

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO.98 OF 2023**

**CLEMENCE SWAI.....1<sup>ST</sup> PLAINTIFF**

**PAMELA CLEMENCY SWAI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**RASHIDI MLIPILI.....1<sup>ST</sup> DEFENDANT**

**ALMASI MOHAMED.....2<sup>ND</sup> DEFENDANT**

**AMINA ALLY.....3<sup>RD</sup> DEFENDANT**

**SAID ISSA.....4<sup>TH</sup> DEFENDANT**

**AHMED NANTEZI.....5<sup>TH</sup> DEFENDANT**

**RULING**

*Date of Last Order: 08.06.2023*

*Date of Ruling: 30.06.2023*

**T.N.MWENEGOHA J**

Two objections were raised by the counsels for the 1<sup>st</sup> to 5<sup>th</sup> defendants, as against the determination of this case as follows; -

1. The plaintiffs have no cause of action against all defendants (raised by all defendants)
2. The suit is bad for non-joinder of a seller as a necessary party (raised by Advocate Tarzan Keneth Mwaiteleke for 2<sup>nd</sup> to 5<sup>th</sup> defendants).

As rules direct, I have to dispose the objections before proceeding with the case to further stages. In the process of doing so, I have decided to

start with the 2<sup>nd</sup> objection on the non-joinder of a necessary party. Mr. Mwaiteleke, arguing for this objection, has contended that, in paragraphs 4, 5 and 6 of the plaint, one Salumu Mbaraka has been mentioned to be the one who sold the suit property to the plaintiffs. However, the said person was not joined in this case and that makes the entire suit incompetent for non-joinder of a necessary party as stated in **Juma B. Kadala versus Laurent Mkande (1983) TLR 103.**

In reply, Advocate Jane Kapufi for the plaintiffs, maintained that, it is not a rule that in every suit a vendor must be joined. It depends on the circumstances and facts of each case as stated in **Salma Miraji Fundi and Mbaraka Miraji Fundi versus Raiti Mohamed Changambe, Misc. Land Case Appeal No. 192 of 2019, High Court of Tanzania, Land Division at Dar es Salaam.**

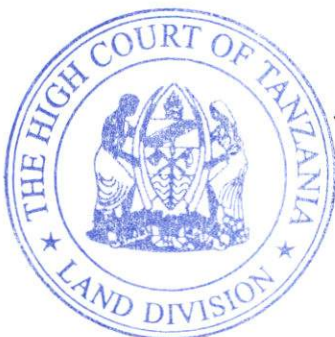
In a brief rejoinder on this objection, the counsel for the 2<sup>nd</sup> to 5<sup>th</sup> defendants, reiterated his submissions in chief.

I have considered the arguments of both parties with regard to the 2<sup>nd</sup> objection. I now have to determine its merits or otherwise. I visited the plaint to satisfy myself on the truth of the claims by the 2<sup>nd</sup> to 5<sup>th</sup> defendants. I found the same to have mentioned the said Salumu Mbaraka as a seller of the suit property to the plaintiffs (see paragraphs 4, 5, 6 and 9). Further, in their reliefs, they have prayed among others that, this Court should make a declaration that, the suit property was sold to the plaintiffs by the said Salimu Mbaraka. The sale agreement was also annexed to the plaint as annexure 1, showing the agreement to have been entered between the parties on the 11<sup>th</sup> of October, 2022.

Based on the above stated facts, I find no reasons whatsoever, justifying the non-joinder of Mr. Salum Mbaraka. In this case, the plaintiffs' major claim is to be declared the lawful owners of the suit property. Such declaration cannot be effectively given, unless the person upon whom the plaintiffs are deriving their ownership over the property is made party to the case at hand. In absence of the seller, Salum Mbaraka, 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, see **Juma B. Kadala versus Laurent Mkande supra**. See also 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)** and **Abdullatif Mohamed Hamis versus Mehboob Yusufu Osman and Another, Civil Revision No. 6 of 2017, Court of Appeal of Tanzania, (unreported)**.

Based on the above given findings, I see the second objection to have merits and the same is sustained. In that case, it is obvious that the entire suits come to an end for want of competence. There is no need therefore to deal with the other objection (1<sup>st</sup> objection).

In the end, I proceed to strike out the case accordingly with costs.



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**J.N. Mwenegoha.**

**Judge**

**30/06/2023**