

TANZANIA / JUDGMENT

fahmi n dovutwa vs attorney general another 2022 tzhclandd 12748 13 december 2022

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13 December 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND CASE NO. 130 OF 2022 FAHMI N. DUVUTWA (Administrator of the estate of the
late Nassoro A. Mhunzi) & 56 OTHERS..... PLAINTIFFS VERSUS THE
ATTORNEY GENERAL..... 1st DEFENDANT TANZANIA NATIONAL ROADS
AGENCY.....2nd DEFENDANT

RULING

Date of Last Order: 22.11. 2022 Date of Ruling: 13.12. 2022 T.N. MWENEGOHA, J The plaintiffs above named, jointly and together, instituted this case against the defendants. The plaintiffs claimed for a declaration against the defendants that, their order and intended act of demolition of the plaintiff buildings found in different parts of Kibamba area, Ubungo Municipality, for construction of new road Kibamba Shule-Magoe Mpiji is illegal. That, the land in dispute is not a road reserve, rather it is owned by the plaintiffs. When the case came for the Final Pre-trial Conference, the counsel for the 2nd - 57th plaintiffs prayed for a leave to amend the scheduling order and the plaint, under Order VIII Rule 23. The Counsel for the 1st plaintiff i objected the prayer, along with the learned State Attorney for the defendants. Owing to those circumstances, and considering the fact that, the case was filed jointly by all plaintiffs, the Court ordered the plaintiffs to sort out their differences before proceeding on the 22nd of November, 2022. Unfortunately, up to the 22nd of November, 2022, the parties remained with their positions, hence this Ruling. As pointed above, the instant case was filled jointly by all plaintiffs together. As of now, 56 plaintiffs want to amend the pleadings, to add the Commissioner for Land and the Permanent Secretary Ministry of Constructions and Transport. The 1st plaintiff through Juma Nassoro his learned counsel, has insisted that, there is nothing wrong with the pleadings, no need to amend the same and the case should proceed as scheduled. In my opinion, the differences so occurred on part of the plaintiffs is conclusive evidence that, their interests in this case are not the same. They cannot continue to prosecute this case together. Under these circumstances, I can not order an amendment of plaint to only 56 plaintiffs, leaving the 1st plaintiff to proceed with the old plaint. At the same time, I cannot compel the 56 plaintiffs who

need amendment of the plaint, to proceed with the old plaint. After all it is their rights for the interest of just, that the pleadings be amended. 2 Therefore, the only available option is to struck out this case as the same is no longer maintainable jointly by all plaintiffs. I take this road for reason that, the parties need a chance to start afresh and proceed separate from each other, if they so wish. Eventually, the instant case is hereby struck out with no order as to costs Mwenegoha. Judge 13/12/2022 3

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Prepared on 13 October 2026 · Esheria