

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

LAND CASE NO. 74 OF 2021

MARIAM SHAMTE AND 70 OTHERS..... PLAINTIFFS

VERSUS

ALPHA EDUCATIONAL CENTER LIMITED..... DEFENDANT

R U L I N G

Date of Last Order: 12.08.2022

Date of Ruling: 18.08.2022

T. N. MWENEGOHA, J.

This ruling follows a preliminary objection by the defendant against the amended plaint by the plaintiffs to the effect that, the same is contrary to the court order dated the 10th of July, 2022. It was the contention of Advocate Octavian Francis Mzee, for the respondent that, the order allowed the amendment of the said plaint by removing the names of four plaintiffs who are now deceased, namely, Ramadhan Mtrimbu (Plaintiff No. 7), Grace Lusofe (Plaintiff No. 18), Tabu Shaaban (Plaintiff No. 39) and Godfrey Boniface (Plaintiff No. 44). The order given by this court was meant to amend the plaint by removing the *names of the person stated* herein above and substitute them with *the names of their legal* representatives if any.



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That contrary to what was ordered, the amended plaint came with an addition as to the number of plaintiffs, from 62 to 71. He referred the court to the case of **Rasia Haroub Salum (Adminstrator of Estate of Harub Salum Msamala) vs. Felix Ndazi & 2 Others, Land case No. 131 of 2018**. He also mention other changes made by the plaintiff including the removal of some plaintiffs appearing in the former plaint. This include the removal of the names of plaintiffs, No. 1-26 who were in the previous plaint but removed in the amended one. That, all these changes were done without a leave of this Court. Hence the amended plaint is defective.

In reply, Mr. Ntabalila Samuel Shadrack for the plaintiffs maintained that, the amendments were subject to the Court's order. That, nothing has been changed without the permission of this Court. That, the plaintiffs complied with the order date 10th of February, 2022. Therefore, the objection by the defendant through his learned council is devoid of merits.

In his rejoinder, the defendant's counsel reiterated his submissions in chief.

After hearing the arguments of both parties through their respective counsels, the issue in need of my determination is whether the objection has merits. The law is clear that, pleadings can amended at any stage of the proceedings, see **Order VI Rule 17 of the Civil Procedure Code, Cap 33 R. E. 2019**. It has been provided in the said provision that, the amendments in question 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 vs. Dr William Shija and Attorney General; Misc. Civil Cause No 15 of 1995: High Court of Tanzania**

at Mwanza (Unreported). For easy reference I will reproduce Order 6 Rule 17 of the Civil Procedure Code, Cap 33 R. E. 2019 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".

It is not in dispute that, on the 10th of February, 2022, the plaintiffs' counsel sought and was granted leave by this Court to amend the plaint. It was clearly stated in his prayer that the amendments were needed for removing the names of two plaintiffs who are now deceased. But, what the counsel for the plaintiffs has done, is truly to the contrary to what he prayed. The amended plaint has come with changes including the number of plaintiffs, which has increased to 71 from the 62 Plaintiffs found in the original plaint. In fact, such amendment though allowed, but only with the leave of the court. Since there was no leave sought and the orders of the court with regard to the amendments of the original plaint was disobeyed, I'm left with no option other than sustaining the objection at hand.

In the event, the amended plaint is hereby struck out, so is the entire suit with costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
18/08/2022