

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 52 OF 2023

ABDALLAH IBRAHIM PAZI APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF

PAN AFRICAN SPORTS CLUB 1ST RESPONDENT

FARETEK CONSTRUCTION COMPANY LIMITED 2ND RESPONDENT

RULING

27.03.2023 & 20.04.2023

A. MSAFIRI, J

This application was brought by the applicant seeking for leave of this Court to be joined as a necessary party in Land Case No. 331 of 2022 before this Court between the respondents herein.

The application was made under Order 1 Rule 10(2) of the Civil Procedure Code, Cap 33 [R.E. 2019] (herein as the CPC) and it was supported by the affidavit of the applicant himself. The 1st respondent did not object the application hence she did not bother to file counter affidavit. The 2nd respondent was opposing the application and filed the counter affidavit to that effect.

The application was disposed of by way of written submission whereas, the applicant had no legal representation while the 1st respondent was represented by Mr. Victor Kessy and the 2nd respondent savored the legal service of Ms. Domina Mdasha both learned Advocates.

As the 1st applicant was not objecting the application, she did not file the *Alleg-*

written submission. So the contest was between the applicant and the 2nd respondent.

On his submission, the applicant stated that the pending Land Case No. 331 of 2022 before this Court is between the respondents, hence this Court be pleased to allow the applicant to be joined as a necessary person for verifying the fact of the Pan African Sports Club Registration on Plot No. 9 Block 34 at Kariakoo area in Ilala Dar es Salaam. The applicant stated that the 1st respondent registration was cancelled by the Registrar of Clubs and Sports Association of Tanzania, so there is invalidity of existence of the 1st respondent's registration because the name of the 1st respondent was deleted by the said registrar.

The applicant submitted further that the Registered Trustees of Pan African Sports Club does not exist, and that the applicant is the only person who can tell the facts about Pan African Sports Club which is now Pan African Football Club after previous name was cancelled by the Registrar of Clubs and Sports Associations of Tanzania as per Registrar's letter dated 22.12.2022, whereas it was stated that the 1st respondent was improper party in the Joint venture with the 2nd respondent.

That, due to the deposed facts, it is important for the applicant to be joined as necessary party in the main suit for the purpose of verifying all the fact concerning the 1st respondent.

Finally, he prayed for the Court to grant the application with costs.

In reply, Ms. Mdasha, counsel for the 2nd respondent adopted the counter affidavit deponed by Arafat Said Salum, the Principal Officer of the 2nd respondent, whereas, she submitted that joinder of necessary

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party is governed by Order 1 Rule 10(2) of the CPC. That the applicant does not qualify to be joined as a necessary party in Land Case No. 331 of 2022.

That the said Order 1 Rule 10(2) of the CPC provides for three criteria for a person to be joined as necessary party as follows;

- a) Such person ought to have joined in a suit as a plaintiff or defendant*
- b) That without his or her presence the question in the suit cannot be effectually and completely decided upon.*
- c) And that such person has not been joined by an application of any party to the suit as a party.*

She contended that the applicant is not a necessary party to be joined in main case Land Case No. 331 of 2022 between the 1st respondent and 2nd respondent because the said parties had entered the joint venture in June 2022 on their legal based capacities even before the alleged previous name was changed in December 2022.

She said further that the main reason advanced by the applicant for seeking to be joined as necessary party is to verify the facts of Pan African Sports Club registration on Plot No. 9 Block 34 at Kariakoo Area within Ilala Municipality, Dar es Salaam. The counsel argued that however, the issue in controversy in the main case Land Case No. 331 of 2022 is not about ownership of land rather the legality of the joint venture Agreement executed between the plaintiff and the defendant in the main suit.

The counsel for the 2nd respondent added that this Court is in a good position to decide the Land Case No. 331 of 2022 in absence of the applicant herein and it can issue executable decree. That under section **8(1), 9 and 12 of the Trustees Incorporation Act** [Cap 318 R.E. *Ally-*

2002], the said registered Trustees of Pan African Sports Club being body corporate have full power of entering into contract, power to sue and be sued (defend the interest of members of the club) thus it is accountable for the benefits and interests of members of the club.

She further added that the applicant has no direct interest in the suit but he is only a stranger because there is no evidence to prove his interest over the suit property Plot No. 9 Block 34 at Kariakoo Area within Ilala Municipality. Also, the applicant is not a member of the 1st respondent, hence lacks capacity to plead anything or verify any facts about the club.

That, the applicant has failed to prove existence of important facts giving him interest with the 1st respondent in which he desires this Court to decide in his favor. The counsel referred this Court to the case of **Registered Trustees of Joy in the Harvest vs Hamza K. Sungura**, Civil Appeal No. 149 of 2017, whereby Galeba J.A ruled that;

'...Legally, if a plaintiff fails to prove his case to the required standard, the said case crumble without having to call the defense to fight it'

Counsel for the 2nd respondent submitted further that, the registrar did not cancel the 1st respondent's registration but directed the changes on the same however that the changes could not affect the transactions which were previously effected before the changes.

She prayed that this application be dismissed with costs.

In rejoinder the applicant reiterated what was submitted in chief and further added that, the letter from the Registrar was communicated to him as a member holding membership No. 0050 and advisor to the Pan *Aelle*.

African Football Club and that the applicant was holding that position for six years now.

He added that, there was no resolution of the members ratifying the joint venture entered into between the respondents, hence that the applicant is a necessary party to be joined in the main suit for verifying all the facts.

After a careful scrutiny of the submission of the parties, it is my view that the major issue is whether this application is meritorious.

It is palpable that the law governing joinder of a necessary party is under Order 1 Rule 10(2) of the CPC which provides;-

*'(2) The court may, at any stage of the proceedings, either upon or without the application of either party and **on such terms as may appear to the court to be just**, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or **whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions** involved in the suit, be added'. (Emphasis added).*

In the instant case the applicant has not managed to establish the essence of his presence as a party in the main case and the effects of his absence.

I agree with the submissions of the counsel for the 2nd respondent that under section 8(1), 9 and 12 of the Trustees Incorporation Act, the Registered Trustees of Pan African Sports Club is a body corporate with the power to sue and be sued in that name. *Alle*.

That is to say in the instant case if we are to agree that the applicant is the member of the Pan African Sports Club/ Pan African Football Club, which is not even proved, then the applicant is a separate person from the 1st respondent in the sense that the 1st respondent can stand on its own and make its defense to the end of litigation and execution in the absence of the applicant.

In that regard the applicant cannot be regarded as necessary party because his absence cannot affect the 1st respondent or the main suit.

The law is very clear that the Registered Trustees has mandate to sue and be sued. If the applicant has any claim under his individual capacity against the 2nd respondent or any party, the law allows an individual to institute a suit against any one including the 2nd respondent, but not necessarily joining the Land Case No. 331 of 2022 because his presence is not necessary and his absence cannot affect the outcome of the main suit.

I find the application to have no merit and it is hereby dismissed with costs.

It is so ordered.



A. MSAFIRI

JUDGE

20/04/2023