

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

LAND CASE NO. 107 OF 2022

**THADEO MUTALEMWA BANTULAKI (Administrator of the Estate of the late
EVARISTA BANTULAKI)PLAINTIFF**

VERSUS

THOMAS EVARISTA BANTULAKI.....1ST DEFENDANT

JOHARI HABIBU SELEMAN.....2ND DEFENDANT

STANVIC COMPANY LIMITED.....3RD DEFENDANT

**MWANGA HAKIKA MICROFINANCE BANK
(FORMERLY KNOWN AS EFC
TANZANIA M.F.C LIMITED).....4TH DEFENDANT**

R U L I N G

Date of Last Order: 15.02.2023

Date of Ruling: 28.02.2023

T. N. MWENEGOHA, J.

On the 12th of December, when the case came for mention, Mr. Cleophas James, counsel for the 4th Defendant raised an issue that a Registrar of Titles be added as a necessary party to this suit, owing to the reason that there are two documents issued with regard to the ownership of the suit land. These are the Residential License, No. KNDO14671, issued on the 23rd June 2006, by Kinondoni Municipal Council, to the 1st Defendant. Also, there exists a title deed, No. DSMT1004201, issued to the plaintiff's

personal representative, on the 16th March 2020. Therefore, under these circumstances, Mr. Cleophas through that, the Registrar of Title is a necessary party in this case, without which, an effective Decree cannot be passed. His arguments were supported by Advocate Pendo Charles for the 3rd defendant.

Mr. Boniface Erasto for the plaintiff, objected the prayer by the 4th defendant's counsel to join the Registrar of Titles as a necessary party. He was of the view that, it is the plaintiff who decides who to sue as stated in a number of cases such as, **Yohana Majigile vs. John Chamile, Civil Case No. 73 of 2017, citing in approval the case of Abeid Kipoto versus A. Mtoi.** That, there is no law requiring the Registrar of Titles be joined as a necessary party. That, after all, the plaintiff was not allocated the said land by the Municipal Council and the same is true for the 1st defendant. That, if the 3rd and 4th defendants wish to call the Registrar to Court, they can call him as a witness as the plaintiff is not claiming any legal remedy against him. His absence by the way, will not affect the Decree to be passed by the Court.

In their rejoinders, both Advocate Pendo Charles for the 3rd defendant and Mr. Cleophas James for the 4th defendant, reiterated their submissions in chief.

I have considered the arguments of both parties with regard to the issue raised by the 3rd and 4th defendants' counsels, that the Registrar of Titles is a necessary party.

To resolve the issue at hand, I visited the pleadings from both, the plaintiff and the defendants. In the plaint there is an Annexure HHM-2 collectively,

where the Certificate of Occupancy with No. DSMT1004201, issued to the plaintiff's personal representative, registered on the 16th March 2020 has been attached. Also, in the Written Statement by the 4th defendant, the Residential License, No. KNDO14671, issued on the 23rd June 2006, by Kinondoni Municipal Council, to the 1st defendant has been attached as Annexure MHB-2.

That means, it is true that, there are land authorities which were involved in giving ownership or otherwise of the land in question to both the plaintiff and the 1st defendant. Under such circumstances, it not possible to determine the question of ownership of the land in dispute without joining them, that the Registrar of Titles who issued the certificate of occupancy to the plaintiff as well as the Kinondoni Municipal Council which gave a Residential License to the 1st defendant.

In absence of these two parties, this Court cannot pass an effective Decree to be executed by the winning party in the future. This has been the position always found in number of cases in our jurisdiction. This position is well settled in a number of authorities, to name few, include the case of **Tanga Gas Distributors Ltd versus Mohamed Salim Said and 2 Others, Civil Revision No. 68 of 2011, Court of Appeal of Tanzania(unreported)**. Also, the famous case of **Abdullatif Mohamed Hamis versus Mehboob Yusufu Osman and Another, Civil Revision No. 6 of 2017, Court of Appeal of Tanzania, (unreported)**.

Further, because the parties to be joined are government authorities, the procedures to be followed are those given under the provisions of section 6 of the Government Proceedings Act, Cap 5 R. E. 2019. Since the case

at hand is at the Final Pre-Trial Conference stage, it is not possible for the same to proceed into this stage without the necessary parties above named. Therefore, the proper remedy is to start afresh, so as to give the parties to be joined, a right to be heard properly.

In the end, I proceed to strike out the case accordingly. The plaintiff if still interested, is advised to file a new case with all the necessary parties named included.

No order as to costs.


T. N. MWENEGOHA
JUDGE

28/02/2023

