

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO 67 OF 2021**

SAMEER MOHAMED PLAINTIFF

VERSUS

THE TEMEKE MUNICIPAL COUNCIL 1ST DEFENDANT
THE ATTORNEY GENERAL 2ND DEFENDANT
SOPHIA BAKARI IMONJE 3RD DEFENDANT
JACKON BARIKIEL ULOTU 4TH DEFENDANT
SAMI GEORGE MAHENGE 5TH DEFENDANT
WAKUBEMBA BAKARI BUSOLO 6TH DEFENDANT
BAKARI ATHUMAN NDOLWA 7TH DEFENDANT
MARIAM KONDO MAHENGE 8TH DEFENDANT
SELEMANI KONDO MAHENGE 9TH DEFENDANT

RULING

A. MSAFIRI, J.

The plaintiff has initially instituted this suit against the defendants jointly and severally for a declaration that he is the lawful owner of the land property located at Plot No. 180 Block 8, Goroka B, Tuangoma, Temeke Municipality (here in a suit property).

After the completion of the pleadings, the suit was set for the hearing and before the commencement of the trial, four issues were framed for determination. The issues were as follows;

1. Who is the lawful owner of the disputed land?
2. Whether the land in dispute was part of 20,000 Plots Project in Dar es Salaam City, Dar es Salaam Region.
3. Whether the compensation was paid on the disputed land.
4. To what reliefs are parties entitled to.

The hearing of the matter commenced on 18/4/2023 with the testimony of the plaintiff's witness PW1. On 29/5/2023, the matter was before the Court for continuance of hearing. The plaintiff was represented by Ms. Win Janeth Lema, learned advocate, the 1st and 2nd defendants were being represented by Mr. Boaz Msoffe, State Attorney assisted by Ms. Caroline Lyimo, Ms. Victorial Lugendo and Mr. Shafiq Mshamu, State Attorneys. The 3rd, 8th and 9th defendants had legal representation of Mr. Edwin Msigwa, learned advocate.

Before continuance of hearing of plaintiff's case, Mr. Msoffe raised a legal concern and addressed the Court on point of law that, there is non-

Acts

joinder of necessary parties. That, the said necessary parties are the land authorities which are the Ministry for Lands/ Commissioner for Lands and or the Registrar of Titles.

Mr. Msoffe submitted further that joining the said authorities was necessary as the Court cannot determine successfully and justly the issues which were framed for determination and that in the event the hearing proceed without joining the said parties, then there is a possibility that the decree which will be issued to be in-executable.

Mr. Msoffe argued that the framed issues No. 2 and 3 cannot be successfully determined in absence of land authorities as they were the one which started and coordinated the 20,000 Plots Project which was effected in various places within Dar es Salaam City, and they were the one who issued the compensation on the lands which were acquired including disputed land.

He contended that the absence of a necessary party in the suit defeats the merits of the suit. To bolster his arguments, he cited cases of **Tanzania Railway Corporation (TRC) vs GBP (T) Limited**, Civil Appeal No. 218 of 2020, CAT at Tabora (unreported), and **Chinese - Tanzania Joint** *Alb.*

Shipping Company vs. Richard Gordon Musika (As an administrator of the estates of the late Edna Nsambe Thom Mwakabumbe) and 2 others, Land Case No. 271 of 2022, HC Land Division (Unreported). He prayed for the Court to strike out the suit.

Ms. Lema, for the plaintiff, conceded to the legal concern raised. However, she pointed that since the legal concern was raised after the issues have already been framed then, instead of striking out the suit, the plaintiff be allowed to withdraw the matter with leave to refile a new suit after having been complied with the necessary requirements.

She prayed to withdraw the suit under Order XXIII Rule 1(2) (b) of the Civil Procedure Code, Cap 33 R.E 2019, with no order for costs.

On his side, Mr. Msigwa, for the 3rd 8th and 9th defendants, vehemently objected the raised legal concern. He submitted that, there is no need of joining the so called necessary parties because there is the Attorney General who is representing them. He argued that the purported necessary parties can be called as witnesses by the Court if it sees it necessary to do so.

He prayed for the Court to reject the prayers by the Counsel for the 1st and 2nd defendants and order that the suit proceed on merit. *Alle.*

On rejoinder Mr. Msoffe reiterated his submission and prayers. He said that he subscribe to the prayers of withdrawal of the suit by the counsel for the plaintiff.

Having heard the submissions by the counsel representing the parties in this suit, the pertinent issue is whether the point of law raised by the State Attorney on the non-joinder of parties has merit.

It is trite law that the point of law can be raised at any time of the proceedings whether by the parties to the suit or by the Court suo motu.

The basis of this legal concern is that the Court cannot justly determine the issues raised by the parties which are subject for determination in absence of necessary parties who are the land authorities. I have read the issues which were framed before the trial. The second issues is on whether the land in dispute was part of 20,000 plots project in Dar es Salaam city. The third issue is on payment of compensation on the disputed land.

I agree that, it will be difficult to determine these two issues in absence of land allocating authorities mainly the Ministry for Lands (Commissioner for Lands) as party to the suit. Even if the Court will pass a Decree on the present parties, the same will be inexecutable since the present parties *All-*

according to the pleadings are not the authorities which made compensation over the disputed land and were not the coordinators of the 20,000 Projects in Dar es Salaam City. The 20,000 Plots Project and compensation was done and effected by the authority or authorities which are not joined in this suit.

In the case of **Ilala Municipal Council vs. Sylvester J. Mwambije**, Civil Appeal No. 155 of 2015, the Court of Appeal among other things observed that;

*"...We take the position that Rule 9 of Order 1 only holds good with respect to the misjoinder and non-joinder of non-necessary parties. On the contrary, **in the absence of necessary parties, the court may fail to deal with the suit, as it shall, eventually, not be able to pass an effective decree ..."** (emphasis added).*

It is my view that in absence of the land authorities which dealt with 20,000 plots Project and made compensations thereof, it will be futile to proceed with the present suit. I beg to differ with Mr. Msigwa's position that the presence of the Attorney General as the 2nd defendant in this suit is sufficient as the said party represents other institutions.

Alle

The Attorney General is a necessary party who is mandatorily joined as per the law requirement. The Attorney General is joined only when other Government Institutions are suing or are being sued. But the Attorney General cannot stand alone in a suit as a representative of those institutions particularly when that other institutions are directly involved in that particular dispute.

Under Order 1 Rule 10 (2) of the CPC, the Court may order for joinder of any party when it sees it necessary to do so.

In the present suit, the plaintiff has prayed to withdraw the suit so that he can file a fresh suit after complying with all necessary requirements. The prayer is granted with no order for costs.



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A. MSAFIRI
JUDGE
29/5/2023.

