

TANZANIA / JUDGMENT

jued homes ltd vs samwel zabdiel tarimo another 2020 tzhclandd 4026 24 march 2020

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24 March 2020

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE NO. 210 OF 2020 JUED HOMES LTD PLAINTIFF VERSUS SAMUEL ZABDIEL TARIMO 1[®] DEFENDANT ALLY MBONDE 2[^] DEFENDANT

RULING

Date of Last Order: 15/03/2022 Date of Ruling: 24/03/2022 T. N. MWENEGOHA, J. Plaintiff filed this suit claim against the defendants among others orders is for declaration that the plaintiff is the lawful owner of the suit property which currently is referred as Plot No. 787 Msasani Beach, Dar es Salaam City, demolition and eviction against the defendants from the suit property and mesne profit amount to Tshs. 500,000,000/= and general damages to be paid by the Defendants to the Plaintiff. On 15^{^^} March 2022 when the matter came for PTC, Advocate Ole Mkulago representing the plaintiff notified the court that they noted that the Commissioner for Lands has not been included in this case as a necessary party. He added that however under Order I rule IX of Civil Procedure Code, cap 33 state that a suit shall not be defeated by reason of misjoinder. He added that therefore they have decided to proceed without the Commissioner for land and they can call him onwards if he is needed as a witness. In reply Mr. Edward Nkungamo objected the prayer he insisted that the Commissioner is a very necessary party in this case for the reasons that the plaintiff has brought an offer in different name. The defendant; has brought title deed of the same plot and they have brought offer of the same plot. All those offers are in different names. He concluded that he therefore believes that Commissioner for Lands was a necessary party who must have been included. He therefore prayed for the matter to be struck out as per Order VI Rule 16 of the Civil Procedure Code. In rejoinder Mr. Mkulago submitted that the counsel for the 2[^] respondent has misdirected himself as he is bringing a prayer that the plaintiff has not prayed for hence, he is out of the context. Having heard the two parties, I find the issue for determination Is whether the joining of Commissioner for Land is vitai considering the circumstance of this case. It is clear in this case that there are two offers and one title deed of the same property all in different names. Such a puzzle can only be solved with the person responsible in issuing the said documents. This person is Commissioner for Lands. Clearly, the

court needs him to establish the authenticity of the documents tendered and the lawful holder of such documents. Hence Commissioner for land is a necessary party. He needs to be included in this case. At this juncture, I wish to define the term necessary party. The term necessary party has been discussed in the Court of Appeal of Tanzania case between Ilala Municipal vs. Sylvester 3. Mwambije, Civil Appeal No. 155 of 2015 which cited with approval a persuasive Indian case of Benares Bank Ltd vs. Bhagwandas, AIR (1947) which has laid down two tests to determine whether a particular party is necessary. The first test is that there has to be a right of relief against such a party in respect of the matters involved in the suit and second, the court must not be in a position to pass an effective decree in the absence of such a party. The Court of appeal added, "...that a necessary party is one whose presence is indispensable to the constitution of a suit and in whose absence no effective decree or order can be passed. It was of their view that thus, the determination of necessary party to a suit would vary from case to case depending upon the facts and circumstances of each particular case. Generally, the law under Order I Rule 9 of the CPC further provide that, "A suit shall not be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it" That is the general rule, but the exception to the above have been expressed in the case of Edina Adam Kibona vs. Absolom Swebe (SHELI), Civil Appeal No. 286 of 2017, Court of Appeal of Tanzania, Mwambegele JA at pg. 14 had this to say, "At this juncture, it must be noted in mind that, the above cited precedent, namely; the Farida case, the Abdulatif case and the Kennedy case decided issues related to land ownership disputes, which said respective pieces of land had been registered and allocated to the parties by the respective mandated allocating authorities. It follows thus, that, in our law, for purposes of resolving land-ownership disputes effectively, a person who is alleged in the pleadings to have conferred land title to the parties or any of them by one means or means or another (such as through allocation of a registered land by a mandated authority or through sale by any other person), and the person to whom the title was so conferred, are necessary parties to the suit. As such persons have to be joined unless the circumstances of the case command otherwise..." It is therefore prudent to examine the circumstances of this particular case and see whether the commissioner for lands in this case is a necessary party. As noted above, there are two offers and one title deed of the same property all in different names allocated to parties in this case. Hence the person responsible in issuing the said documents is necessary to appear to Court. He is the person who will be able to testify to Court and shed a light on what had transpired to have such allocations. Clearly, the court needs him to establish the authenticity of the documents tendered and a determination of who is the lawful holder of such documents. Hence Commissioner for land is a necessary party. He needs to be included in this case. This Court further notes that Commissioner for land being a government institution needs to be given a 30 day notice before an institution of a case against him. Therefore, the correct procedure needs to be carried out so as to include him in the suit. I therefore strike out this suit for non-joinder of necessary party, with costs. It is so ordered. Dated at Dar es Salaam this 24th day of March, 2022. N ENE OHA //ipy JUDGE i^\ !Sii 4/

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