

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

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 2568 OF 2024

RAMADHANI SHABANI LIKIMANGIZA.....1<sup>ST</sup> APPLICANT  
MWAIJA AYUBU NGOMELO.....2<sup>ND</sup> APPLICANT  
MWANAMOSHI ELIUS MSUYA.....3<sup>RD</sup> APPLICANT  
ASHA RASHID HEMEDI.....4<sup>TH</sup> APPLICANT  
HAMIS RAMADHANI KILIMANGIZA.....5<sup>TH</sup> APPLICANT  
NURU RAMADHANI KILIMANGIZA.....6<sup>TH</sup> APPLICANT  
OMARI KOMBO.....7<sup>TH</sup> APPLICANT  
HEMED SHABANI KILIMALIZA.....8<sup>TH</sup> APPLICANT

VERSUS

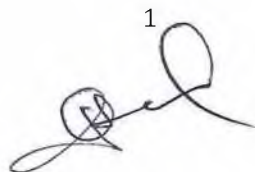
TEMEKE MUNICIPAL COUNCIL.....1<sup>ST</sup> RESPONDENT  
NATIONAL SOCIAL SECURITY FUND.....2<sup>ND</sup> RESPONDENT  
THE ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT

RULING

30<sup>th</sup> April, 2024 & 10<sup>th</sup> May, 2024

**L. HEMED, J.**

The instant application is for *mareva* injunction brought by the applicants under section 2(3) of the Judicature and Application of Laws Act, [Cap.358 R.E 2019]. They are seeking for an order for maintenance of *status quo* as regards to the land in dispute, pending the intended suit against the

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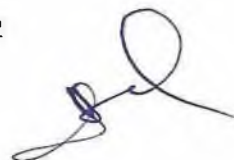
1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents, which await maturity of a statutory notice already served upon the Government. The application is supported by the joint affidavit of the applicants.

The respondents challenged the application through the affidavit of **SIMA MAFIPA**, the Principal Officer of the 2<sup>nd</sup> Respondent. The learned counsel for the respondents also raised a preliminary objection *limine litis* thus:

*"The Application is incompetent and bad in law for suing non-existing entity in law thus is the 2<sup>nd</sup> Respondent."*

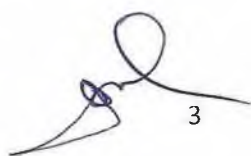
For purposes of serving time, it was directed by the Court that application and the preliminary objection be argued by way of written submissions simultaneously. The submissions were filed by **Ms. Kause Kilonzo**, learned State Attorney for the respondents while **Mr. Mashiku Sabasaba**, learned advocate, acted for the applicants.

It is the practice that where a preliminary objection has been raised, it should be determined first before delving into the merit of the matter before the court. In that regard I am bound to begin determining the preliminary objection.



The learned State Attorney submitted that the 2<sup>nd</sup> Respondent is a non-existing entity to be sued. In her view, suing the 2<sup>nd</sup> Respondent is contrary to the provision of section 53(1) of the National Social Security Fund Act, Cap.50 which establishes a Board of Trustees of the National Social Security Fund which has the capacity to sue and being sued. It was asserted further that suing person with no legal legs to stand, makes the suit/application bad in law. She fortified her arguments with the decision of this Court in **Singida Sisal Production & General Supply vs Rofal General Trading Limited & 4 Others**, Commercial Review No.17 of 2017; **Change Tanzania Limited vs. Registrar, Business Registration and Licencing Agency**, Misc. Commercial No. 27 of 2019; and the Court of Appeal of Tanzania's decision in **Ilela Village Council vs. Ansaar Muslim Youth Centre and Another**, Civil Appeal No. 317 of 2019.

In response to the respondents' submissions, Mr. Sabasaba contended that the 2<sup>nd</sup> Respondent is in full existence save that her name has been written not in full. According to the learned counsel, the noted error is a normal human error which has been occasioned largely by the common use of such short name by the public.

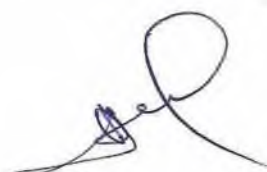


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He proceeded to state that the 2<sup>nd</sup> Respondent is a social fund established under section 3(1) of the National Social Security Act (*supra*) and is managed by the Board of Trustees as per the provisions of section 4(1) of the Act. He insisted that the 2<sup>nd</sup> Respondent is legally in existence and conceded that for the purpose of this Application the name of the 2<sup>nd</sup> Respondent ought to have commenced with the Board of Trustee.

Mr. Sabasaba was of the further view that the omission to the name of the 2<sup>nd</sup> Respondent is curable under Order I Rule 10(2) of the Civil Procedure Code [Cap.33 R.E 2019] as the court has the power to order removal or additional of a party to the suit. He asked the Court to apply the principle laid down by the Court of Appeal of Tanzania in the case of **Director General LAPF Pension Fund vs. Pascal Ngodo**, Civil Appeal No.78/08 of 2018 in which it was held that omission to cite enabling provision as inconsequential. He also sought refuge to the overriding objective principle as he prayed the Court to ignore the omission and direct rectification of the error.

