

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

LAND CASE NO. 153 OF 2023

**Yael Barayazi Mbangika (As Administratrix of the Estate of the late
Julius Kabeba Dyegula) PLAINTIFF**

VERSUS

GERVAS YOTAM KALUHIJE & 91 OTHERS.....DEFENDANTS

R U L I N G

Date of Last Order: 26.10.2023

Date of Ruling: 31.10.2023

T. N. MWENEGOHA, J.

The plaintiff in this suit has claimed that, the defendants have trespassed into her properties, both found in Dar es salaam Region, Kinondoni District, Mabwepande Ward and Malolo Street, described as Plot No. 27, measuring 4.22 Hectors with Certificate of Title Number 86087 and Plot No. 28, measuring 3827 sqm, with a Certificate of Title No. 86,423. The defendants on their joint Written Statement of Defense claimed to have a Sale Agreement with Dar es salaam Development Council (DDC), the owner of the lands in question, who sold the same to them. It was out of this basis that they requested DDC to be added as a necessary party. The defendants argued that joining DDC is crucial as they are still selling part of the land to other people as they sold to the defendants. The plaintiffs agreed to this request and prayed for time to amend their plaint. This Court gave the plaintiff up to

19/10/2023 to amend the plaint as prayed, however, the plaintiff did not adhere to the order. Instead, on the 26/10/2023 when the matter was called, the plaintiff prayed for this Court to vacate its orders allowing plaintiff to file amended plaint and instead grant more time so that they can issue a 90 day notice to DDC and Attorney General as the law requires when suing government institution. A letter to that effect was also filed. It was to that background that this Court wanted parties to address it on the appropriateness of such prayers. The parties addressed the Court on the issue through written submissions.

The plaintiff who was represented by Tukilage Frank was of the view that it is important for the Court to allow the DDC to be added in the case. It was her further argument that this Court has such powers given under the provisions of **Order 1 Rule 9 and Rule 10(2) of the Civil Procedure Code, Cap 33 R. E. 2019** to join any party at any material time for the interest of justice. It was highlighted in their argument that because DDC is a government entity, that is why they need more time so as to give 90 days' notice to be able to join the government as required by the Government proceedings Act.

On the other hand, the defendants, through the legal services of Advocate Goodchance Reginald, were of the view that, the prayers of the plaintiff cannot stand. That, as the plaintiff needs to save the 90 days notice, the same cannot be done while the case is pending in Court. It was his submission that this case should be struck out and the plaintiff if still wishes to pursue the matter, will file a fresh suit, with the government as one of the parties, including the DDC.

After going through the submissions, I am in the agreement with Advocate Reginald's arguments that the plaintiff's prayers are unattainable. It is evident

that there is a need to join DDC as a necessary party, which has been agreed by both parties. As per the defendants' paragraph 4 of the Written Statement of Defense, DDC has been referred as the owner of the land in dispute, who sold the same to the defendants. Therefore, she is a necessary part. This fact was affirmed by the plaintiff during the proceedings and indeed agreed that DDC is a necessary party. Therefore, she should be joined, see **Juma B. Kadala versus Laurent Mkande [1983] TLR 103** and also the case of **Abdullatif Mohamed Hamis versus Mehboob Yusufu Osman and Another, Civil Revision No. 6 of 2017, Court of Appeal of Tanzania, (unreported)**.

The question then parties were to address is will it be proper to stay the case for 90 days, for the DDC to be joined. It is on this point that I agree with the defendants' advocate. The proper recourse for the plaintiff is to issue the notice before instituting a suit against the government. This is the position held in several cases including that of **Venance Pius Lafa versus Ibrahim Ally Mpore and 4 others, (Land Case No 10 of 2020) 2023 TZHC 20654**.

With such requirement, the current suit cannot stand as there is a non joinder of a necessary party who cannot be joined while the suit is pending.

For the reasons I have explained herein above, I find the instant suit to be incompetent. The same is struck out for non-joinder of a necessary party.

No order as to Costs.




T. N. MWENEGOHA
JUDGE
31/10/2023