

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 253 OF 2021

BETWEEN

NYASULU ENOCK NKYAPI..... PLAINTIFF

VERSUS

DEBORA JAMES IKHALLADEFENDANT

RULING


12/12/2022 & 02/2/2023

A. MSAFIRI, J.

On 12/12/2022, this Court acting on complaints raised by the defendant in this case, summoned the two parties to the case so that the defendant can address the Court on their complaints and the plaintiff can respond on them.

Both parties were represented whereby Mr. Aman J. Richard, learned advocate appeared for the plaintiff while Mr. Yuda Thadei Paul, learned advocate with Edward Kikuli learned advocate appeared for the defendant.

The complaints by the defendant as addressed to the Court by Mr. Paul were briefly that;

First; that the original plaint was not signed by the Registry Officer when it was filed. 

Second; that, the defendant was served with the amended plaint after almost eight months has passed since the case was filed.

Third; after having been served and made a perusal, the defendant discovered that the receipt was written by a red pen and show that the case was filed on 31/12/2020. However, the Court record shows that the case was filed on 04/01/2022.

Mr. Paul was of the view that this shows contradictions because the case has been registered with a 2021 number i.e. Land Case No. 253 of 2021 and it is not supported by the registration receipt. He averred that, because of this contradiction, this case is not proper before the Court, as they raise doubts as to the competency of this matter before this Court.

Mr. Paul prayed for the Court to strike out this matter so that the plaintiff can start afresh.

In response, Mr. Richard submitted that the plaintiff maintains that this matter was filed on 31/12/2021. That, the issue of discrepancies or contradictions are on the Court's side and not the parties.

Mr. Richard pointed that the defendant was served late because there was difficulty in tracing her. The plaintiff sought for leave to amend the plaint and it was granted by the Court. That the defendant was served with the amended plaint as the original one has already been replaced.

On the issue of the receipt for registration, Mr. Richard argued that even if the original receipt is dated 04/01/2022 instead of 31/12/2021, the case is not time barred so there is no harm in proceeding with the case for the interest of justice to all parties.

Alle

He prayed for the Court not to strike out this matter.

In rejoinder, Mr. Paul argued that, for the document to be proper before the Court, the date of filing is the date which the receipt was issued and that is on 04/01/2022. Hence, the receipt cannot support the case with registration No. 253 of 2021.

Mr. Paul added that, for the case file to be proper, the plaint should be signed by the Court Registrar and be compatible with the receipt of filing fee, but this is not the case in the present matter where the original plaint was not signed and that this defect is fatal to the case. He reiterated his prayers.

Having heard both parties to the case, I am of the view that the major issue here is whether this case is competent before this Court.

The plaintiff through her advocates has casted doubt on authenticity of the receipt and date of filing the plaint.

On the issue of the authenticity of the receipt of filing fee, it is my view that the authentic receipt is the one which is on the Court's records which shows that the case was filed for the first time on 04/01/2022. The contradiction of the dates of filing which is being pointed by the counsel for the defendant is not fatal to the case as averred by the counsel because it does not go to the root of the case.

Admittedly, there is a mix upon the dates of filing of this case basing on the two receipts, the first one written by red pen showing that the case was filed on 31/12/2021, and the second, the one in Courts records which shows that the case was filed on 04/01/2022. *Alle -*

Despite this, I have failed to see any legal fatality to this case which could have rendered the same incompetent before me. My reason for this finding is that the contradiction is not judicial or legal issue which could be attended by the Judge presiding this matter as to my view, the complaint by the defendant is more administrative.

There is no question of time limitation as rightly pointed by the counsel for the plaintiff which was not objected by the defendant so the matter is legally within time.

The defendant also did not show how the contradiction on the dates of filing has prejudiced her rights or is going to prejudice her rights as a defendant in this matter.

On the issue of defectiveness of the purported original plaint which the defendant submitted that it was never signed, hence never received by the Court, it should be remembered that the defendant through her advocate has admitted that there is a receipt of filing fee in the Court record which shows that this case was filed on 04/01/2022. So, the claim that this case has never been received by the Court is misplaced.

Even if the original plaint was not signed and dated by the Court Register, there is receipt which shows that the case was filed and received by the Court on the shown date.

Advocate for the defendant failed to back up his averments by any law or rule of practice. He has failed to prove to this Court, how, legally, this matter is incompetent before this Court.

Adle

On the issue of the original plaint and amended plaint, after the amendment, the original plaint ceased to have any effect in the matter as there is the current one which prevails.

To sum up my findings, the defectiveness pointed out by the defendant in this matter are not fatal as the same does not go to the root of the case. Again, as I have observed earlier, the defendant did not show this Court how this defectiveness has prejudiced her as far as this case is concerned. I find that this case is competent before the Court.

I hereby reject the prayers of striking out this case. The same shall proceed on hearing on merit as scheduled.



A handwritten signature in black ink, appearing to read "A. Msafiri". The signature is written in a cursive style and is positioned above a horizontal dotted line.

A. MSAFIRI

JUDGE

02/2/2023