

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND CASE NO. 277 OF 2023

TULIBAKO GODWIN MWANDAMBO (suing as Administratrix of the Estate of the Late Daimony Kipala Mwandambo).....**PLAINTIFF**

VERSUS

EXECUTIVE DIRECTOR ILALA

MUNICIPAL COUNCIL.....1ST DEFENDANT

DISTRICT COMMISSIONER ILALA DISTRICT.....2ND DEFENDANT

WARD EXECUTIVE OFFICER.....3RD DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

RULING

4th October, 2023

L. HEMED, J.

On 30th August 2023, the Plaintiff herein instituted the present suit against the defendants herein claiming for declaration that she is the lawful owner of unsurveyed landed property measuring 6 acres located at Kimara Bonyokwa Area. She claimed to have instituted the instant suit in the capacity of Administratrix of the estate of the late Daimony Kipata Mwandambo for purposes of restoring back to the family the ownership of

the suit land which was given to Bonyokwa ward by way of gift without the consent of the family of the deceased.

The plaintiff is thus praying for judgment and decree against the Defendants as follows:

"a) A declaration that the plaintiff is lawfully owner of the suit land unsurveyed landed property measuring 6 acres located at Kimara Bonyokwa Area and the said suit property is bordered in the North by David Waseda in the South by Elly Vahaye in the West by Asingizibwe Kalokola and in the East by Suzana Daudi, within Ilala Municipality in Dar es Salaam region.

b) The Defendants be ordered to give vacant possession of the suit land measuring 6 Acres located at Kimara Bonyokwa within Ilala Municipality in Dar es Salaam region.

c) An order to demolish any structure erected in the suit land.

d) General Damages as to be assessed by this Honorable Court.

e) The Defendants be condemned to bear cost of this suit.

f) Any other reliefs this Honorable Court may deem just and fit to grant."

The defendants responded to the claim by filing the joint written statement of defence disputing all the claims. They also raised a preliminary objection points of law thus: -

"(i) The suit is unmaintainable and bad in law for impleading a wrong party contrary to section 14 of the Local Government (urban Authorities) Act, [Cap. 258 R.E 2002]

(ii) The suit is unmaintainable and bad in law for suing a non-existent party not known to law."

When the matter was called on the 4th October, 2023, Mr. Francis Kajilu, advocate who appeared for the Plaintiff, opted to concede to the Preliminary Objection. He prayed for leave to refile. Ms. Kause Kilonzo, learned state attorney objected the prayer for leave to refile on the ground that the effect of conceding to the Preliminary Objection is to strike out the suit.

Having conceded to the Preliminary Objection, it implies that the plaintiff agrees that the suit before this court is unmaintainable and bad in law for impleading a wrong party. She is also agreeing that she has sued a non-existent party who is not known to law.

The fact that the plaintiff had conceded to the Preliminary Objection, it means that she is ready for the consequences thereof. The remedy to a suit found to be bad and unmaintainable is in law to strike it out.

From the foregoing, I have no option other than to sustain the preliminary objection. I do hereby strike out the entire suit. Each party to bear its own costs. It is so ordered.

DATED at **DAR ES SALAAM** this 4th October, 2023.




L. HEMED

JUDGE