

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 85 OF 2023

ALLY SALIM MBELWA (Administrator or the estate of the late Kuruthumu Ibrahim Salum).....**1ST PLAINTIFF**

VERSUS

MADANIO IBRAHIM SAID.....**1ST DEFENDANT**

HALIMA OTHMAN SADAN.....**2ND DEFENDANT**

RULING

19th July, 2023 & 25th August, 2023

L. HEMED, J.

On 03rd day of March, 2023, the Plaintiff herein **ALLY SALIM MBELWA**, under the capacity of administrator of the estate of the late Kuruthumu Ibrahim Salum, filed the instantaneous suit. In the said suit, the plaintiff claims from the defendants jointly and severally for vacant possession of Plots No. 57, 58 and 59 Block 'N' Goba Area, Ubungo Municipality, Dar es Salaam.

In his plaint, the plaintiff has asserted that the suit properly was initially and originally owned by the late Kuruthumu Ibrahim Salum. The defendants

by their malpractice and fraud obtained Certificate of Title No. 84255 in the name of **Madanio Ibrahim Said** and Certificate of Title No. 84159 in the name of **Halima Othman Sadan**.

In response thereto, the 1st defendant **MADANIO IBRAHIM SAID** disputed all the claims by filing the written statement of defence. The 2nd defendant **HALIMA ATHMAN SADAN** was yet to file her written statement of defence by the time of composing this Ruling.

The 1st defendant also raised Preliminary objection on the following points of law: -

"a) That, the Complaint is defective for failing to state particulars of fraud alleged to have been committed by the Defendants contrary to the provision of Order VI rule 4 of the Civil Procedure Code.

b) The suit by the Plaintiff is time barred.

c) that the plaintiff failed to join necessary party to the suit".

Preliminary Objection was argued by way of written submissions. In arguing the objections, the 1st defendant was duly represented by **Mr. Mashaka Ngole**, learned advocate while the plaintiff enjoyed the service of **Mr. Gideon Opanda**, learned advocate.

I have opted to begin with the 3rd limb of objection on failure to join the necessary party to the suit. In respect of this point, the learned advocate submitted that, by reading of the contents of paragraphs 7 and 8 of the Complaint, the plaintiff has mentioned the involvement of the office of the Commissioner for Lands to the extent that he prays for remitting the suit properly to the original owner. The learned counsel was of the view that the allegation necessitates the joining of the necessary party, the Commissioner for Lands.

In reply thereto, the counsel for the plaintiff contended that it is the trite law that the plaintiff is at liberty to sue any person whom he has cause of action against. He contended that the 1st Defendant cannot choose for the Plaintiff who should be joined as a co-defendant in a suit. To cement his point, he cited the case of **Rashid Abdallah Dochi vs Leonard Gerald Bura**, Land Case No. 5 of 2019, (High Court – Tanga). It was stated further that there is no matter in controversy between the plaintiff and the Government for it to be joined as necessary party.

In order to ascertain the merits of this point, I had to peruse the plaint to find out if there is anywhere the plaintiff has pleaded facts which requires

necessary party to be joined. In the course of perusing the plaint, I came across with paragraph 4 which is quoted herein below verbatim thus:

*"4. That the suit property was initially and originally owned by the late Kuruthumu Ibrahim Salum who passed away and the Plaintiff and Maka Kombo Hassan later were appointed joint administrators of the estate of the late Kuruthumu Ibrahim Said including the suit property. The Defendants in the suit property, **by their malpractice and fraud obtained Certificate of Title No. 84255 in the name of Madanio Ibrahim Said and Certificate of Title No. 84159 in the name of Halima Othman Sadan the former** and the later deleted from the record of the Registrar of Titles."*[Emphasis added]

In the above quoted paragraph, it is obvious that the plaintiff has pleaded that transfer of the suit property has been effected from the late Kuruthumu Ibrahim Said to the defendants. The plaintiff appears to allege that the deletion from record of the Registrar of Titles of the name of the former owner was done through Malpractice and fraud. The said allegation in paragraph 4, implicates the office of the Registrar of Titles in the alleged malpractice and fraud in the transfer of the suit properties. It follows

therefore that, this matter cannot conclusively be determined without the involvement of the Registrar of Titles as a party.

The discussion on the absence of the necessary party and the adverse consequence that it carries featured in the case of **Abdullatif Mohamed Hamis vs Meliboob Yusuf Osman and Another**, Civil Revision No. 6 of 2017 (CAT). The Court of Appeal of Tanzania emphatically stated thus: -

*"... 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 my 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.**"* [Emphasis added]

The holding by the Court of Appeal of Tanzania herein above quoted, binds me to hold that the plaintiff failure to implead the Registrar of Titles in the matter at hand, constitutes a non-joinder of a necessary party. In fact, failure to join the said necessary party amounts to breach of the law and thus, rendering the entire suit incompetent.

The truth being that this point of objection surfaces to dispose of the entire suit, I find no need of laboring to determine the other limbs. In the upshot, I proceed to strike out the entire suit with no orders as to costs. I order so.

DATED at DAR ES SALAAM this 25th August, 2023.




L. HEMED
JUDGE