

TANZANIA / JUDGMENT

hassan abdallah kitigi 2 others vs temeke municipal council another 2023 tzhclandd 17163 24 november 2023

COURT
TANZLIIDECIDED
24 November 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND CASE NO. 06 OF 2023 HASSAN ABDALLAH
KITIGI.....1st PLAINTIFF UWESU ABDALLAH
MOHAMED..... 2nd PLAINTIFF SELEMAN JUMA
SALAMBA..... 3rd PLAINTIFF VERSUS TEMEKE MUNICIPAL
COUNCIL..... 1st DEFENDANT ATTORNEY GENERAL.....
2nd DEFENDANT

RULING

24h November, 2023 L, HEMED, 3, On 2nd November, 2023 when the matter was called for hearing the plaintiffs appeared in person. They reported that their advocate was attending another matter and that they were unable to proceed on their own. They prayed to be given the last chance. Following such prayer from the plaintiffs, the court granted it and made the following observations and orders:- i "COURT: It is the 3d time that the matter fails to take progress on account of the plaintiffs' advocates being absent. I have decided to grant the prayer for adjournment only in the interests of justice. The plaintiffs must be prepared to proceed on their own in case their advocates will fail to appear on the next hearing date. Order: - Last adjournment. o Hearing to proceed on 24h November, 2023 at 9:00 AM. o Ms. Lucy Thobias Otto and Mr. Godfrey Edward Asukiie, witnesses of the defendants are warned to appear." (Emphasis added). Today, the 1st and the 3rd plaintiffs have entered appearance while the 2nd plaintiff and the advocates have not appeared. The 3rd Plaintiff has asserted that the plaintiffs' advocate is attending another matter. However, he could not submit summons or cause list in regard to the case attended by the said advocate. It should be noted that in this matter two advocates have been representing the plaintiffs, Mr. Juma Nassoro and Ms. Fauzia Kajoki. The plaintiffs have not told the court who between Mr. Nasoro and Ms. Kajoki is attending the alleged 'another matter'. In the absence of summons or any other evidence showing that the advocate is attending 2 another case the court has the right to draw inference that the advocate has just decided not to attend the instant case. As aforesaid, on 2nd November, 2023 it was ordered as last adjournment following the plaintiffs request to be availed the last chance. The plaintiffs were also directed to be

prepared to proceed on their own in case their advocates fail to appear. It is so perplexing to hear from the plaintiff telling the court that they are unable to proceed with their case in the absence of their advocate. Principally, parties are bound to observe court's orders. In *Felix Mosha and Two Others vs The Capital Markets and Securities and Hon. Attorney General*, Misc. Civil Cause No. 16 of 2021, the court observed thus:- is, indeed, a fundamental principle of the rule of law that Court orders must be obeyed." Of course, it is not only parties who should observe and abide to the orders but also the court itself must observe them jealously. In the instant case, an order of 'last adjournment' had already been made and parties, the plaintiffs in particular, were also directed to be prepared to proceed on 3 their own in case their advocate(s) fail(s) to appear. The advocate(s) have not appeared and the plaintiffs have forgotten the directives of this court to prepare themselves to proceed by themselves in case their advocates fail to appear. Even after the court ordered them to proceed on their own, they refused. The plaintiffs have already paraded three witnesses but they have not closed their case. I am aware that, closing of a case is within the mandate of a party concerned. The court cannot force parties to close their case. It can only order them to prosecute to the completion of their cases. The question is what has to be done when a party fails to prosecute and close his/her case? The answer to the question is based on the principle that, in any event, litigation must come to an end. By virtue of inherent powers, courts have authority to terminate proceedings where the circumstance calls so. It should be noted that the jurisprudence behind party's mandate/supremacy to close his/case is that when a party to a suit submits that he/she has no more witnesses and pray to close his/her case, he/she implies to state that his/her full package of evidence is completely 4 presented for the court to decide. The party's unclosed case has partial and incomplete evidence for the court to rely upon in making its decision. Therefore, where a party, refuses to finalize his/her case after having been directed by the court so to do, it has to be considered as if such party has failed to prosecute his/her case. The remedy is, if it is the Plaintiff, the suit has to be dismissed for want of prosecution. Where it is the defendant who fails to close his/her case, the proper remedy is to strike out the written statement of defence and proceed to compose judgment as if the suit was heard *ex parte*. In the instant case, the Plaintiffs are the ones who have unjustifiably failed to conclude and close their case even after being ordered by the court. Indeed, there is no any option other than to terminate the proceedings against the plaintiffs. In the upshot, I dismiss the entire suit for want of prosecution. Considering the nature of the parties to the matter at hand, I refrain from awarding costs. It is so ordered. 5 DATED at DAR ES SALAAM this 24th November 2023. L^HEMED JUDGE 6

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