

TANZANIA / JUDGMENT

Land Case No

COURT
TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE NO. 14411 OF 2024 AMANIEL PETER NGOMOI..... PLAINTIFF VERSUS THE ATTORNEY GENERAL, ATTORNEY GENERAL'S CHAMBERS..... 1st DEFENDANT MANAGING DIRECTOR, THE ENERGY AND WATER UTILITIES REGULATORY AUTHORITY - EWURA..... 2nd DEFENDANT EXECUTIVE OFFICER, DAWASA HEADQUARTERS..... 3Rt> DEFENDANT

RULING

Date of last Order: 14/11/2024 Date of Ruling: 11/12/2024 A. MSAFIRI, J The plaintiff herein above has instituted a suit against the defendants as listed above claiming that the 3rd defendant has wrongly installed a water pipe underneath the plaintiff's house foundation. That, due to the constant moisture generated by that water pipe, the plaintiffs house walls have absorbed moist and failed to resist weakness which resulted into destruction of those house walls. The plaintiff reliefs include the prayers that the 3rd defendants be ordered to remove the water pipe from the plaintiff's residential premises and that the 3rd defendant be ordered to reconstruct th i damages portion of plaintiff's house or alternatively pay TZS 39,675,000. 00 to the plaintiff. The defendants filed their joint WSD and with it, they raised four points of preliminary objections to the effect that;

1. This suit is incompetent and bad in law for preferring wrong parties.
2. This suit is res subjudice.
3. This Honorable Court has no jurisdiction to hear and determine this matter.
4. This suit is incompetent and bad in law for contra vening with Order VII Rule 1(e), (i) of the Civil Procedure Code, Cap 33 R.E2019. As a rule, the preliminary objection was disposed of before proceeding with other stages of the case. By leave of the court, the preliminary objection was disposed of by way of written submissions. The parties complied with the schedule order. After the parties' submissions for and against the raised preliminary objections, the court made determination on the points of objection. The defendants were represented by Mr. Mkama Musalama learned State Attorney while the plaintiff had legal services of Mr. Christian Rutagatina, learned Advocate. ^) /j 2 In its ruling which was delivered on 23/10/2024, the court upheld/sustained the first limb of objection. The court

agreed that the 2nd, 3rd and 4th defendants were misjoinder parties. But using the provisions of Order 1 Rule 9 of the Civil Procedure Code (CPC), the court found that the suit could not be defeated by reason of misjoinder or non-joinder of the parties, and it ordered for the amendment of the plaint so as to join/sue the correct parties. The court also upheld the fourth limb of objection which stated that the plaint does not disclose cause of action hence the suit should be dismissed. In the same breath, despite the fact that the court has sustained this point of objection, that the whole of the plaint does not disclose cause of action, it exercised its powers under the proviso of Order VII Rule 11 of the CPC which gives a room to the court to allow the amendment of the plaint in the cases where the same does not disclose cause of action. On that, the court ordered the amendment of the plaint so as to disclose the cause of action. The court overruled the second limb of objection on res subjudice on ground that the objection needed evidence to ascertain it hence it disqualifies to be an objection on pure point of law. A//1, 3 The court did not determine the third limb of objection as it was abandoned by the defendant. After delivery of the Ruling on preliminary objection, the court made a schedule order for the amendment of pleadings where by the plaint was to be amended specifically on two parties, first to change the parties to the suit whereby the 2nd, 3rd and 4th defendants were to be withdrawn from the plaint and be replaced by the correct, necessary parties. Second, the plaint was to be amended to show cause of action of the plaintiff against the defendants and the time it arose. The plaintiff was to be amended by 04/11/2024, while the WSD was to be amended by 11/11/2024. The matter was set for mention on 14/11/2024. On 11/12/2024, parties appeared before the court. Mr. Rutagatina for the plaintiff informed the court that they have filed the amended plaint within time but have not yet received the amended WSD. Mr. Musalama for the defendants informed the court that they faced difficulties in serving the counsel for the plaintiff due to the miscommunication. By leave of the court, the defendants served the counsel for the plaintiff with their amended WSD on 11/12/2024 in court. - 4 However, before proceeding with the matter, the court suo motu, raised a point of concern on its findings while perusing the amended plaint that the plaintiff have contravened the court's order dated 23/10/2024 by failing to amend the plaint on the parties, i.e the defendants. The court has observed that the 2nd defendant namely Managing Director, the Energy and Water Utilities Regulatory Authority - EWURA and the 3rd defendant namely Executive Officer, DAWASA Headquarters, are the same as they appeared in the old plaint (then as 3rd and 4th defendants respectively). Despite the court's ruling dated 23/10/2024 which sustained the objection that the 2nd defendant cannot be impleaded as a party to the suit because he is a mere employee and the proper party to be joined in the suit is the Authority itself i.e. EWURA as it is a body corporate capable of suing and be sued. The same was for the 3rd defendant named as Executive Officer, DAWASA Headquarters where the court ordered the right/correct party to be joined. Despite that court order, the plaintiff through his advocate has defied the said order and returned the plaint back to the court with the defective parties. The court ordered the parties through their counsels to address on the said anomaly and the consequences thereof. Mr. Rutagatina for the plaintiff 5 maintained that the amended plaint has included the correct and necessary parties as per the plaintiff's case. Mr. Musalama for the

defendants stated that indeed the plaintiff have contravened the court's order and the consequence is for the matter to be dismissed. He added that considering the fact that the case is still at the preliminary stage, the same be dismissed with no order as to the costs. It is clear that the plaintiff have failed to comply with the court's order. The said court having found the plaintiff to have errors, ordered the same to be corrected by ordering amendment of the plaint. The plaintiff through his counsel was given a chance to address the court on the reason of non- compliance of the court order, but surprisingly, the counsel for the plaintiff adamantly maintained that the plaint was amended as per the order. It is trite law that the court's orders should be followed. This rule has been observed in several cases of this court and the Court of Appeal. In the case of Karori Chogoro vs. Waitihache Merengo, Civil Appeal No. 164 of 2018, CAT at Mza whereby the Court of Appeal with approval quoted the decision in the case of TBL v. Edson Dhobe, Miscellaneous Civil Application No. 96 of 2006 where it was stated that; /V.I L 6 "Court orders should be respected and complied with. Courts should not condone such failures. To do so is to set badprecedent and invite chaos. This should not be allowed to occur..." Basing on the above analysis, I find the suit to be incompetent for contravening the court's order issued on 23/10/2024 on the amendment of the plaint. I hereby struck out the suit with no order as to the costs. It is so ordered.

11/12/2024 7

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