

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

MISC. LAND CASE APPLICATION NO. 3597 OF 2024

LATIFA RASHID MKETO (Adminstratix of the Estate of the late
RASHID SAID MKETO).....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

THE COMMISSIONER FOR LANDS.....2ND RESPONDENT

DIRECTOR OF TEMEKE MUNICIPAL COUNCIL..3RD RESPONDENT

THE REGISTERED TRUSTEES OF

AL-KHAYRIYAH.....4TH RESPONDENT

THE REGISTERED TRUSTEES OF BARAZA

KUU LA WAISLAM TANZANIA(BAKWATA)..... 5TH RESPONDENT

R U L I N G

Date of Last Order: 11. 03.2024

Date of Ruling: 27.03.2024

T. N. MWENEGOHA, J.

The Application at hand, met with an objection from the 1st, 2nd and 3rd respondent that, the same is untenable for misjoinder of the 3rd respondent. In their joint written submissions, the said respondents through the services of the learned Senior State Attorney, Selina Kapange, maintained that, the applicant has sued a wrong party, that is the 3rd respondent. That, the proper party to be sued is Temeke Municipal Council as stated in **Section 14(1) of the Local Government (Urban**

Authorities) Act, Cap 288 R. E. 2002. As well as stated in **Maulid Shaaban versus Temeke Municipal Executive Director and Another, Misc. Land Application No. 1030 of 2017, High Court of Tanzania, Land Division at Dar es Salaam (unreported).**

In reply, the applicant's counsel, Nehemia Gabo agreed with the learned State Attorney for the 1st to 3rd respondents. He argued that, it is true as per **Section 14(1) of the Local Government (Urban Authorities) Act, Cap 288 R. E. 2002,** it is stated clearly that, a local government authority is an entity with powers to sue and be sued. Thus, Temeke Municipal Council in the case at hand is capable of being sued. However, including the 3rd respondent in this case has not render the striking out of this case, since the said non joinder does not go to the root of the case at hand. He cited the case of **Israel Malegesi and Another versus Tanganyika Bus Services, Civil Application No. 172/08 of 2020, Court of Appeal of Tanzania, at Mwanza (unreported).**

Indeed, in the instant case, the applicant's counsel admits that, the 3rd respondent has wrongly been sued in this case. The proper person to be sued in the position of the 3rd respondent is the Temeke Municipal Counsel, as stated under **Section 14(1) of the Local Government (Urban Authorities) Act, Cap 288 R. E. 2002,** which states;-

(1) Every urban authority established or deemed to have been established under this Part, and in respect of which there is in existence a certificate of establishment furnished under section 9, shall, with effect from the date of commencement of the establishment order, be a body corporate, and shall;-

(a) have perpetual succession and an official seal;

(b) in its corporate name, be capable of suing or being sued;

(c) subject to this Act, be capable of holding and purchasing, or acquiring in any other way, and disposing of any movable or immovable property.

Basing on the above quoted provision of the law, a person cannot sue the Chief executive officer of the urban authority as done in this case. He or she has no locus to sue or be sued on behalf of the authority, rather the authority has vested with the powers to sue and be sued in its own name. Apparently, the applicant has not just joined a wrong party as claimed by her learned counsel, rather sued a wrong party along with others. The case, as it is, cannot proceed and this Court cannot order the substitution of parties from the Director of Temeke Municipal Council to Temeke Municipal Council. The only remedy available is to strike out the case to pave the way for the applicant to sort out the proper parties involved in her case, see **Maulid Shaaban versus Temeke Municipal Executive Director and Another** (supra).

The applicant's counsel on the other hand, sought to apply the overriding objective rule, claiming that the defect did not touch the root of the case, citing the decision of the Court of Appeal of Tanzania in **Israel Malegesi and Another versus Tanganyika Bus Services**, (supra). However, the cited case of **Israel Malegesi** is distinguishable with the case at hand as the same involved omissions of the names by the applicants, who sued in their individual capacities instead of suing as Administrators of the estate of the late one Mnubi Maingu. In this case, there was no omissions, rather the 3rd respondent was sued in his capacity as a Chief Executive Officer of the authority, instead of the authority itself. Hence, the oxygen principle

cannot apply under such circumstances, **see Njake Enterprises Limited versus Blue Rock Limited and Rock Venture Company Limited, Civil Appeal No. 69 of 2017, Court of Appeal of Tanzania at Arusha, (Unreported)** and **Mondorosi Village counsel & 2 Others versus Tanzania Breweries Limited & 4 others, Civil Appeal No. 66 of 2017, Court of Appeal of Tanzania (unreported).**

In the event, the Application is struck out with no order as to costs.

it's so ordered.




T. N. MWENEGOHA

JUDGE

27/03/2024