

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO.203 OF 2023

JOHN BONIFACE KILawe.....1ST PLAINTIFF

MARY KILawe.....2ND PLAINTIFF

VERSUS

HALMASHAURI YA MANISPAA YA UBUNGO.....1ST DEFENDANT

HALMASHAURI YA MANISPAA YA KINONDONI.2ND DEFENDANT

SHUHUDA MBAGA.....3RD DEFENDANT

AVELYNE TAIRO.....4TH DEFENDANT

MWANASHERIA MKUU WA SEREKALI.....5TH DEFENDANT

RULING

Date of Last Order: 15.06.2023

Date of Ruling: 27.06.2023

MWENEGOHA -J

This Ruling results from a default notice, filed by the plaintiff, against the 1st, 2nd and 5th defendants respectively. That, they have defaulted to file their amended Written Statement of Defence as ordered.

Mr. Deogratus Mwarabu, counsel for the plaintiffs, in his oral submissions, maintained that, the 1st, 2nd and 5th defendants were granted leave by this

Court to amend their Written Statement of Defence for the 2nd time, following the existence of errors apparently on the face of their document (Written Statement of Defence). However, they have filed their amended Written Statement of Defense with errors again on the case number. Instead of **Land Case No. 203 of 2022**, their amended Written Statement of Defense referred this case as **Land Case No. 203 of 2020**, which is not the case before this Court.

That, because they have been given the chance to amend their pleadings more than once, then this Court should proceed to rule against them that they have defaulted in filling their Written Statement of Defense. That the Court needs to control these proceedings to avoid chaos, as stated in **Urban J Mtui versus Commissioner General of TRA& Attorney General, Civil Appeal No. 265/16 of 2017, Court of Appeal of Tanzania, at Dar es Salaam.**

In reply, Advocate Stanley Mahenge for the 1st, 2nd and 5th defendants, admitted to the mistake in referring this case as Land Case No. 203 of 2020 instead of Land Case No. 203 of 2022. He also agreed to have been granted leave to amend the Written Statement of Defense, but still it has come with the noted errors. However, he prayed this Court to use the Overriding Objective Principle, **under section 3A (1) and (2) and section 3B (a) of the Civil Procedure Code, Cap 33 R.E 2019, and Article 107A of the Constitution of the United Republic of Tanzania, of 1977.** He argued that the court should do away with the technicalities and focus on substantive justice as the error was not an intentional one, rather a typing error.

His arguments were supported by that of Advocate Mutatina for the 3rd and 4th defendants who insisted that, the default notice be rejected, the defendants' Written Statement of Defense be taken to have been properly filed, subject to rectification of the year.

In his rejoinder, Mr. Mwarabu reiterated his submissions in chief and asked the Court to expunge the amended Written Statement of Defense by the 1st, 2nd and 5th defendants.

After a careful consideration of the arguments by the counsel for both parties, I asked myself if it is worth to expunge the amended Written Statement of Defense by the 1st, 2nd and 5th defendants, owing to the reasons put forward by Mr. Mwarabu.

I agree with Mr. Mwarabu, there is an error apparent on the face the amended Written Statement of Defense by the 1st, 2nd and 5th defendants when they referred this case to be Land Case No. 203 of 2020 instead of Land Case No. 203 of 2022. However, the issue to consider here is not the mistake/error per se, but also the Court has to examine if it goes to the root of the case to allow expunging of the amended Written Statement of Defense in question, **see Mondorosi Village counsel & 2 Others versus Tanzania Breweries Limited & 4 others, Civil Appeal No. 66 of 2017, Court of Appeal of Tanzania (unreported).**

As argued by Advocate Stanley Mahenge for the 1st, 2nd and 5th defendants and Advocate Mutatina for the 3rd and 4th, the error existing on the document in question does not affect the case at all, it is a minor error, resulting from an accidental slip of pen (if handwritten) or a typing error so to speak. Therefore, under the oxygen rule, I find no need to expunge the amended Written Statement of Defense by the 1st, 2nd and 5th

defendants as prayed by the plaintiff's counsel, **see Yakobo Magoiga Gichere versus Peninah Yusuph, civil Appeal No. 55 of 2017, court of Appeal of Tanzania at Mwanza, (unreported).**

In the end, I reject the notice of default filed by the counsel for plaintiffs and proceed to order rectification of the amended Written Statement of Defence to accommodate the required year of the case at hand.

No order as to costs.




T.N. MWENEGOHA

JUDGE

27/06/2023