

**THE DISTRICT EXECUTIVE DIRECTOR, KIGAMBONI MUNICIPAL
COUNCIL.....2ND RESPONDENT**

YUSUPH MZEE NGORORO.....3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

RULING

Date of Last Order: 13.12.2022

Date of Ruling: 25.01.2022

T.N. MWENEGOHA, J

The applicant sought for an injunction order against the 1st-4th respondents and any person working under their instructions from making any attempt to dispose the applicant's landed property located at Magogoni Area, Plot No. 618, Block G within Kigamboni Municipality in Dar Es Salaam Region, pending the filing and full determination of the applicant's intended suit. The instant case has been preferred under section 2(3) of the Judicature and Application of Laws Act, Cap 384, R.E 2019, Order XXXVII Rule 1(a) and Rule 2, sections 68 and 95 of the Civil

Procedure Code, Cap 33 R.E 2019. The same was supported by the affidavit of the applicant herself.

Moving against the Application at hand, Mr. Urso Luoga, counsel for the 1st, 2nd and 4th respondents raised three preliminary objections as follows;

1. That, the applicant is abusing court process.
2. That, the suit is bad in law for suing a wrong party.
3. That, there is no cause of action against the 1st, 2nd, and 4th respondents.

Hearing of the objections was by way of written submissions and exparte against the applicant as she failed to file her reply submissions as ordered per order of this Court of 13/12/2022.

I will begin my analyzing with the 2nd objection. Mr. Luoga argued in his submissions that, according to the Local Government (Urban Authorities) Act, Cap 288, R.E 2002, under section 14(1), it has been provided that, every urban authority established under the said law has a legal personality, perpetual existence and has the capacity to sue and be sued in its own name. therefore, suing the District Executive Director of Ubungo Municipal Council as a 2nd respondent is wrong in this case.

That, the same position was taken in the case of **Elizabeth Simon Mwakapangala (Adminstratix of the Estate of the late Said Shomari) versus Municipal Director, Ilala Municipal Council & Another, Misc. Land Application No. 580 of 2020, High Court of Tanzania at Dar es Salaam.**

Beyond all doubts, I agree with Mr. Luoga. The 2nd respondent is a wrong party, joined in the case at hand. The District Executive Director of Ubungo Municipal Council has no capacity to sue or be sued on behalf of

the Municipal Council. Let me quote the provisions of section 14 1 (b) of the Local Government (Urban Authorities) Act, Cap 288, R.E 2002, which provides as follows;-

14. Urban authority to be 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-

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

See also **Elizabeth Simon Mwakapangala (Adminstratix of the Estate of the late Said Shomari) versus Municipal Director, Ilala Municipal Council & Another supra.**

On the basis of authorities cited above, I find merits in the 2nd objection, hence the same is sustained. Considering the fact that Ubungo Municipal Council is a necessary party in this Application as per the content of the affidavit in support of the Application, her absence therefore affects the entire Application. The same cannot proceed into merits. Further, the findings obtained in the 2nd objection herein above, are capable of disposing the entire Application, hence I see no need to deal with the 1st and 3rd objections.

In the event, the application is hereby struck out with costs.

Ordered accordingly.





**T.N MWENEGOHA,
JUDGE,
25/01/2023**