

TANZANIA / JUDGMENT

final first ruling Tanzllii

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DECIDED
23 August 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MOSHI SUB - REGISTRY AT
MOSHI LAND CASE NO. 12410 OF 2024 ELIA RICHARD MOSHI (as legal Personal Representative
of the late) RICHARD ELIAKIMU MOSHI.....1ST PLAINTIFF ATANASIA KICHINDA
KUNDI.....2ND PLAINTIFF VERSUS ELIZABETH RICHARD MOSHI.....
1ST DEFENDANT ELIZABETH MARO MINDE.....2ND DEFENDANT

RULING

7th & 23rd August 2024 A.P. KILIMI, J.: This is the ruling in respect to the prayer by Mr. Asubuhi Yoyo learned counsel for the first defendant. It was made orally when this matter came before me for mention. Mr. Yoyo prayed to amend the first defendant’s Written Statement of Defence (“WSD”) filed on 24th June 2024 so as to incorporate a counter claim. He referred to order VI rule 17 of CPC and stated that the rationale is not to change the WSD but to incorporate the counter claim so as to enable this court to determine all at once instead of filling a new separate suit. He further argued that by doing so the other 1 parties will not be prejudiced for such amendments and he was of the view the same will even expedited disposition of dispute and also to evade conflicting decision. Responding to the above prayer, Mr. Jonas Semu counsel for Plaintiffs vehemently rejected the counsel prayer and stated that the prayer did not fall within the ambit of the cited provision. He stated that as the counsel submitted that he will not change anything in WSD thus since no changes was to be affected in the already filed WSD, the counsel was of the view that it amounts to no amendments of pleadings at all. He further stated that that the proper provision for counter claim is guided by order VIII rule 9 up 12 of the Civil Procedure Code Cap 33 R.E. 2019 (“CPC”). Thus, he concluded that the prayer is more speculative and prayed not to be granted. In his rejoinder, Mr. Yoyo maintained that WSD is the pleading and is the one he prays to be amended, the argument that he ought to have cited order VIII rule 9 of the CPC, the counsel added that as long as he specifically prayed for amendment of pleadings, this Court is presumed to know the law, thus none or wrong citation of enabling provision cannot hinder this court in exercising its jurisdiction. The counsel further 2 maintained that by his prayer he will be adding a cross suit by filing a counter claim so that specific matter may be ascertained. Then the counsel insisted this court to allow his prayer in order to avoid conflicting decision for the same subject matter. Before I dwell into the prayers submitted before me, I find it is pertinent to understand what is pleading, according to Order VI rule 1 “Pleading’ means a plaint or a written statement of defence (including a written statement of defence filed by a third party) and such other

subsequent pleadings as may be presented in accordance with rule 13 of Order VIII. The said subsequent pleadings under rule 13 of Order VIII of CPC provides; “No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off or counterclaim shall be presented except by the leave of the court and upon such terms as the court thinks fit, but the court may at a pre-trial conference require a written statement or additional written statement from any of the parties and fix a time for presenting the same” [Emphasis added] 3 Nonetheless, According to Blacks law Dictionary 8th Edition, pleading is defined to be a formal document in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials, or defences. According to the provisions of CPC above, counter claim is a pleading which is filed together with the WSD, therefore the two are inseparable if a party opt to file a cross suit. Now having the said settled mind, the issue is how pleading is amended after being filed in court of law. Order VI rule 17 of the CPC provides; “The court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.” [Emphasis added] I am convinced by the case of Muhindo v Kasese District Local Government and 2 Others (Miscellaneous Application 31 of 2023)

[2023] UGHCLD 281 (UgandaLII) wherein the High Court of Uganda when interpreting Order 6 Rule 19 of the Civil Procedure Rules governs the amendment of pleadings which is in parimateria with the provision of Order VI rule 17 of the CPC quoted above, the said court referred an English case of Cropper v Smith (1884) 26 Ch. D. 700 (CA) and observed at page 12 as follows; “Amendments are made on the need for courts to determine the real questions in controversy between the parties and to avoid multiplicity of pleadings. Where it appears that the way in which a party has framed his case will not lead to a decision on the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right.” In Cropper vs Smith (supra) Bowen LJ had this to say; "Now, I think it is a well-established principle that the object of Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights....., I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace.” I have considered the reasons stated by Mr. Yoyo above in lieu of the discussion above, I am settled the reasons advanced for praying amendment of pleading intend to settle matters in controversy between the parties which is the spirit and duty of this court, but moreover the said amendment will help to avert multiplicity of suit since all claims by the first defendant against the Plaintiff shall be handled in a single suit. However, in my view it will not cause any injustice to the Plaintiff if the same is done. On the premises and from what I have endeavored to discuss above, the prayer to amend WSD by the first defendant by adding a counter claim is hereby

granted, and the same should be filed within 14 days whereas after filing, the Plaintiffs reply to it be within 21 days. In the circumstance each party shall bear own costs. 6 It is so ordered. DATED at MOSHI this 23rd day of August, 2024. X JUDGE Signed by: A. P. KILIMI Court: Ruling delivered today on 23rd day of August, 2024 in the presence of Mr. Yoyo Asubuhi learned advocate for the first defendant and Ms. Dorisi Kinyoa learned advocate on behalf of Elizabeth Minde. First defendant also presents in person. Sgd; A. P. KILIMI JUDGE 23/08/2024 7

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