

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO.307 OF 2022

BETWEEN

HAMISI MARIDADI MWALIMU.....PLAINTIFF

VERSUS

JOHN LAZARO MWATEBELA.....1ST DEFENDANT

DAR ES SALAAM CITY COUNCIL.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

RULING

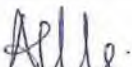
Date of Last order: 12.06.2023

Date of Ruling: 22.06.2023

A. MSAFIRI J.

This is land case between the plaintiff and the defendants whereas the plaintiff has sued the defendants praying for the Court's declaration order that he, the plaintiff is the lawful owner of the land measuring about three and a quarter acre (3 ¼) situated at Buyuni Mgeule, Dar es Salaam City. (herein as suit property).

While filing their joint written statement of defence, the 2nd and 3rd defendants also has filed a notice of preliminary objection on point of law to the effect that, the suit is unmaintainable and bad in law for not joining the seller of disputed land.

The preliminary objection was set to be heard by way of written submissions whereby the plaintiff was represented by Mr Juma Nassoro, learned advocate, while the defendants were represented by Ms Hosana Mgeni, learned State Attorney. 

Arguing on the preliminary objection, Ms Mgeni was of the view that the application at hand is unmaintainable for not joining the vendor one Asha Salehe Holea as necessary party who is purported to have sold the land to the plaintiff. Ms Mgeni relied on Order 1 Rule 10 (2) of the Civil Procedure Code [Cap 33 RE 2019] (the CPC) to support her arguments.

To cement her point, she also cited the case of **Juma B. Kadala vs. Laurent Mnkande** [1983] TZ HC 103 where the Court held that failure to join the person who was ostensibly left out is fatal and the Court dismissed the application with cost. She prayed that this application be also dismissed with costs.

Mr. Nassoro for the plaintiff responded and submitted that the plaintiff has no any claim or cause of action against the vendor of the disputed land. However, if this Court is on the opinion that the seller is the necessary party, then he may be joined as per Order 1 Rule 10 (2) of the CPC.

To buttress his arguments, he cited the case of **Mexons Investment Ltd vs. CRDB Bank Plc.**, Civil Appeal No. 222 of 2018. He prayed this Court to overrule the preliminary objection.

Having gone through the submissions of both parties before this Court, the issue for determination is whether the raised preliminary objection has merit. In determination, I will be guided by the principle established in the case of **Mukisa Biscuits Manufacturing Co. L.T.D versus West End Distributors L.T.D** (1969) EA 696, where the preliminary objections were set to have the following tests; -

".....preliminary objection consists of a point of law which has been pleaded, or which arises by clear Alle.

implication out of pleadings, and which if argued as a preliminary point may disposed of suit"

The raised preliminary objection is that the suit is unmaintainable for not joining the seller as necessary party. I find it to be a point of law capable to be determined on the preliminary objection.


The Court of Appeal of Tanzania in the case of **Tang Gas Distributors Limited v. Mohamed Salim Said & 2 Others**, CAT, Civil Revision No. 68 of 2011 (unreported) when considering circumstances upon which a necessary party ought to be added in a suit stated that: -

*"....an intervener, otherwise commonly referred to a **NECESSARY PARTY**, would be added in a suit under this rule even though there is no distinct cause of action against him/ where: -*

(a) NA

(b) his proprietary rights are directly affected by the proceedings and to avoid a multiplicity of suits, his joinder is necessary so as to have him bound by the decision of the court in the suit."

Again, in **Abdullatif Mohamed Hamis v. Mehboob Yusuf Osman and Another**, Civil Revision No.6 of 2017, CAT at Dar es Salaam(unreported), when faced withan akin situation, it was stated that: -

" The determination as to who is a necessary party to a suit would vary from a case to case 

depending upon the facts and circumstances of each particular case. Among the relevant factors for such determination include the particulars of the non-joined party, the nature of relief claimed as well as whether or not, in the absence of the party, an executable decree may be passed."

Being guided by the above authorities and having reflected on the material facts alleged by plaintiff in the Plaint and material facts alleged in the written statement of defence, I agree with Mr Hossana Mgeni that Asha Salehe Holea is a necessary party who ought to have been joined in the proceedings in the main suit involving the parties in this present suit.

This is because the basis of the plaintiff's claims in the Plaint is the ownership of disputed land whereby he claims that one Asha Salehe Holea is the one who sold the disputed land to the plaintiff. According to the written statement of defence, the 1st and 2nd defendants claimed that the disputed land was owned by Ujamaa Buyuni Village.

In the circumstances it is necessary for the seller to be joined as the necessary party in this suit so as to allow the Court to determine effectively all issues related to the ownership of the property in dispute. It is a considered view that the seller must be joined as the defendant as in the case of **Tanga Gas Distributors Limited (supra)** where the Court of Appeal while considering the issue of a necessary party to be joined in a suit stated that:-

".....Settled law is to the effect that once it is discovered that necessary party has not been joined in the suit and neither party is ready to apply to have him added as a *Aelle* *."*

party, the Court has a separate and independent duty from the parties to have him added... "

The effect of not joining a necessary party to the case is stated in the same case;-

".. it is now an accepted principle of law (see Mula Treatise (supra) at p. 810) that it is a material irregularity for a court to decide a case in the absence of necessary party. Failure to join a necessary party, therefore is fatal (MULLA at p 1020) ..."

In that regard, I also find the suit incompetent for failure to join the seller. I find the preliminary objection to have merit and it is sustained. The main suit is hereby struck out with cost. The plaintiff will have to file a proper suit involving all necessary parties.

It is so ordered.


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A. MSAFIRI
JUDGE
22/6/2023

