

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 126 OF 2022

LYDIA MWAMIKO.....1ST PLAINTIFF

GRACE HAULE.....2ND PLAINTIFF

VERSUS

KINONDONI MUNICIPAL COUNCIL.....1ST DEFENDANT

GEORGE MASELE.....2ND DEFENDANT

DANIEL TUMAINIEL NYAKIMORI.....3RD DEFENDANT

ALLY MAULID MGOMI.....4TH DEFENDANT

WILLIAM CHARLES MASANTIKA.....5TH DEFENDANT

GODFREY ATHANAS KAYOMBO.....6TH DEFENDANT

NATHANIEL TIBAIGANA.....7TH DEFENDANT

JULIANA JOSEPHAT MERO.....8TH DEFENDANT

HASSAN NGULUNGU.....9TH DEFENDANT

MUHUNZI WAZIRI MUHUNZI.....10TH DEFENDANT

ONIKE CHARLES.....11TH DEFENDANT

AYOUB HUSSEIN BANZI.....12TH DEFENDANT

SOPHIA WAMBULA.....13TH DEFENDANT

GLORY CHARLES WAMBURA.....14TH DEFENDANT

ATTORNEY GENERAL.....15TH DEFENDANT

R U L I N G

Date of Last Order: 26.06.2023

Date of Ruling: 20.07.2023

T. N. MWENEGOHA, J.

This Ruling is in respect of a preliminary objections, raised by the 12th defendant, Ayoub Hussein Banzi, that, the instant case is untenable, owing to non-joinder of necessary parties and further that, the reliefs claimed in the case are not specifically pleaded

Arguing in favour of the objection, through written submissions, Mr. Hassan Athuman Fatiu, counsel for the 12th defendant, maintained that, according to paragraphs 22 and 24 of the plaint, there are two persons who were named to be trespassers into the suit land, who later, were compensated by the 1st defendant and left the land to be acquired by the 1st defendant. These are, Joyce F. Mhina and Barnabas S. Byabato. These two, together with the Commissioner for Lands and Registrar of Titles are the necessary parties that have to be joined in this case. Failure to join them, the suit contravenes the provisions of **Order I Rules 3,7 and 9 of the Civil Procedure Code, Cap 33 R. E. 2019**. Their non joinder is fatal and may result in miscarriage of justice to either party in this case.

Further that, in the plaint, the reliefs sought are not specific, rather they are too general and this is contrary to **Order VII Rule 1(g) and Rule 7 of the Civil Procedure Code, Cap 33 R. E. 2019**.

In reply, Mr. Boniface Erasto Meli, Advocate for the plaintiff, disputed the joinder of the necessary parties claimed by the counsel for the 12th defendant, who are Joyce F. Mhima, Barnabas S. Byabato, Commissioner for Lands and the Registrar of Titles. He insisted that, at the beginning of

this suit, the 1st respondent prayed to join Joyce F. Mhina and Barnabas S. Byabato, but later withdrew her prayer as the said persons are nowhere to be found. Above all, the plaintiff has no claims against them, as the matter between them plaintiff was settled before Kinondoni District Land and Housing Tribunal, vide Land Application No. 458 of 2009. Same applies to the joinder of the Commissioner for Land and the Registrar of Titles. They are not necessary parties in this suit. The matter at hand is not about allegations of forgery of Certificate of Titles or two or more Certificates of Titles being issued over different persons on the same land. Further, the case is not about who has a better title to the suit land, to require the joining of the Commissioner for Lands. The counsel for the plaintiff cited a number of cases to support his arguments, including the case of **Eliminate Masinda and Another versus Maswet Masinda and Another, PC Civil Appeal No. 47 of 2020 (unreported)**.

As for the 2nd objection, it was argued by the counsel for the plaintiff that, this objection does not fall within the purview of what has to be a preliminary objection. It is based on pure factual issues and not a point of law.

Having gone through the submissions from the counsels on behalf of the parties (12th defendant and that from the plaintiffs), the issue for determination is whether the objections have merits or not.

I will start addressing on the necessary parties where the counsel for the 12th defendant was of the view that, Joyce F. Mhina, Barnabas S. Byabato, Commissioner for Lands and the Registrar of Titles are necessary parties in this case, owing to what was stated in paragraphs 22 and 24 of the plaint. The plaintiffs on the other hand disputed that fact, contending that, they do not have any redress against them.

I agree with the plaintiffs' counsel on non-joinder of Joyce F. Mhina Barnabas S. Byabato. It is true that they are not necessary parties. As they were involved in Land Application No. 458 of 2009 against the same plaintiffs. That, finalised as stated in the plaint. Joining them again as defendants in the suit at hand makes the matter to be resjudicata against them.

However, on joining the Commissioner for Lands and the Registrar of Titles, I disagree with the plaintiffs' counsel. On this part, the 12th defendant's counsel is right. They are necessary parties. If we read the pleadings, the individuals who have been called as trespassers into the suit land, including the 12th defendant, save for the 1st and 15th defendants, claim their titles over the suit land from the land authorities. That, the same was acquired by them through the land authorities, including Commissioner for Lands. Also, they have Certificates of titles, issued by the office of the Registrar of Titles. Under these circumstances, it is inevitable to avoid joining these two authorities as necessary parties. The decrees to be passed will not be effective if does not touch them if so required. Hence, in my opinion, they are necessary parties.

That being my findings as far as the positions of the Commissioner for Lands and the Registrar of Titles are concerned in this suit, I will therefore, clearly say that, without them, this suit must fail for non-joinder of a necessary party. In land disputes, the effects of non-joinder of a necessary party has long been settled in a number of authorities. I do not need to repeat what the settled position says, as I have already stated here in above. But I will say it again, the suit must fail, see **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).

For these reasons, I sustain the 1st objection and pen off here. This suit has met its end, based on the findings given in the 1st objection above. Hence, I see no need to discuss the 2nd objection.

Eventually, the suit is struck out with costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
20/07/2023