

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

LAND APPEAL NO. 613 OF 2024

(Originating from Application No. 87/2023, Kigamboni District Land and Housing Tribunal)

RAMADHANI OMARI KIMBIKITI (Suing Under Power of
Attorney of Asha Ally Kimbikiti).....**APPELLANT**

VERSUS

SAID ATHUMANI NGULANGWA.....**1ST RESPONDENT**
ATHUMANI ABEID @ JASCO.....**2ND RESPONDENT**
INNOCENT KAJUMBA BASHAURA.....**3RD RESPONDENT**
LORNA MAKANYA.....**4TH RESPONDENT**
HUGO MAMBO.....**5TH RESPONDENT**
DANIEL SELEKI.....**6TH RESPONDENT**
ROMANUS MWANG'ING'O.....**7TH RESPONDENT**

JUDGMENT

15/04/2024 to 26/06/2024

E.B. LUVANDA, J

The Appellant named above is challenging the ruling of the Tribunal which struck out his suit without costs, on the ground of non-joinder of a necessary party that is TANESCO who was pleaded in the application (plaint) to have embarked into acquisition and payment of compensation to the Respondents in respect of the suit land at Vumilia Ukooni Kisarawe II Kigamboni, currently

hosting high voltage electricity of 132 kilowatts, running from Kibada to Dege Beach. Striking out of the Appellant's suit for non-joinder of necessary party as aforesaid was explained by the Tribunal to have been attributed by a fact that joining or impleading TANESCO will entail impleading the Honorable Attorney General as well, citing The Written Laws (Miscellaneous Amendments) Act, 2020, section 6(3) of Cap 5 which amended section 25(a) of Act No. 1 of 2020. In a bid to challenge the above ruling on a typical legal aspect, the Appellant grounded that: One, the Honorable Chairman erred in law and fact by holding that the dispute area are taken by TANESCO; Two, the Honorable Chairman erred in law and fact by holding that the disputed plot is taken by TANESCO and the same is not joined as necessary party to the case; Three, the Honorable Chairman erred in law and fact by holding that the application is incompetent for failure to join TANESCO as necessary party to the case; Four, the Honorable Chairman erred in law and fact by holding that the Appellant does not want to sue TANESCO who invaded while TANESCO is one who takeover the plot; Five, the Honorable Chairman erred in law and fact by holding that the application cannot be determined unless TANESCO is joined as a necessary party to the case.

Mr. Issa Chundo learned Counsel for Appellant, combined grounds number two, three and five into one and argued separately grounds number one and four.

He started with the amalgamated grounds number two, three and five. The learned Counsel prefaced his argument by citing **Black's Law Dictionary** 8th Ed, regarding as to who is a necessary party; **Abdullatif Mohamed Hamis vs Mehboob Yusuf Osman and Another**, Civil Revision No. 6 of 2017, on a proposition of factors to be considered when determining as to who is a necessary party to be joined in the suit. He submitted that in his view, TANESCO is not a party whose absence would mean no effective decree or orders could be passed. He submitted that according to the prayer in the application, there is no prayer that will affect the interest and right of TANESCO of having the passage of their electricity line. He cited Order I rule 3 Cap 33 (supra); **Tanga Gas Distributors Ltd vs Mohamed Salim Said and Two Others**, Civil Application No. 68 of 2011; **Juliana Francis Mkwabi vs Lawrent Chimwaga**, Civil Appeal No. 531 of 2020, CAT.

The learned Counsel also combined grounds number one and four, he submitted that in their application and defence neither the Appellant nor the Respondent stated that the area in dispute was taken by TANESCO. He submitted that the Appellant sued for the plot which are now occupied by the Respondents not taken by TANESCO.

