

TANZANIA / JUDGMENT

20190213 TZHC Dar es Salaam 1

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TZHCDECIDED
13 February 2019

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I ✓ IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM MISC. LAND APPLICATION NO 29 OF 2017 CAMEL OIL (T) LTD APPLICANT VERSUS THE DIRECTOR ILALA MUNICIPALCOUNCIL RESPONDENT (Application for injunctive order against the respondent and or defendant in Land Case No 13 of 2017)

RULING

MGETTA, J: -..... - ..:.....:i -,___ - - Along with filing Counter affidavit in response to the Chamber Summons supported by affidavit affirmed by Mr. Suleiman Amour, Business Development Manager of Camel Oil (T) LTD (the Applicant), the Director of .Ilala Municipal Council (the respondent) did also file a notice of preliminary objection containing three points of law as hereunder:

1. That this court has no jurisdiction to entertain the Applicants' Application;
2. That the Application is unmaintainable and bad in law for contravening section 14(1) (b) of the Local Government (Urban Authorities) Act CAP 288; 1
3. That the Appli~ation is unmaintainable and bad in law for Non joinder of necessary party. Similarly the same points of law were raised by the respondent and or defendant, the Director of Ilala Municipal Council in its written statement of defence in the main case, that is to say that Land Case No. 13 of 2017. These are as hereunder:
 1. That the suit is unmaintainable and bad in law for contravening section 14 (1) (b) of the Local Government (Urban Authorities) Act, Cap 288.
 2. That the suit is unmaintainable and bad in law for failure of the Plaintiff to join a necessary party. In this ruling, I have decided to combing the objection raised by same party, the Director of Ilala Municipal Council in this application and in Land Case No. 13 of 2017 as they are similar and do involve same parties. I thus begin with the preliminary objection that the application and the suit are unmaintainable and bad in law for contravening the provision of section 14 {1} {b) of the Local Government {urban authorities) Act CAP 288. For ease of reference, section 14 (1) {b) of CAP 288 is hereunder quoted that: 2 .. "14.- (1) Every urban authority established or deemed to have been established under this Part, and in respect of which there is in existence a certificate of establishment furnished under section

9, shall, with effect from the date of commencement of the establishment order, be a body corporate, and shall -

- (b) in its corporate name be capable of -- suing or-being sued. Admittedly, Ilala Municipal Council as a local government authority is a body corporate which is capable of suing and being sued in its own name as provided under the above quoted provision of law. As correctly submitted by Mr. Hussein Kambi, the learned Municipal Solicitor in his written submission, any Director is an employee like other employees of any Municipal Council. When any wrong is committed by a Municipal Council, an employee like its Director or Municipal Solicitor, so to speak, cannot be sued. Similarly, an employee of a municipal council cannot sue anybody on behalf of the Municipal council, his employer as the law does 3
- • crystal clear provide that municipal council can sue and be sued on its own . name. In his written submission, Mr. Hassan Juma Zungiza, the learned advocate for the applicant and or plaintiff agreed with the submission by Mr. Hussein Kambi that it is true Ilala municipal Council as local government authority, in law is a body Corporate with capability of suing or being sued in its own name. Suing the Director, an employee of Ilala municipal Council was therefore not proper. On the strength of the submission by the ·learned council and as the law provides, the applicant and or plaintiff did sue a wrong person, or a person who is not capable of being sued. I thus uphold the preliminary objection that the application and or suit is unmaintainable, for; a wrong person was sued. In my view, this holding suffices to dispose of the matters completely. For the reasons given hereinabove, the application in Misc. Land Application No. 29 of 2017 as well the suit in Land case No. 13 of 2017 are accordingly struck out. In the circumstances of these matters, each party has ·to bear its own costs. It is so ordered. 4 • __,J ~ : 1/ JOHN S. MGETTA JUDGE 13/2/2019 COURT: This ruling is delivered today this 13th day of February, 2019 in the presence of Mr. Hussein Kambi, the learned municipal solicitor for the respondent, but in absence of the. applicant for reason(s) known to itself. ~---~-,/ JOHN S. MGETTA JUDGE . . - 1312/2019 5

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