

TANZANIA / JUDGMENT

Land Case No

COURT
TANZLII

DECIDED
1 January 2024

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE NO.
12357 OF 2024 ABDULBAST MKOKO ISSA..... 1st PLAINTIFF LIBERAT
JOVINE..... 2ndPLAINTIFF OMAR MOHAMMED
MTWANGA..... 3rdPLAINTIFF PASCAL JONATHAN
NJAU..... 4th PLAINTIFF SIKUZANI ADAM
SAFARI..... 5thPLAINTIFF HAMZA
FADHILI..... 6thPLAINTIFF PRISCA
MGENI..... 7thPLAINTIFF FURAHISHA A
MTAHENA..... 8thPLAINTIFF ABDUL
RUHEMBWA..... 9thPLAINTIFF STEPHEN
NDIMANGWA MZIRAY.....10TMPLAINTIFF SAMIRA S.
AZIZI..... 11TMPLAINTIFF ABDALLAH SOUD
HEMED..... 12TMPLAINTIFF SHARIFU MFAUME NAHINDU
alias SHARIFU M.NAHINDU...13TM PLAINTIFF RICHALD ONESMO
LANGULA..... 14TMPLAINTIFF NICODEMUS
VICTOR..... 15TMPLAINTIFF SYLVANTUS P.
ISHOBEZA..... 16TMPLAINTIFF YARED MUNDO
AINEA.....17TMPLAINTIFF SEHEWA N.NDAHANI alias
SEHEWA NOEL NDAHANI..... 18TM PLAINTIFF FATUMA JUMA
ESMAHILI..... 19TMPLAINTIFF SARAH &
CHARLES..... 20TMPLAINTIFF PIUS MASANJA
SWAGA..... 21stPLAINTIFF PILI
MASIKU..... 22ndPLAINTIFF ASHA HAMED
KHAMIS..... 23rdPLAINTIFF DAUD SOX
KYANDO..... 24TMPLAINTIFF MASOUD
SALUM..... 25TMPLAINTIFF ZAHARA
RAMADHANI..... 26TMPLAINTIFF ALLY RASHIDI
MSELEMO..... 27TMPLAINTIFF 1 SALUM SULEIMAN
KHALFAN..... 28TMPLAINTIFF MOHAMED MUSA
ABDULRAHMAN..... 29TMPLAINTIFF SAREHE AZIZI
ALI..... 30TMPLAINTIFF SHAITH SALUM
SAID..... 31stPLAINTIFF YONATHAN HEBRON LANDA

& JACQUELINE BENSON MSHANA..... 32nd PLAINTIFF FRANSIS
JESSE VESO & MAGRETH VESO..... 33rd PLAINTIFF BERTHELY E.
BIHURULA..... 34th PLAINTIFF VERSUS TAZAMA
PIPELINES LIMITED..... DEFENDANT

RULING

27/6/2024 A. MSAFIRI, J. The Plaintiffs hereinabove have filed this case against the herein above defendant claiming that they are the lawful owners of various plots of land (houses) located at neighbourhood streets of Upendo and Mkwajuni, Vijibweni Ward, Kigamboni District, Dar es Salaam Region. That the plaintiffs and the defendant have been enjoying harmonious and good neighbourhood as there is clear demarcation/ boundaries separating the land of the plaintiffs and the defendants pipeline. The plaintiffs claim further that sometime in the year 2022, with ill intent, the defendant through her employees and agents, trespassed into the plaintiffs' lands and wrote an order for demolition of the plaintiffs' premises. The plaintiffs are seeking for the court's declaration that they are the lawful owners of the landed properties in dispute and that the defendant has trespassed into their properties. The defendant was summoned to appear in court and file her defence. Therefore on 27/6/2024 parties in dispute appear before the court for the first time as the suit was filed in court on 27/5/2024. The plaintiffs were represented by Mr. Malindi Saidi, learned advocate while the defendant had legal services of Mr. Michael Kariwa, learned advocate. Mr Kariwa addressed the court on the points of law and apparent defects which the defence has observed in the Plaintiff. He submitted that they have detected some defects in the Plaintiff which are fatal. The first defect is that this Plaintiff has been signed by 37 deponents on the verification clause instead of plaintiffs and that the Plaintiff contains 34 plaintiffs and not 37 plaintiffs. The second defect is on the jurisdiction of this court as highlighted by paragraph 11 of the Plaintiff. That the said paragraph does not reflect the pecuniary jurisdiction of this court and this is contrary to Order VII Rule 1 (i) of the Civil Procedure Code, Cap 33 R.E

2019. He said on those defects the defendant is of the view that the Plaintiff is defective and pray for the same to be struck out with costs. Mr Saidi responded that in regard to the variation of number of plaintiffs, that is due to the death of some of the plaintiffs and some have no intention of being part of this suit and they intend to withdraw.. 3 That the variation of number of the plaintiffs is due to the oversight and it is humane. On the second point on Order VII Rule 1 (i), of the CPC, Mr Saidi replied that, unfortunately due to computer error, the pecuniary jurisdiction is not reflected in the Plaintiff. He prayed for amendment of the Plaintiff specifically in those defects which the counsel for the defendant has raised. In rejoinder, Mr Kariwa reiterated his submission in chief and added that on the point that some of the plaintiffs are deceased and others have no intention to be part of the suit, it proves that the Plaintiff is indeed defective as the deceased have to be represented by their legal representatives. In absence of legal representatives, the defendant will not be able to execute order against the plaintiffs in the event the court issues any order against the deceased plaintiffs. Also a deceased person has no locus standi it is only the legal representatives who have locus standi. On the pecuniary jurisdiction, Mr Kariwa said that

the law is clear that the Plaint should contain a statement of value to mandate the pecuniary jurisdiction of the court. He reiterated his prayers that the Plaint be struck out with costs. 4 Having heard the submissions from the both parties to the suit, I also read the Plaint and I agree with the counsel for the defendant that it contain gross defects. First the Plaint shows that there are 34 plaintiffs. However in the verification clause, it shows 37 plaintiffs to have signed the verification. It is not known where the additional three plaintiffs came from. Also there is a confusion whereby in the verification, some parties have signed as plaintiffs and some have signed as deponents. The counsel for the plaintiffs have submitted that the variations on the verification clause is because some of the plaintiffs are deceased and some intends to withdraw from the suit as they have no interest to pursue the matter. However the counsel for the plaintiffs did not elaborate on which plaintiffs are deceased and which one have withdrawn or intends to withdraw from the suit. Furthermore the response of the counsel for the plaintiffs about the variations on the names of the plaintiffs shows clearly that this suit was filed prematurely as the plaintiffs have not sorted themselves out about the institution of this suit. I totally agree with the counsel for the defendant that if counsel for the plaintiffs admits that there are plaintiffs who are deceased, then this Plaint and the entire suit is incurably incompetent before this court as those deceased have no locus standi to institute a suit. 5 On the point of Order VII Rule 1(i) of the CPC, I need not labour much as the counsel for the plaintiffs has admitted the defect that paragraph 11 of the Plaint does not reflect the pecuniary jurisdiction of this court. The provisions of Order VII Rule 1 (i) of the CPC are couched in the mandatory term. In the circumstances, the Plaint in this suit is found to be incurably defective and it is hereby struck out. However, I refrain to issue the order of costs for the reason that this is the first appearance of the parties before the court and the defendant have not yet filed their written statement of defence. The suit is hereby struck out in entirety with no order as to the costs. It is so ordered. 6

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