Mr. Augustino Mariano Mwanyigu learned Counsel for the Respondents he submitted that on quick review of the appeal, there is only one ground of

appeal, and submitted collectively that the Tribunal did not err in assessing and identifying TANESCO as a necessary party who ought to be joined for the effectiveness of the decision, for reason that TANESCO obtained land from some of the Respondents (with exception to those who were wrongly joined) through legally identified process of acquisition and compensation. He cited Order I rule 3 Cap 33 (supra). He submitted that the requirement of adding a necessary party in the case intends to assist the court to effectively hear, grasp, and settle the dispute once and for all to avoid multiplicity of cases. He submitted that new owners of land and prayers sought will affect TANESCO too; the Appellant's action against the Respondents came after TANESCO's compensation arrangements as well as Vumilia Village authority; the two authority were in a good position to assist the Tribunal on how they identified owners of the plot. He cited **Mexon Investment Limited vs CRDB Bank PLC**, Civil Appeal No. 222 of 2018, regarding the effect of not joining the necessary party, that it entails nullification of the proceedings.

On rejoinder the learned Counsel for the Appellant submitted that the action of the Appellant arose immediately after the Respondents invaded the suit land and not after TANESCO's compensation. He submitted that a claim and prayers by the Appellant was never to vacate TANESCO facility at the disputed area rather compensation made to the Respondents be refunded to the Appellant

being the owner of the disputed property as if TANESCO would have compensated the Appellant when found to occupy the property.

I am in agreement with the argument of the Respondents that technically there is only one ground of appeal. No wonder the learned Counsel for the Appellant at the preface of his submission vowed to combine grounds number two, three and five into one and promised to argue separately grounds number one and four. But at the verge of arguing combined grounds number one and four as well, and proceeded to argue facts relating to impleading TANESCO.

Be as it may, the bases of the Tribunal decision was centered on the facts pleaded by the Appellants as well as his reliefs sought.

At paragraph 5(a)(vi) of the application, the Appellant pleaded that,

'Further to the aforesaid the Respondents have unlawfully and without any colour of right represented as owners of the disputed plot and received compensation from TANESCO as TANESCO passed a high voltage electricity-TanESCO Power Line at the disputed plot. The Respondents have deliberately refused to remit the paid compensation to the Applicant. The Respondent are unlawful getting benefit out of the Applicant's property without any lawful cause'

At reliefs, the Appellant sought for a relief of specific damages of Tsh 50,000,000 as compensation received from Tanesco.

In view of the above, the Tribunal was legally justified to rule that the suit before the Tribunal was incompetent for failure to join TANESCO who acquired the land and own it for hosting high voltage electricity for which the Appellant claim ownership and accuse the Respondents to have received compensation illegally.

Therefore, the way the Appellant's claim was pleaded joining TANESCO is inevitable.

The argument by the learned Counsel for the Appellant that neither the Appellant nor the Respondent stated that the area in dispute was taken by TANESCO or a rejoinder that they never sought for relief to vacate TANESCO facility or that he is merely asking for refund of compensation illegally obtained by the Respondents from TANESCO, to my view is a mere sake of argument and changing the goal post of his claim.

Above all, there were other crucial points which were not resolved by the Tribunal regarding *locus standi* of the Appellant who at paragraph 5(a)(ii)

of the application, where he introduced elements of administration of the estate of the late Said Ally Kimbikiti, but did not plead having letters of administration; cause of action against some Respondents; time limit for some claims and reliefs.

In the upshot I uphold the decision of the Tribunal.

The appeal is dismissed. No order for costs.

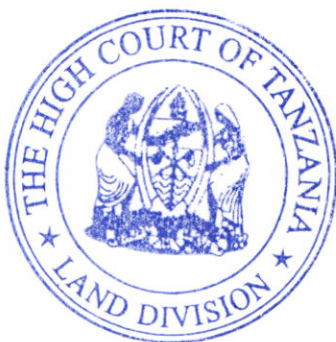


E.B. LUVANDA

JUDGE

26/06/2024

Judgment delivered in the presence of Ms. Rozalia Ntiruhungwa learned Advocate for the Appellant and Mr. Augustino Mariano Mwanyigu learned Counsel for the Respondents.



E.B. LUVANDA

JUDGE

26/06/2024