

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 334 OF 2023

BETWEEN

THOMAS KIMBARI NGUMA ..... PLAINTIFF

VERSUS

AMANI HAMISI CHUMA ..... 1<sup>ST</sup> DEFENDANT

REGISTRAR OF TITLES ..... 2<sup>ND</sup> DEFENDANT

COMMISSIONER FOR LANDS ..... 3<sup>RD</sup> DEFENDANT

HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT

**RULING**

19/3/2024

**A. MSAFIRI, J.**

The 1<sup>st</sup> defendant in this suit has raised preliminary objections on points of law to the effect that;

- a) *The suit at hand has laid – off the directives issued by the District Land and Housing Tribunal of Kinondoni at Mwananyamala, thus incompetent.*
- b) *That the proceedings before this Honourable Court are an abuse of the Court process.*

The hearing of the preliminary objections was orally whereby the 1<sup>st</sup> defendant was represented by Mr. Sigbert Ngemera and Ms. Lilian Kweka, learned advocates. Submitting on the first limb of objection, Mr. Ngemera

*Alle*

stated that formerly one Amani Hamisi Chuma ( now the 1<sup>st</sup> defendant) filed Application No. 288 of 2017 in the District Land and Housing Tribunal of Kinondoni at Mwananyamala (herein the District Tribunal) against Hamisi Yusuph Rubawa and Thomas K. F Nguma (now the plaintiff). However, there was an order of the District Tribunal that since there was Certificate of Titles on the disputed land, then the Commissioner for Lands was a necessary party to the matter.

That the District Tribunal ordered that the parties to the suit should join the Commissioner for Lands and the Registrar of Titles to the suit. That the District Tribunal struck out the Application and ordered that if any party has intention of refileing the suit again, then the parties should join the above said necessary parties.

Mr Ngemera argued that it is trite law that the order of the Court should be adhered to and effected to the core, and that the plaintiff have failed to comply with the order of the District Tribunal which is still valid today as it has never been challenged before any Court.

The counsel Mr. Ngemera submitted further that the plaintiff have once instituted the same proceedings in this court without complying with the District Tribunal's order. That it was Land Case No. 101 of 2023 between Thomas Kimbari Nguma vs. Amani Hamisi Chuma. The case was before

*Atto.*

Hon. Luvanda, J. Mr. Ngemera said that this Court strike out the said case for the reason of not complying with the trial Tribunal order. That the plaintiff has again instituted this suit but failed to comply with the court's order.

To buttress his point, he cited the case of **Karori Chogoro vs. Waitihache Merengo**, Civil Appeal No. 164 of 2018, CAT at Mwanza.

On the second limb of objection, Mr. Ngemera submitted that the plaintiff have instituted proceedings which are abuse of court process. That there is a Court order which the plaintiff have deliberately refused to comply with it. That for those reasons, this suit be struck out with costs.

In reply, Mr. Husdon Mchau, learned advocate who was representing the plaintiff submitted that it is true that there was an order of the District Tribunal in Application No. 288 of 2017 dated 13/3/2023. That in the said case, the plaintiff was the 2<sup>nd</sup> respondent. That generally, according to the order of the District Tribunal, the one to be joined were the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants and therefore the plaintiff have complied with the District Tribunal's order.

Mr. Mchau submitted further that, it is true that the plaintiff had instituted Land Case No. 101 of 2023 in this case which was before Hon. Luvanda, *Aells*  
J.

That the 1<sup>st</sup> defendant raised the same preliminary objection and the matter was struck out. He argued that the plaintiff have this time complied with the Court's order.

Mr. Mchau submitted further that the issue of joinder of parties is governed under Order 1 Rule 3 of the Civil Procedure Code, Cap 33, and that the provisions does not mandatorily set who plaintiff may sue and who may not. He said that the plaintiff has no cause of action against Hamisi Yusuf Rubawa. He added that the non-joinder is not fatal, but the party/plaintiff can seek leave of the Court to join the party to the case.

He referred this Court to the case of **Abdi M. Kipoto vs. Chief Arther Mtoi**, Civil Appeal No. 75 of 2017, CAT, Tanga.

On the second limb of objection, the counsel for the plaintiff stated that it has no merit since it is the right of the plaintiff to institute a case in Court. He prayed the Court to find that the suit is competent before the Court and the preliminary objection to be struck out with costs.

In rejoinder, Mr. Ngemera mostly reiterated his submission in chief and prayers.

