

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

LAND CASE NO.131 OF 2018

RASIA HARUBU SALIM (Administratrix of the Estate of
HARUBU SALUM MSAMALA..... **PLAINTIFF**

VERSUS

HALIMA MSHINDO.....**1ST DEFENDANT**
KURUTHUMU MSHINDO.....**2ND DEFENDANT**
HASHIM KAMBI.....**3RD DEFENDANT**
SALUM KINDANMBA.....**4TH DEFENDANT**
JAFRA INVESTMENT & SUPPLIES CO. LIMITED...**5TH DEFENDANT**
FELIX NDAZI.....**6TH DEFENDANT**
TEDDY W. MKIZU.....**7TH DEFENDANT**
JOHN P. NGOKO.....**8TH DEFENDANT**
WILE P. CHEDIELY.....**9TH DEFENDANT**
JOHN DANIEL.....**10TH DEFENDANT**
ADAM MPEKA.....**11TH DEFENDANT**
BARAKA SAMSON.....**12TH DEFENDANT**
HEMED ABSUFIAN.....**13TH DEFENDANT**

R U L I N G

Date of Last Order: 10.02.2022
Date of Ruling: 15.03.2022

T. N. MWENEGOHA, J.

The ruling follows the act of the plaintiff's counsel one Abraham Hamza Senguji, to amend the plaint contrary to the orders of this court. It is on record that, on the 20th October, 2021, Mr. Senguji acting for the plaintiff,

sought a leave to amend the pleadings in this case, under Order VI Rule 17 of the Civil Procedure Code, Cap 33 R. E. 2019. His intention as stated in his prayer was to add more names following the information that there were people who have trespassed on the suit land and built their houses. Initially, the original plaint contained only three defendants, who are Felix Ndazi as the 1st defendant, now the 6th defendant, Salum Kindamba and Hashimu Kambi (3rd and 4th defendants here in above).

Surprisingly, apart from adding the parties as appearing herein above, the amended plaint came with changes as to the monetary claims from the plaintiff against the defendants. Previously, the plaintiff claimed a total of 270, 000,000.00 as general damages from the defendants jointly. As of now, the amended plaint appears with a new claim of 400,000,000.00, being compensation resulting from the destruction of crops and trees on the land trespassed upon by the defendants.

Above all, the principal parties have changed. At the beginning, the case was between the plaintiff and Felix Ndazi and 2 others. Instantly, it is between the plaintiff versus Halima Mshindo and 12 others. It is from this background the Court ordered the parties to address it on the maintainability of the case before it. The order was complied with by the counsels for the parties who preferred to address the court orally.

Mr. Senguji for the plaintiff maintained that, the amendments were necessary and were made according to Order VI Rule 17 of the Civil Procedure Code, Cap 33, R. E. 2019. The said provision, allows the parties at any stage of the proceedings, to amend the pleadings for the purpose of determining the matters in controversies in the case. The same position is found under section 97 of the same law. He insisted that, he had to add all the persons concerned in the dispute without leaving anyone. That, they

are proper parties, hence they will enable the court to determine the issue at hand properly.

His arguments were supported by the case of **Juma B. Kadala versus Laurent Mkande, TLR 1983, 103** and also **Suryakant D. Ramji versus Servings and finance Ltd & others, TLR 2002, 121**. Mr. Senguji concluded his arguments by insisting that, if the Court is of the opinion that the amended plaintiff contravenes the law, then it should invoke the provisions of Order XXIII Rule (b) which allows the plaintiff to withdraw the case with a leave to refile.

In reply, Advocate Auni Chilamula for the 1st-5th defendants resisted the maintainability of the amended plaintiff. He insisted that the same has changed the entire suit by changing the principal defendant from Felix Ndazi to Halima Mshindo. Moreover, the reliefs and claims prayed by the plaintiff have changed from 270 million to 400 million. Therefore, the nature and character of the previous suit has changed completely. Furthermore, changing of the principal defendant causes a breach of procedural rules, because the matter before amendment of pleadings has already reached the Final Pre-trial Conference. As we speak, the matter cannot proceed if the principal defendant was not engaged in mediation. The counsel for the 1st -5th defendant went on to argue that, the cases referred by the plaintiff's counsel are distinguishable in this case. Above all, the 1st and 2nd defendants in the amended plaintiff were added as Administratrix of the estate but such information is not reflected in the plaintiff.

In his rejoinder, Mr. Senguji maintained that, they were allowed by the order of the court to make amendments of the pleadings, therefore the Court should accept the amendments.

After deliberating from the submissions of the parties, I agree that it is settled law that amendments of pleadings can be at any stage of the proceedings. However, such amendments should only be for the purpose of determining the real questions in controversy between the parties, and can be made without causing injustice to the other side, see **Dr Fortunatus Lwanyantika Marsha versus Dr William Shija and AG; Misc. Civil Cause No 15 of 1995: High Court of Tanzania at Mwanza (Unreported)**. This is also the spirit of Order 6 Rule 17 of the Civil Procedure Code. For easy reference, I will reproduce the said provision as here under; -

"The court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and 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 questions in controversy between the parties".

Our jurisprudence on the other hand is very clear that, when the pleadings are amended, to introduce new or fresh matters, or facts into the case, or if such amendment create inconsistencies in the pleadings, it will not be allowed, see **Dr Fortunatus Lwanyantika Marsha (supra)**.

On the face of it, the amended plaint at hand has contravened the rules regarding to the amendment of pleadings as provided for in the two authorities here in above. The amended plaint has come up with new facts which have changed the entire case as claimed by the counsel for the 1st - 5th defendants.

Either, the amended pleadings also go against the orders of this Court given on the 20th of October, 2021. On the material date, the plaintiff's counsel prayed for and was granted leave to amend the plaint with regard to

addition of names of the defendants. But he went further into changing the claims in the said plaint, something which he was not given any leave whatsoever to do so. This is a mistake on part of the plaintiff that cannot go unchecked by the Court. It is because the permission to amend the plaint emanated from the Court Order which was to be observed strictly by the counsel for the plaintiff. It was held in **Tanzania Harbours Authority versus. Mohamed R. Mohamed (2002) TLR 76**, that:

"Court orders are binding and are meant to be implemented. They must be implemented. If such orders are disrespected, the system of justice will be rendered useless and it will create chaotic that everyone will decide to do anything that is convenient to him,the court is dully bound to make sure that, rules of the Court are observed strictly and it cannot aid any party who deliberately commit lapse".

For the foregoing reasons, I find the amended plaint to be fatally defective. The same is unmaintainable and it is here by struck out so is the entire case.

No order as costs.

Dated at Dar es Salaam this **15th** day of **March, 2022**.



T. N. Mwenegoha
T. N. MWENEGOHA

JUDGE