

TANZANIA / JUDGMENT

Land Case No

COURT
TANZLIIDECIDED
1 January 2015

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE NO. 396
OF 2015 BETWEEN HASSAN SALEHE NDENGENYU AND GUSTAV D.K. MIHANJO AND 87
OTHERS PLAINTIFFS VERSUS DIRECTOR GENERAL EXPORT PROCESSING ZONES
AUTHORITY..... 1stDEFENDANT PERMANENT
SECRETARY MINISTRY OF LANDS AND HUMAN SETTLEMENT
DEVELOPMENTS.....2ndDEFENDANT ATTORNEY
GENERAL..... 3rd DEFENDANT

RULING

25/4/2024 A. MSAFIRI, J, In this suit, the 88 plaintiffs have sued hereinabove defendants claiming that they have been residents of Shimo la Udongo in Kurasini area, in Temeke District (suit area) for uninterrupted period of more than 30 years- That sometime in May 2002, the defendants issued Government Notice No. 54 published on 25/01/2002 declaring Kurasini area a development area for the sake of Town and Country Planning Ordinance. The said declaration called for relocation of the plaintiffs to pave way for the intimated development. i The plaintiffs claims further that on 18/12/2014, the 1st defendant issued a public notice to the plaintiffs that they should demolish their houses at their own costs and vacate the suit area failure of which the defendants' agent will demolish the same at their own costs. The plaintiffs claims that they have not been fairly compensated and given alternative plots as duly promised. Hence, among other reliefs, the plaintiffs prays for judgment and decree against the defendants jointly and severally for order that the defendants be ordered to effect fair compensation and allocation of alternative plots by the 3rd defendant. The suit was instituted for the first time in this Court on 17/12/2015. Before hearing of the main suit, the defendants raised a preliminary objection on point of law that the matter was instituted before the Court without observing the provisions of Order I Rule 8 of the Civil Procedure Code, Cap. 33. After hearing the parties to the suit, the Court sustained the preliminary objection and dismissed the suit with costs. The Ruling was delivered on 02/9/2016. The plaintiffs were aggrieved and lodged an appeal before the Court of Appeal, contesting the Ruling of this Court. Having heard the parties to appeal, the Court of Appeal allowed the appeal, and remit the record of the case to the trial Court with the direction that this Court should determine the case on merit. Following the order of Court of Appeal, the case file was remitted to this court and was scheduled for the hearing. On 25/4/2024, the matter was set for mention. The plaintiffs were being represented by Mr. Omega Myeya and Ms. Hilda Msanya, learned advocates.

The defendants had representation of Mr. Edwin Joshua Webiro, learned State Attorney. The learned State Attorney Mr. Webiro raised a legal concern that the 1st plaintiff Hassan Salehe Ndengenyu has represented his late father as a legal representative, but in the suit the 1st plaintiff appears in his individual capacity not as legal representative of his father. The State Attorney argued that this omission renders the whole suit to be incompetent and the only remedy is to struck out the matter where the plaintiffs can refile the suit if they so wishes. To bolster his point, the State Attorney cited the case of Registers Trustees of SOS Village TZ vs. Igenge Charles, Civil Application No. 426 of 2008, CAT (Tanzilii). He prayed that the suit be struck out with no order as to the costs. Mr. Myeya, counsel for the plaintiffs subscribed to the submissions by the defence counsel and admitted the fatal defect. He pleaded that the suit has been pending in this Court for about nine (9) years now and all the time the plaintiffs have been Court corridors hence they should not be subjected to the costs. L j | He prayed to the Court to struck out the matter with no order as to the costs. Having heard the submissions of both parties, it is clear that both parties to the suit has unanimously agreed that the suit is incompetent for the reason that the first plaintiff who was supposed to represent his late father, as legal representative, has appeared in the suit in his own capacity. Both parties having agreed that the 1st plaintiff has sued the defendants in his own capacity instead of as a legal representative of his late father, it follows that the 1st plaintiff has no locus standi to sue the defendants. This makes the whole suit incompetent before this Court and the only remedy is for the same to be struck out. For that reason, I hereby struck out the suit with no order as to the costs. 4

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