

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

LAND CASE NO. 16 OF 2021

MUSTAPHA SEIF NGANE (Administrator of the estate of the late Seif Ngane)..... **PLAINTIFF**

VERSUS

DR. ELIFURAHA ELIMBIZI SARIA & 70 OTHERS....DEFENDANTS

R U L I N G

Date of Last Order: 24. 03. 2022
Date of Ruling: 16. 05. 2022

T. N. MWENEGOHA, J.

The plaintiff above named instituted this case against the defendants herein above jointly. He is seeking for the declaration that, the late Seif Ngane is a lawful owner of the 78.25 acres of land, trespassed by the defendants. The said land is partly located at Kilungwa Street and partly at Tegeta A street, within Goba Ward, in Ubungo Municipality, Dar es Salaam.

Upon service to the defendants; 58 out of 71 defendants, through their Written Statements of defense, claimed to have been allocated the land in question by Goba Ward Executive Council. When the case was called for the 1st Pre-Trial Conference on the 24th March 2022, the learned counsel for the plaintiff, Denice Tumaini sought for a leave to amend the plaint by adding a necessary party who is Goba Ward Tribunal and other parties mentioned in

the written statements of defense by defendants, including one Muhidin Ally Ndolanga.

Owing to the said reason, the court ordered the parties to address it through written submissions on the following issues; -

1. Why the Goba Executive Council was not impleaded from the beginning of the case at hand.
2. The legality of prayers to amend the plaint by the plaintiff's counsel.

The parties complied with the order and their submissions were brief. Denice Tumaini, the counsel for the plaintiff maintained that, according to the plaint, none of the facts pleaded therein touched the Goba executive Council, hence there was no need to implead her in the first place. The need to implead Goba Executive Council arose only after the Written Statements of defense particularly by 3rd -6th, 8th -10th, 12th, 15th, 16th 19th -21st, 25th -27th, 32nd, 45th, 50th -54th 58th, 60th -62nd, 64th, 66th, 67th and 69th defendants, were filed.

On the 2nd issue was the legality of prayers to amend the plaint by the plaintiff's counsel owing to the stage at which the case at hand has reached. With regard to this issue, the plaintiff's counsel was of the view that, when researching for these submissions, they came to realize that, the organ named herein above (Goba Executive Council) do not exist in the eyes of law, hence there can be no action against a non-existent organ of the government. Therefore, the prayer by the plaintiff's counsel lacks legal basis and the same was withdrawn by him.

In reply, Godfrey Gimeno, Advocate for the 68th defendant was of the view generally that, it is true that Goba Executive Council is incapable of being sued, however, the said authority was just implementing the orders of the Regional Commissioner and District Commissioner. Therefore, still the

involvement of the government is there and it can equally be sued as a necessary party. Failure of which makes the case incompetent worth of being struck out.

If that is the case, the procedures given under the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020, Parts VI, IX and X, which amended sections 6 and 16 of the Government Proceedings Act, Cap 5, R. E. 2019, and section 106 of the Local Government Urban Authorities Act, Cap 258 should apply. The plaintiff should comply with the 90 days mandatory notice requirement to be served to the government authority concerned. Therefore, the best way is for the court to strike out the instant case owing to the non-joinder of the government as a necessary party. His arguments were supported by Advocate Odhiambo Kobas, who represented the 1st -13th, 19th -22nd, 25th -28th, 30th, 32nd -43rd, 45th, 46th, 50th -58th, 60th -67th, 69th and 70th defendants.

In his brief rejoinder, the counsel for the plaintiff reiterated his submissions in chief and insisted that, the court has the powers to order an addition of any party in the suit for the sake of ensuring the ends of justice. Further, it has powers to adjourn the matter pending exhaustion of the statutory requirement without striking the matter.

Having gone through the submissions of the parties in the issues at hand, I agree with Mr. Tumaini on the reasons as to why they didn't implead Goba Ward Executive Council from the beginning. It is well known that; a plaintiff is the one who is well versed with the facts of the case and has the right to choose who he or she can sue based on the said set of facts. By the way, the law allows the amendment of pleading in a manner and on such terms as

may be just to the parties, any time, subject to the leave of the court, see order VI Rule 17 of the Civil Procedure Code, Cap 33 R. E. 2019.

Now, what was is before me is a need to amend the pleading by adding a necessary party which is a government. Though the plaintiff's counsel in his submissions has tried to avoid this fact, by arguing that, Goba Ward Executive Council is a non-existence government organ, hence it cannot be sued in the case at hand, the fact remains that, there is a government involvement in the allocation of the land in question. As argued by the counsels for the named defendants herein above, this organ, Goba Ward Executive Council was just executing the orders of the government. Since the same is under the local government's authority, therefore the necessary party here will be the Municipal authority to which the Goba Ward Executive Council is found.

The consequences of a non-joinder of a necessary party in a suit are well known in our jurisdiction. The case becomes incompetent. There are number of authorities to that effect including the case of **Abdullatif Mohamed Hamis vs. Mehboob Yusuf & Another, Civil Revision No. 6 of 2017, Court of Appeal of Tanzania as quoted the case of Leonrad Peter vs. Joseph Mabao and 2 Others, Land Case No. 4 of 2020.**

That being said and done, I proceed to strike out the instant case owing to the reasons I have given above. No order as to costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
16/05/2022