

TANZANIA / JUDGMENT

charles werongo another vs crdb bank plc others21 2023 tzhclandd 16836 21 august 2023

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21 August 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM LAND CASE NO. 83 OF 2023 CHARLES WERONGO..... 1st
PLAINTIFF MABIBO CONSTRUCTION COMPANY LIMITED...2nd PLAINTIFF VERSUS CRDB
BANK PLC..... 1stDEFENDANT AFRIMAX ENTERPRISES
LIMITED..... 2ndDEFENDANT MR. SALIM ABDALLAH
MUHENDE..... 3rdDEFENDANT MS JANETH AMEDE
MASSAWE..... 4thDEFENDANT

RULING

17th July & 21st August, 2023 L. HEMED J. On the 15th day of March 2023, CHARLES WERONGO and MABIBO CONSTRUCTION COMPANY LIMITED the Plaintiffs herein, filed the instantaneous suit against CRDB BANK PLC, AFRIMAX ENTERPRISES LIMITED, MR. SALIM ABDALLAH MUHENDE and MS JANETH AMEDE MASSAWE the defendants. The plaintiff claim for declaratory order that an act of selling of Plot No.70 Block D CT 40716, LO No 141476 Kigogo area, Plot No. 633/1, Block "D" CT No 43122, LO No 147606 Mabibo Ubungo and Plot No. 566 i CT No.36364 LO No. 93898, Kawe Kinondoni is unlawful and void ab initio. The plaintiffs also pray for a declaration order that transfer of ownership or title of Plot No.70 Block "D" CT No.40716, LO No. 141476, Kigogo Area and Plot No.633/1, Block "D" CT No.43122, LO No. 147606, Mabibo Ubungo Area to 4th Defendant which was auctioned on 31st October 2022 and on 10th November 2022 Plot No.566, CT No. 36364, LO No.93898 Kawe Kinondoni, made from the 1st Plaintiff to 4th and 3rd defendants respectively is null and void as whole process of purchasing the same was illegal. The defendants disputed all the claims of the plaintiffs vide written statement of defence. The 3rd defendant also raised the preliminary objections on the following points of law: "1. The suit is bad in law for misjoinder of cause of action.

2. The suit is bad in law for want of valid board resolution of the 2nd plaintiff to institute the suit.

3. The suit is bad in law for nonjoinder of the Registrar of Titles/ Commissioner for Lands." The preliminary objections were argued by way of written submissions. Mr. Augustine Mathern Kusaiika learned advocate, acted for the plaintiffs, while the 3rd defendant enjoyed the service of Mr Hosea Chamba, learned State Attorney. The defendants' counsel 2 filed their submissions in chief on the 24th day of July 2023 while the plaintiffs' counsel filed reply submission on the 31st day of July, 2023. It should also be noted that the defendants managed to file rejoinder submission on 7th day of August 2023. I have opted to begin with the 3rd limb of objection raised by the 3rd defendant on the non-joinder of the Registrar of Titles/ Commissioner for Lands. My decision to start with this point is based on the fact that once found with merits, it will dispose of the entire suit. On the non-joinder of parties, Mr Hosea Chamba submitted that amongst the reliefs sought by the plaintiffs is the nullification of the transfer of the suit properties from the 1st plaintiff to the 3rd and 4th defendants. He asserted that since the Registrar of Titles effected the transfer of the suit properties, he is the necessary party to the suit at hand. To cement his point, he cited the case of Ngerengere Estate Company Limited v. Edna William Sitta, Civil Appeal No. 209 of 2016 and Dr Anthony Ambikile Nsojo v. Adam Mwakyembe and Another, Land Case No. 2 of 2021. The learned State Attorney argued further that misjoinder of necessary party cannot be cured by Order 1 Rule 10 (2) of the Civil Procedure Code, [Cap 33 R:E 2019]. He urged the court to strike out the suit. In his response, Mr. Augustine Mathern Kusalika, contended that joining of the Registrar of Titles or Commissioner for Lands is not necessary as according to the plaint filed in court there is no allegations or civil wrong which was done by Registrar of Titles or Commissioner for Lands to warrant them to be joined in the suit. He prayed the preliminary objection to be overruled with costs. In rejoinder submission, the counsel for the 3rd defendant reiterated his submissions in chief that the plaintiff challenges acts of the Registrar of Titles in transferring the suit properties, thus joining of the Registrar of Titles is vital. I have carefully followed the rival arguments by the parties concerning the question of nonjoinder of Registrar of Titles. The issue for determination is whether the Registrar of Titles is a necessary party in the instant suit. In an Indian case of Benares Bank Ltd v. Bhagwandas, A.I.R. (1947) All 18 the High Court of Allahabad laid down two tests for determining the question whether or not a particular party is necessary to the proceedings. The said two tests were approved by Supreme Court of India in the case of Deputy Comr. Hardoi v. Rama Krishna, A.I.R.(1953) S.C.521. The 4 said tests are as follows:-
- a) There has to be a right of relief against such a party in respect of the matter involved in the suit; and
 - b) The court must not be in the position to pass an effective decree in the absence of such a party. I am persuaded by the above laid down test because they emanated from the interpretation of the provisions of the Civil Procedure Code of India which is in pari materia with our Civil Procedure Code. In the present case one of the relief sought by the plaintiff is "a Declaration that transfer of ownership of the suit properties to the 4th defendant is null and void." This kind of relief is against the Registrar of Titles because he is the one involved in the whole process of transfer of Titles. In the absence of the Registrar of Titles as a party,

the court cannot be in the position to pass an effective decree. I am taking this position because under section 18 of the Land Registration Act [Cap. 334 R:E 2019], the Register of Titles is the one who has power to approve any application for transfer. The Court of Appeal of Tanzania in the case of Abdullatif Mohamed Hamis v Mehboob Yusuf Osman & Another CAT-Civil 5 Revision No. 6 of 2017 (unreported) had this to say in respect to a necessary party: "...u/e take the position that Rule 9 of Order 1 only holds good with respect to the misjoinder and non-joinder of non-necessary parties. On the contrary, in the absence of necessary parties, the court may fail to deal with the suit, as it shall, eventually, not be able to pass an effective decree. It would be idle for a court, so to say, to pass a decree which would be of no practical utility to the plaintiff." Led by the above authority, I find this suit improper before this court for non-joinder of the Registrar of Titles who is a necessary party in this suit. The fact that the point on non-joinder of necessary party disposes the entire suit, I find no need of canvassing the other limbs. In the upshot, I proceed to strike out the entire suit with costs. It is so ordered. 6

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/charles-werongo-v-crdb-bank-plc-Non-joinderofnecessaryparty-tanzlii-2023--6a3ea52c3b1caa9129825584

Prepared on 14 October 2026 · Esheria