

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

AT DAR ES SALAAM

LAND CASE No. 247 OF 2023

MARTHA DEOGRATIAS MAGENDELA (SUING AS

NEXT FRIEND OF JUNIOR GODWIN MALEMA (MINOR) PLAINTIFF

VERSUS

IRENE JOSEPH NKOMBACHEPA.....1ST DEFENDANT

KISARAWA DISTRICT COUNCIL.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

RULING

10th & 30th October, 2023

A. MSAFIRI.J

On the 1st day of August 2023, the plaintiff herein Martha Deogratius Magendela suing as of next friend of Junior Godwin Malema (minor), filed the instantaneous suit. In the said suit the plaintiff claims against the defendants jointly and severally for declaration that she is a bonafide purchaser of the landed property on Plot No.10980 Block 'A' Mloganzila area at Kisarawe District in Coast Region (herein the suit land). She averred that the 1st defendant is a trespasser and that the act of the 2nd defendant of issuing and grant of a certificate of a right of occupancy of suit land in favour of the 1st defendant is null and void ab initio.

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In response thereto, the 1st defendant Irene Joseph Mkombachepa disputed all the claims and filed her written statement of defence, in same, the 1st defendant raised a preliminary objections on points of law as follows:-

- a. The court has no jurisdiction to entertain the suit.*
- b. The suit is incompetent for non-joinder of the necessary parties.*
- c. The plaintiff has no cause of action against the 1st defendant in respect of Plot No. 10980 Block A, Mloganzila Area, Kisarawe District, Coast Region.*

Preliminary objection was argued by way of written submissions. In arguing the objections, the 1st defendant was duly represented by Mr. Alexander Kyaruzi, learned advocate while the plaintiff enjoyed the service of Mr. Frank Ntuta learned advocate.

I have opted to begin with the second limb of objection on non-joinder of the necessary parties to the suit. In respect of this point, Mr. Kyaruzi submitted that this suit is incompetent for non-joinder of the Commissioner for Lands who is responsible to issue right of occupancy, and Registrar of Titles who registers the certificate of titles. He submitted that by reading the contents of paragraphs 9,10,12,13 and 15 of the plaint, the plaintiff claims that the purported certificate of title was

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unlawfully and wrongly issued to the 1st defendant and is void ab initio. He submitted that the Government bodies which are responsible to issue and register titles are the Commissioner for Lands and Registrar of Titles and hence the complaint as regards to the whole process and procedure for issuance of Title Deed should be directed to those authorities. It is necessary for them to be joined in order to clarify those allegations. He further argued the reasons behind that necessity is that the court order will be in-executable in their absence in suit. To cement his points, he referred to the decision of **Leonard Peter vs Joseph Mabao and 2 others**, Land Case No 4 of 2020, HC at Mwanza Registry (Unreported).

In reply thereto, the counsel for the plaintiff contended that the Commissioner for Lands and Registrar of Title are not necessary parties to be joined in this suit because even with their absence to the suit this Court is in the position to pass executable and effective decree. To cement his point, he cited the case of **Abdulatif Mohamed Hamis vs Mehboob Yusuf Othman and Another**, Civil Revision No. 06 of 2017, CAT at DSM (Unreported), where the Court of Appeal of Tanzania provided two tests for determining the questions whether a particular party is necessary party to the proceedings. First there has to be a right of reliefs against such a party of the matters involved in the suit, second

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the court must not be in the position to pass an effective decree in the absence of such a party.

The learned counsel for the plaintiff stated that the reliefs sought against the defendants, a declaratory order that she is the bonafide purchaser of the suit land against the 1st defendant, the 2nd defendant is the local government authority where the land in dispute is located and the 3rd defendant is the government legal adviser. He argued that in the absence of the Commissioner of Lands and Registrar of Title the court can pass an effective decree, thus joining those authorities as necessary parties is not necessary.

On rejoinder, the counsel for the 1st defendant mostly reiterated his submissions in chief and prayers.

In order to determine merits of this limb of preliminary objection, I had to revisit the plaint to find out if the plaintiff has pleaded facts which requires necessary parties to be joined in the suit. The paragraphs 9,10,11 and 12 of the plaint reads as;-

9. That while the said land is located at Ubungo municipality in Dar es salaam Region but the purported Title Deed was unlawfully issued to the 1st defendant by the 2nd defendant.

10. That, the plaintiff is on the grave doubt as the procedures, through which the 1st defendant, acquired

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the land in dispute as no single even neighbours out of all the neighbours around the suit land was involved on signing C.F No.90 in the wholly process of procurement of the right of occupancy from the 2nd defendant and as well have no any information about the incidence as of to date.

11. That, meanwhile the said 1st defendant without any colour of right had erected foundation deployed armed security Guards to man the area without justification as the land belong to plaintiff as bonafide purchaser for value since 2008.

12. That, the plaintiff named herein above is deeply aggrieved by the procedure which of (sic) the 2nd defendant in granting and or issuing the certificate of a right of Occupancy to wrong person instead of the plaintiff who bought the said suit land since 2008.

In the above quoted paragraphs, it is obvious that the plaintiff has pleaded that the purported title deed was unlawfully issued to the 1st defendant by 2nd defendant. The plaintiff complained on how did the 1st defendant acquired the title deed and the plaintiff questioned on the correctness of the procedure for granting and issuing the Certificate of Title in paragraph 12. By these claims, the matter cannot conclusively be determined without the involvement of the Registrar of Titles and Commissioner for Lands who in fact are the authorities which registered and issued the certificate of title to the 1st defendant. *Alle.*

In the case cited by the counsel for the plaintiff of **Abdulatif Mohamed Hamis vs Mehbood Yusuf Othman and Another**, (supra) the Court of Appeal emphasised and 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 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 .."

The Court of Appeal further cited with approval the decision in the case of **Tanga Gas Distributors Ltd vs Mohamed Salim Said and Two Others**, Revision No.6 of 2011 where it was held that;

"...it is now an accepted principle of law (see MULLA 'S treatise (supra at p 810) that it is a material irregularity for a court to decide a case in the absence of a necessary party. Failure to join a necessary party, therefore, is fatal (MULLA at p.1020.."

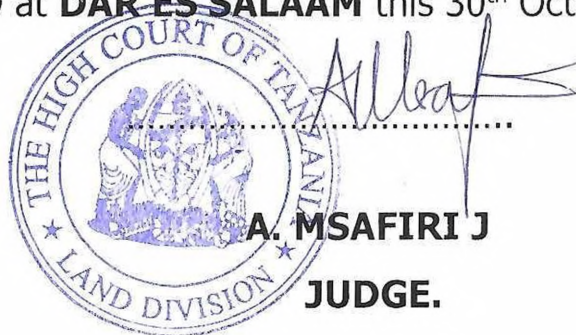
The Court of Appeal of Tanzania herein above quoted decisions, held that the plaintiff's failure to add the Commissioner for Land and Registrar of Titles in the suit constituted a non- joinder of necessary parties. *Alle.*

I find that the position of the cited case is similar to the suit at hand. The Commissioner for Land and Registrar of Titles are necessary parts in the instant suit, thus, failure to join them renders the entire suit incompetent. For that reason, I sustain the second limb of objection and since the same suffices to dispose of the entire suit, I will not determine the rest of the preliminary objections.

I proceed to strike out the entire suit with no orders as to costs.

It is so ordered

DATED at DAR ES SALAAM this 30th October, 2023.



A. MSAFIRI J
JUDGE.

30/10/2023