Having gone through the rival submissions it is now apt to determine as to whether the preliminary objection is meritorious. The learned counsel for the respondents in her submission was of the view that the 2<sup>nd</sup>



Respondent is a non-existent entity. With due respect to the learned State Attorney, I do not subscribe to her view. The reason is that the 2<sup>nd</sup> Respondent is established under section 3(1) of the National Social Security Fund, Cap.50 which provides thus:

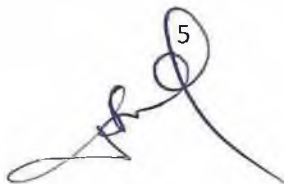
*"3.-(1) There is established a Fund to be known as the **National Social Security Fund** into which shall be paid all contributions and other moneys required by this Act."*[Emphasis added]

According to the above provision, the 2<sup>nd</sup> Respondent, National Social Security Fund is a creature of the statute herein above cited and thus do exist. However, the question is whether the 2<sup>nd</sup> Respondent has the legal legs to sue and being sued. The answer to this question is found under the provision of section 53(1)&(2)(a) (b) and (c) of the National Social Security Fund (*supra*) which provides thus:-

*"53.-(1) There is established a **Board of Trustees of the National Social Security Fund** which shall be registered by the Authority.*

*(2) The Board shall, in its corporate name be capable of-*

*(a) **suing and being sued;***



*(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of property, movable or immovable; and*

*(c) entering into contracts and performing all such other acts for the proper performance of its functions under this Act which may lawfully be performed by a body corporate.”[Emphasis added]*

The above provisions establishes another entity known as **Board of Trustees of the National Social Security Fund** which is mandated to manage the 2<sup>nd</sup> Respondent. According to the Act, it is the said Board of Trustees of the National Social Security fund which has legal legs to sue and being sued. It should be noted that, the National Social Security Fund established under section 3(1) of the Act is distinct to the Board of Trustees of the National Social Security Fund, established under section 53 of the Act. I am holding so in view of what was held by the Court of Appeal in **Ilela Village Council vs Ansaar Muslim Youth Centre and Another**, Civil Appeal No.317 of 2019, thus:-

*“...the 1<sup>st</sup> respondent does not have powers to transact any business or invest or manage the properties of the Registered Trustees of Ansaar Muslim Youth Centre. **Principally, the Registered***



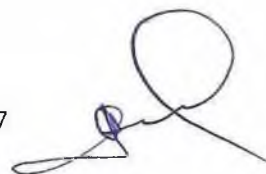
**Trustees of Ansaar Muslim Youth Centre is a separate legal entity person with its own legal entity distinct from the 1<sup>st</sup> Respondent.**"

[Emphasis added]

Likewise, in the instant case, the **Board of Trustees of the National Social Security Fund** is quite separate legal entity person with its own identity distinct from the 2<sup>nd</sup> Respondent, the National Social Security Fund.

The 2<sup>nd</sup> Respondent in the instant case is an entity created under section 3(1) of the Act with no capacity of suing and being sued. Being a non-juristic person, it cannot be brought to court as it has no legs to make it walk into the court premise and it has no mouth that it cannot speak when so required to do. A legally crippled person cannot sue or being sued in personal capacity. In the instant case, the 2<sup>nd</sup> Respondent is incapable to sue or being sued in its own capacity, rather through its **Board of Trustees** established under section 53 of the National Social Security Fund Act.

The question is the error curable as suggested by **Mr. Sabasaba** counsel for the applicants? The learned counsel was of the view that the omission is curable under Order I Rule 10(2) of the Civil Procedure Code, [Cap.33 R.E 2019]. It provides thus:



*"(2) The court may, at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."*

*[Emphasis added]*

The learned counsel prayed to evoke the above provision to rectify the omission in the Application by adding the **Board of Trustees of the National Social Security Fund**. In my view, the proposition made by the learned advocate is inapplicable in the circumstance of the matter at hand. I am holding so because the above provision cited refers to the non-joinder and misjoinder of parties to the suit. The above provision applies where a party who has legal capacity to sue or being sued exist but has not made a party to the suit or has been wrongly joined to the suit. In the instant case, the 2<sup>nd</sup> Respondent is not a wrong party but a creature with no legal capacity

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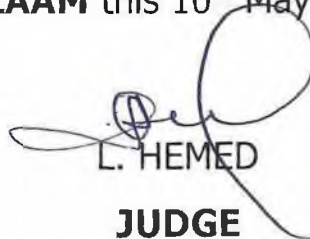


to be sued. In fact, the omission cannot be cured by either Order I rule 10(2) of the Civil Procedure Code (*supra*) or by the oxygen principle as it is a fatal omission.

In the final analysis, I find merits in the preliminary objection. In that regard, I cannot proceed to assess the merit of the application. I uphold the preliminary objection and proceed to strike out the entire application. Each party to bear its own costs. Order accordingly.

**DATED at DAR ES SALAAM** this 10<sup>th</sup> May 2024.



  
L. HEMED  
**JUDGE**