Having gone through the submissions of the rival parties, the issue for determination is whether these preliminary objections have merit. *Alls.*

As per attached records, one Amani Hamisi Chuma (now 1<sup>st</sup> defendant), instituted Application No. 288 of 2017 before the District Tribunal against Hamisi Yusuph Rubawa (as administrator of the estate of late Yusuph Kondo Rubawa (as 1<sup>st</sup> respondent) and Thomas K.F. Nguma (now the plaintiff), the claim was over the disputed property.

At the Tribunal, the disputed land was found to have been surveyed hence possessed the Certificate of Title in the names of the plaintiff herein. At the stage of defence hearing, the District Tribunal raised a concern *suo motu* on whether the matter can be heard without joining the Commissioner for Lands since there exists granted rights of occupancy. The District Tribunal then proceeded to strike out the Application and issued an order which I shall quote herein below;

*'AMRI'*

*Kabla ya kuendelea kusikilizwa nimeona hati mbili ambazo zimetolewa na Kamishna wa Ardhi na kusajiliwa na Msajili wa Hati ambao si sehemu ya Shauri hili. Ni ukweli kwamba hatuwezi kuendelea na kusikiliza shauri hili bila uwepo wa Kamishina wa Ardhi na Msajili wa Hati. Kwa sababu hawa ni watu muhimu kwenye kuthibitisha umiliki wa ardhi hii basi ni lazima waunganishwe pamoja na Mwanasheria Mkuu wa Serikali. Inapotokea wameunganishwa Baraza linakosa mamlaka ya kusikiliza Shauri hili na **hii ndiyo sababu***

*Atto*

***nalifuta ili wadaawa waweze kuwaunganisha Kamishna wa Ardhi na Mwanasheria Mkuu wa Serikali katika kesi watakayosajili Mahakama kuu. "(emphasis mine).***

In Land Case No. 101 of 2023 in this Court before Hon. Luvanda, J, the Hon. Learned Judge held that the order of the learned Chairman was valid and that the dispute could not be resolved without joining the Commissioner for Lands and Registrar of Titles who are necessary parties.

In the instant case, one Thomas Kimbari Nguma is now the plaintiff and indeed the land authorities i.e. the Registrar of Title (2<sup>nd</sup> defendant), the Commissioner for Lands (3<sup>rd</sup> defendant), and the Attorney General (4<sup>th</sup> defendant), have now been joined in the suit. Therefore, the order of joining necessary parties have been complied with as it was issued in Land Case No. 101 of 2023 by this Court.

Has the order of the District Tribunal been complied with? It is my view that the order has been complied with. The plaintiff (who was then the 1<sup>st</sup> defendant) has joined the land authorities as ordered by the District Tribunal.

The District Tribunal order stated that the matter was struck out so that parties can join the Registrar of Titles, Commissioner for Lands and the Attorney General.

*Alle*

The Tribunal order was specifically on joining the above Government Institutions and not to join all parties to the suit before the Tribunal. The matter was struck out and it was not Amani Hamisi Chuma who was the applicant before the Tribunal who instituted the instant matter. In the instant case it is Thomas Kimbari Nguma who was then 2<sup>nd</sup> respondent who has filed the instant case as the plaintiff. The only party missing is Hamisi Yusuph Rubawa (an administrator) who was then the 1<sup>st</sup> respondent.

Since the District Tribunal did not specifically stated that all parties who had matter in Application No. 288 of 2017 MUST appear as parties in the case instituted by the plaintiff, but it ordered parties to join the Commissioner for Lands, Registrar of Titles and the Attorney General, then I find that the order of the District Tribunal is clear. It did not specifically ordered that all parties who were appearing at District Tribunal should be joined or should appear in the High Court. The District Tribunal proceedings which is attached to the counter affidavit was specifically on joining the Government authorities.

Furthermore, I find the non-joinder of Hamisi Yusuf Rubawa who was the 1<sup>st</sup> respondent in Application No. 288 of 2017 before the District Tribunal not fatal as this Court was not told whether the non-joinder had fatal

*Alle.*

effect to the pending case. In addition, if the party is necessary to the suit, the Court can order rejoinder of the said party under Order 1 Rule 10 (2) of the CPC.

I find the first limb of objection to have no merit. Since the second limb of objection depends on success of the first limb, then it also fails. I proceed to order that both two limbs of objection lacks merit and are hereby overruled with costs.

It is so ordered.



*A. Msafiri*  
**A. MSAFIRI**

**JUDGE**

**19/3/2024**