

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT MOROGORO**

CIVIL CASE NO. 05 OF 2022

NAHEDI UKILE CHENGULA PLAINTIFF

VERSUS

HALMASHAURI YA KIJJI CHA MSHIKAMANO ... 1ST DEFENDANT

DISTRICT EXECUTIVE DIRECTOR

OF KILOMBERO2ND DEFFENDANT

ATTORNEY GENERAL3RD DEFENDANT

TANZANIA ELECTRICK SUPPLY COMPANY.....4TH DEFENDANT

RULING

Hearing date on: 14/6/2022

Ruling date on: 16/6/2022

NGWEMBE, J:

The plaintiff in this suit is seeking among others for declaratory orders and payment of specific damages of TZS. 20,000,000/= general damages, interest and costs of the suit. In the cause of pleadings, the defendants upon filing their written statement of defence, also they filed one ground of preliminary object to the effect that *the plaint does not disclose cause of action against the 2nd defendant.*

Usually, when an objection is raised in a pleading, same must first be determined prior to considering the suit on its merits. This position has been repeated in various decisions, including in the case of **Shahida Abdul Hassanali Vs. Mahed M.G. Karji, Civil Application No. 42 of 1999, Thabit Ramadhani Maziku & Another Vs. Amina Khamisi Tyela & Another, Civil Appeal No. 98 of 2011** where the Court of Appeal held:-

"the law is well established that a court seized with a preliminary objection is first required to determine that objection before going into the merits or the substance of the case or application before it"

Since it is a settled principle of law that an objection must be heard as soon as it is raised, I proceeded to invite the disputants to address the court on this point of objection. The objector/defendants were represented by learned State Attorney Hemed Said Mkomwa, while the plaintiff was represented by two advocates namely, Upendo Mtebe and Hassan Nchimbi learned advocates.

In arguing on the ground of objection, the learned State Attorney briefly submitted that the involvement of the 2nd defendant in this suit was contrary to Order VII Rule 1 (e) of the Civil Procedure Code Cap 33 R.E. 2019, which rule demand the defendant to have direct involvement in the suit. In the contrary, the plaintiff has failed to disclose any involvement of the 2nd defendant in his claim. The 2nd defendant is neither a necessary party nor interest on the subject matter. The necessary party by operation of the law is the District Executive Director. Supported his argument by referring this court to section 30 (3) of the

Written Laws (Misc. Amendments) Act No. 1 of 2020 which amended the Local Government District Authorities Act Cap 287 R.E. 2019. Also referred this court to the case of **John M. Byombalilwa Vs. Agency Maritime International Ltd [1983] TLR 1**. Rested by asking this court to dismiss the suit against the 2nd defendant and proceed with other defendants.

In response therein, Mr. Nchimbi stood firm to argue that the 2nd defendant is a corporate body capable of suing and being sued, since it is established under the Local Government (Urban Authorities) Act Cap 288 R.E. 2002. Therefore, the 2nd defendant has a case to answer in this suit.

Having summarized the rival arguments of learned counsels, I find this issue should not tie me up for simple reason that the source of the dispute is between the plaintiff and the Village Council (Halmashauri ya Kijiji cha Mshikamano) of Mshikamano village. The two parties are the proper parties to this suit, while the rest of the defendants are involved by virtual of law. Thus, they are necessary parties by operation of law. Therefore, let the law answer itself if the 2nd defendant is a necessary party or otherwise.

In fact, section 30 (3) of the above cited law stipulates as follows:-

"Notwithstanding subsection (2), the District Executive Director shall have the right to be joined as a party in any suit or matter instituted by or against the Village Council, and for that purpose the Village Council shall have a duty to notify the District Executive Director of any impending suit or intention to institute a suit or matter against the Village Council"



This section means exactly what it says and to my understanding the contents of the section does not require an expert of legal interpretation to grasp its meaning. For clarity, the Village Council is a legal entity/corporate body capable of suing and being sued. It can stand alone but the law requires involvement of two necessary parties who are the District Executive Director who can *suo motto* join as a party, but even if it is not joined as a party, yet the respective Village is mandatorily required to inform it. The second necessary party is the Attorney General through the Solicitor General.

The question is, if the law is direct and clear like the cited section above, who is Ifakara town council in this suit? I think the answer is straight forward, Ifakara town council is a stranger in this suit, neither a necessary party nor a proper party. Thus, the plaintiff cannot claim for reliefs against a stranger. Order 1 Rule 3 of CPC categorically clarifies that all defendants may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist. In this suit by perusing generally the pleadings, there is no claim or relief may be claimed or found from the 2nd defendant. Therefore, joining Ifakara town council will embarrass or delay the trial of the suit.

In totality, the preliminary objection has merits same is granted, consequently the name of the 2nd defendant (Ifakara Town Council) is hereby removed, remaining with only three defendants in this suit namely; Halmashauri ya Kijiji cha Mshikamano; Attorney General; and Tanzania Electrick Supply Company Ltd. No order as to costs.



Order accordingly.

Dated at Morogoro this 16 June, 2022.



P. J. NGWEMBE

JUDGE

16/6/2022

Court: Ruling delivered at Morogoro in Chambers on this 16th day of June, 2022 in the presence of Upendo Mtebe, Advocate for Plaintiff and Hemed Said Mkomwa, State Attorney for Respondents.



P. J. NGWEMBE

JUDGE

16/6/2022

