

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**  
**LAND CASE NO. 83 OF 2023**

**CHARLES WERONGO.....1<sup>ST</sup> PLAINTIFF**

**MABIBO CONSTRUCTION COMPANY LIMITED...2<sup>ND</sup> PLAINTIFF**

***VERSUS***

**CRDB BANK PLC.....1<sup>ST</sup> DEFENDANT**

**AFRIMAX ENTERPRISES LIMITED.....2<sup>ND</sup> DEFENDANT**

**MR. SALIM ABDALLAH MUHENDE.....3<sup>RD</sup> DEFENDANT**

**MS JANETH AMEDE MASSAWE.....4<sup>TH</sup> DEFENDANT**

**RULING**

*17<sup>th</sup> July & 21<sup>st</sup> August, 2023*

**L. HEMED J.**

On the 15<sup>th</sup> day of March 2023, **CHARLES WERONGO** and **MABIBO CONSTRUCTION COMPANY LIMITED** the Plaintiffs herein, filed the instantaneous suit against **CRDB BANK PLC, AFRIMAX ENTERPRISES LIMITED, MR. SALIM ABDALLAH MUHENDE** and **MS JANETH AMEDE MASSAWE** the defendants. The plaintiff claim for declaratory order that an act of selling of Plot No.70 Block D CT 40716, LO No 141476 Kigogo area, Plot No. 633/1, Block "D" CT No 43122, LO No 147606 Mabibo Ubungo and Plot No. 566

CT No.36364 LO No. 93898, Kawe Kinondoni is unlawful and void *ab initio*.

The plaintiffs also pray for a declaration order that transfer of ownership or title of Plot No.70 Block "D" CT No.40716,LO No. 141476, Kigogo Area and Plot No.633/1, Block "D" CT No.43122, LO No.147606, Mabibo Ubungo Area to 4<sup>th</sup> Defendant which was auctioned on 31<sup>st</sup> October 2022 and on 10<sup>th</sup> November 2022 Plot No.566, CT No. 36364, LO No.93898 Kawe Kinondoni, made from the 1<sup>st</sup> Plaintiff to 4<sup>th</sup> and 3<sup>rd</sup> defendants respectively is null and void as whole process of purchasing the same was illegal.

The defendants disputed all the claims of the plaintiffs *vide* written statement of defence. The 3<sup>rd</sup> defendant also raised the preliminary objections on the following points of law:

- "1. The suit is bad in law for misjoinder of cause of action.*
- 2. The suit is bad in law for want of valid board resolution of the 2<sup>nd</sup> plaintiff to institute the suit.*
- 3. The suit is bad in law for non-joinder of the Registrar of Titles/ Commissioner for Lands."*

The preliminary objections were argued by way of written submissions. **Mr. Augustine Mathern Kusalika** learned advocate, acted for the plaintiffs, while the 3<sup>rd</sup> defendant enjoyed the service of **Mr Hosea Chamba**, learned State Attorney. The defendants' counsel

filed their submissions in chief on the 24<sup>th</sup> day of July 2023 while the plaintiffs' counsel filed reply submission on the 31<sup>st</sup> day of July, 2023. It should also be noted that the defendants managed to file rejoinder submission on 7<sup>th</sup> day of August 2023.

I have opted to begin with the 3<sup>rd</sup> limb of objection raised by the 3<sup>rd</sup> defendant on the non-joinder of the Registrar of Titles/ Commissioner for Lands. My decision to start with this point is based on the fact that once found with merits, it will dispose of the entire suit.

On the non-joinder of parties, **Mr Hosea Chamba** submitted that amongst the reliefs sought by the plaintiffs is the nullification of the transfer of the suit properties from the 1<sup>st</sup> plaintiff to the 3<sup>rd</sup> and 4<sup>th</sup> defendants. He asserted that since the Registrar of Titles effected the transfer of the suit properties, he is the necessary party to the suit at hand. To cement his point, he cited the case of **Ngerengere Estate Company Limited v. Edna William Sitta**, Civil Appeal No. 209 of 2016 and **Dr Anthony Ambikile Nsojo v. Adam Mwakyembe and Another**, Land Case No. 2 of 2021. The learned State Attorney argued further that misjoinder of necessary party cannot be cured by Order 1 Rule 10 (2) of the Civil Procedure Code, [Cap 33 R:E 2019]. He urged

the court to strike out the suit.

In his response, **Mr. Augustine Mathern Kusalika**, contended that joining of the Registrar of Titles or Commissioner for Lands is not necessary as according to the plaint filed in court there is no allegations or civil wrong which was done by Registrar of Titles or Commissioner for Lands to warrant them to be joined in the suit. He prayed the preliminary objection to be overruled with costs.

In rejoinder submission, the counsel for the 3<sup>rd</sup> defendant reiterated his submissions in chief that the plaintiff challenges acts of the Registrar of Titles in transferring the suit properties, thus joining of the Registrar of Titles is vital.

I have carefully followed the rival arguments by the parties concerning the question of non-joinder of Registrar of Titles. The issue for determination is whether the Registrar of Titles is a necessary party in the instant suit. In an Indian case of **Benares Bank Ltd v. Bhagwandas**, A.I.R. (1947) All 18 the High Court of Allahabad laid down two tests for determining the question whether or not a particular party is necessary to the proceedings. The said two tests were approved by **Supreme Court of India in the case of Deputy Comr. Hardoi v. Rama Krishna**, A.I.R.(1953) S.C.521. The

said tests are as follows:-

- a) There has to be a right of relief against such a party in respect of the matter involved in the suit; and
- b) The court must not be in the position to pass an effective decree in the absence of such a party.

I am persuaded by the above laid down test because they emanated from the interpretation of the provisions of the Civil Procedure Code of India which is in *pari materia* with our Civil Procedure Code. In the present case one of the relief sought by the plaintiff is "a Declaration that transfer of ownership of the suit properties to the 4<sup>th</sup> defendant is null and void."

This kind of relief is against the Registrar of Titles because he is the one involved in the whole process of transfer of Titles. In the absence of the Registrar of Titles as a party, the court cannot be in the position to pass an effective decree. I am taking this position because under section 18 of the Land Registration Act [Cap. 334 R:E 2019], the Register of Titles is the one who has power to approve any application for transfer.

The Court of Appeal of Tanzania in the case of **Abdullatif Mohamed Hamis v Mehboob Yusuf Osman & Another** CAT-Civil

Revision No. 6 of 2017 (unreported) had this to say in respect to a necessary party:

*"...we take the position that Rule 9 of Order 1 only holds good with respect to the misjoinder and non-joinder of non-necessary parties. On the contrary, in the absence of necessary parties, the court may fail to deal with the suit, as it shall, eventually, not be able to pass an effective decree. It would be idle for a court, so to say, to pass a decree which would be of no practical utility to the plaintiff."*

Led by the above authority, I find this suit improper before this court for non-joinder of the Registrar of Titles who is a necessary party in this suit. The fact that the point on non-joinder of necessary party disposes the entire suit, I find no need of canvassing the other limbs. In the upshot, I proceed to strike out the entire suit with costs. It is so ordered.

**DATED at DAR ES SALAAM this 21<sup>st</sup> August 2023.**



*L. Hemed*  
L. HEMED

**JUDGE**