

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 139 OF 2023

CENTAZA PLASTICS CO. LTD.....PLAINTIFF

VERSUS

ABDULKADIRI SHEIKH MOHAMED.....DEFENDANT

R U L I N G

Date of Last Order: 21.07.2023

Date of Ruling: 31.07.2023

T. N. MWENEGOHA, J.

The plaintiff in this suit has claimed that, the defendant has invaded/trespassed into a portion of land, located at Plot No. 11, Changómbe Industrial Area, Temeke Municipality, Dar es Salaam. The respondent on the other hand, has raised a preliminary objection against the suit, that the same is incompetent for non-joinder of necessary parties.

According to Mr. Victor Kikwasi, counsel for the defendant, in his written submissions, has argued that, as per the Written Statement of Defense, by the defendant, formerly the suit land was owned by Omary Ndambwe, the Registered Trustees of Masjid Nnur and Hassan Mohamed Mahamud. That, these persons are necessary parties. They have to be joined in the suit, as the plaintiff obtained the land prior to the compensation paid to

the above-named persons. The defendant's counsel referred the Court to the case of **Juma B. Kadala versus Laurent Mkande [1983] TLR 103.**

In reply, Advocate Samson Mbamba, for the plaintiff maintained that, the objection raised fall short of a preliminary objection in law as decided in **Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd (1969) EA 966.** The objection raised is not on point of law, rather on factual issues. It is based on whether or not there were original owners before the plot was allocated to the plaintiff and if the said people were compensated accordingly. After all, the plaintiff cannot be compelled to join a party against whom she has no cause of action. That, the facts alleged by the defendant are not known to the plaintiff.

I have given the submissions by the counsels for the parties, the consideration they deserve. The issue for determination is whether the objection has merits or not.

The law has been well settled that, non-joinder of a necessary party in Civil cases, land cases in particular, is fatal, see **Abdullatif Mohamed Hamis versus Mehboob Yusufu Osman and Another, Civil Revision No. 6 of 2017, Court of Appeal of Tanzania, (unreported).**

The question remain, do we have a necessary party, worth of being joined in the suit at hand. The answer is no. The plaint is very clear and straight forward. The case is for trespass, where the plaintiff claims the defendant to have invaded the suit land. There is no other person being named in the plaint, in relation to the claim by the plaintiff as against the defendant.

The necessary parties so called, as named by the defendant's counsel, are be contained in the Written Statement of Defense. If these people qualify to be called as necessary parties or not, under these circumstances, is an arguable issue which cannot be dealt with in a preliminary objection. The same need presentation of evidence and arguments. To that point, I join hands with the plaintiff's counsel, the objection at hand is defeated by the rules propounded in **Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd, supra**. The preliminary objection raised by the defendant, is therefore overruled.

If those parties are interested in joining this suit they may pray to be joined in this proceeding by following proper procedures.

In the event, the main case shall proceed to be heard on merits until its final determination. Costs to follow the event.

It is so ordered.




T. N. MWENEGOHA
JUDGE
31/07/2023