

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

**LAND CASE NO. 16 OF 2020**

**ABBAS JUMA MTEMA..... PLAINTIFF**

**VERSUS**

**TED FRANK SILKILUWASHA.....1<sup>ST</sup> DEFENDANT**

**KACHETI MUBA @MOHAMED KACHETI.....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

*Date of Last Order: 25.05.2022*

*Date of Ruling: 29.06.2022*

**T. N. MWENEGOHA, J.**

This ruling follows a preliminary objection by the 1<sup>st</sup> defendant on point of law that, the suit is incompetent for failure to join the Ministry of Lands and Human Settlement Development as a necessary party. Advocate Richard Kihara, who appeared for the 1<sup>st</sup> respondent, has argued in his written submissions that, the plaintiff has sued the 1<sup>st</sup> defendant and has claimed that he is a legal owner of the suit land, a farm measuring 15 acres, located at Vikawe, Kibaha within the Coast Region.

However, at the same time, the plaintiff claims further that, the 1<sup>st</sup> defendant has resurveyed the suit land and acquired title over it. It is on the basis of these facts, as contained in the plaint, the 1<sup>st</sup> defendant's counsel was of the view that, a necessary party is missing in the instant

case. That is the Ministry of Land and Human Settlement Developments. Hence Order 1 Rule 10(2) of the Civil Procedure Code Cap 33 R. E. 2019 has to be complied with. He cited the case of **Leonard Peter vs. Joseph Mabao and 2 Others, Land Case No. 4 of 2020, High Court of Tanzania at Mwanza (unreported)**.

In reply, Mr. Lutufyo Mvambangu, learned counsel for the plaintiff submitted that, the objection is devoid of merits and should be dismissed with cost as the same was not filed at earliest possible time, subject to **Order I Rule 13 of the Civil Procedure Code, Cap 33, R. E. 2019**. Mr. Lutufyo maintained that, in the case at hand, there is no need of joining the Ministry of Land and Human Settlements Development simply because is not privy to plaintiff's claim nor the reliefs claimed by him. After all, non-joinder of the said party cannot vitiate determination of this suit as stated under **Order I Rule 10 of the Civil Procedure Code, Cap 33 R. E. 2019** which is also supported by the case of **Leonard Peter vs. Joseph Mabao and 2 others** (supra). The Ministry of Land and Human Settlement Development can still be called as a witness or the court can invoke the provision of **Order, I Rule 9 of the Civil Procedure Code, Cap 33 R. E. 2019** and rectify the anomaly by an order of amendment of the plaint.

In rejoinder, Mr. Kihara argued that, the proposition by the plaintiff's counsel of joining the Ministry of Land and Human Settlements Developments by amending the plaint is not viable, the same will contravene the mandatory provisions of **Section 6(2) of the Government Proceedings Act, Cap 5 R. E. 2019**.

Upon going through these arguments by both counsels for the 1<sup>st</sup> defendant and the plaintiff herein above, the question in need of

determination is whether the Ministry of Land and Human Settlements Developments is a necessary party in this case and if so, whether the same can be added through an order of amendment of the pleadings on part of the plaintiff.

My answer is simply, yes, the Ministry of Land and Human Settlements Developments is a necessary party to the case at hand. The basis of my findings is on paragraph 7 of the amended plaint where the plaintiff has stated as follows; -

*"That, it was also discovered that, the 1<sup>st</sup> defendant has re-surveyed the suit land and acquired a certificate of occupancy in respect of the suit land knowing that the same has been initially surveyed and owned by the plaintiff."*

Simply, what I have noted from the above quoted paragraph, the 1<sup>st</sup> defendant has a tittle already of the land in dispute under his possession. If that is the case, then the land authorities are to be involved in the dispute to help this court determine the dispute between the parties and later execute it by handling the said land to the rightful owner so declared by this court. Without these authorities, this case cannot be effectively entertained and fully determined. Therefore, this objection has merits as it is well settled law that, in land disputes, non-joinder of a necessary party is fatal, **Leonard Peter and Joseph Mabao and 2 others** (supra).

As for an alternative proposed by the plaintiff's counsel that, the court give an order of amendment of the plaint to add the Ministry of Land and Human Settlements Development, this too is not possible. As it a government Institution, the provisions of Section 6(2) of the Government Proceedings Act, Cap 5 R. E. 2019 must be complied with.

In the event, the objection is sustained and the case is struck out accordingly with costs.

It is so ordered.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**29/06/2022**