

TANZANIA / JUDGMENT

FELICHISM MUSHI SCANNED

COURT
TANZLIIDECIDED
1 January 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LAND DIVISION AT DAR-ES-SALAAM LAND CASE NO. 13131 OF 2024. K & A ENGINEERING.....
PLAINTIFF VERSUS FELICHISM WILBARD MUSHI..... 1ST DEFENDANT GODFREY
MKINI.....2ND DEFENDANT REMINI
ANDREW..... 3RD DEFENDANT PIUS
WASULWA..... 4THDEFENDANT MAARI FA
MPUTA..... 5THDEFENDANT CLETUS ZEDEKIA
MLASHANI..... 6THDEFENDANT NELSON JACOB SWAI.....
7THDEFENDANT MOHAMED ABDALLAH MAUNDA..... 8THDEFENDANT JOHN
MARTIN MLINGI..... 9THDEFENDANT GABRIEL
NDEMASI..... 10THDEFENDANT ASHAHADU MAHEKE
MAHEKE..... 11THDEFENDANT VICTOR ALFRED KALINGA.....
12THDEFENDANT DEUS KUSEKWA..... 13THDEFENDANT REHEMA
MAGESA..... 14THDEFENDANT ELISANTE
KIRITA.....15THDEFENDANT OMBENI
MWASHA..... 16TH DEFENDANT AMARIN ALPHONCE.....
17TH DEFENDANT FANUEL MANDARI..... 18THDEFENDANT
REGISTERED TRUSTEES OF EFATHA
CHURCH..... 19THDEFENDANT

RULING

Date of last Order: 28/2/2025 Date of Ruling: 28/2/2025 LALTAIKA, J, The plaintiff herein K & A ENGINEERING instituted this suit against the above-named Defendants praying for the following orders/reliefs:

1. The Plaintiff is the legal and lawful owner of the Suit property located at Plot No. 212 Block Institutional Area, Kibaha Township, registered with Certificate of Title No. CT: 47948, measuring 5.484 Hectares.
2. Declaration that the defendants are trespassers into the suit land

3. The order for payment of Tsh: 500,000,000/= (Five Hundred Million only) as compensation for the trespass and devastation caused by the defendants jointly and severally for unlawful developments made into the suit land.
4. An Order for demolition of whatever structures and/or buildings erected by any defendant into the suit property.
5. Perpetual injunction restraining all the defendants from entering in the suit property in whatsoever manner and/ or making changes of the suit property in whatsoever way.
6. General/ damages as may be assessed by the Court
7. Costs of the suit to be provided by the Defendants jointly and severally.
8. Any other relief(s) as the court shall deem fit and just so to grant. When the suit was called for mention earlier today, representation by Counsel was as follows: For the Plaintiff: Mr. Armando Swenya, learned Advocate. For the 2nd, 3rd, 4th, 5th, 6th, 7th, 9th, 10th, 11th, 14th, 15th, and 17th, Defendants: Mr. Frank Chundu, learned Advocate. For the 1st and 12th Defendants: Mr. Amani Mwakolo, learned Advocate. For the 19th Defendant: Ms. Precious Hassan, learned Advocate. Mr. Swenya quickly informed the court that he had been instructed to consult his client, which he did. Following the consultation, Counsel averred, his clients had decided to withdraw the matter. He submitted further that, given the unique circumstances of the case, he prayed for the withdrawal to be granted without costs. He averred that the reason for withdrawal is that they (referring to his client) intended to include the necessary party in accordance with the current position of the law. In response, Mr. Chundu stated that while he had taken note of the last sentence, the issue of costs remained highly sensitive. He contended that the plaintiffs were well aware of the legal requirements. He recounted that the matter had initially been filed before the District Land and Housing Tribunal (DLHT), where it was struck out for failure to join the necessary party. Subsequently, it was refiled in the High Court as Land Case No. 12 of 2023 before Hon. Gwae, J., where it was again struck out for failing to disclose the date of the cause of action. Counsel averred that the dispute had been in court for over twelve years and lamented the continuous re-litigation of the matter. He urged the court to grant costs, emphasizing that it was time for the plaintiffs to bear that responsibility. Ms. Hassan supplemented Mr. Chundu's submission, stating that they had made repeated court appearances while receiving instructions on multiple occasions. She asserted that they had expected the plaintiffs to rectify the gaps identified in previous proceedings. However, she pointed out that the plaintiffs had frequently changed legal representation, and the parties had remained engaged in litigation throughout. She therefore urged the court to take into account their prayer for costs. Mr. Mwakolo aligned himself with the submissions of his colleagues. He argued that since a preliminary objection (PO) had been raised, the matter should be struck out accordingly. He suggested that opposing counsel might concede to the PO. Regarding costs, he supported the prayer for their award, emphasizing that they, as legal representatives, had been engaged and remunerated for their services. He contended that

the plaintiffs had not acted diligently, citing as an example the fact that they had been served with the PO on 19th September 2024, yet five months had elapsed without any appropriate action being taken. In rejoinder, Mr. Swenya conceded to the PO. He reiterated his submission that costs should not be granted, arguing that his clients had initially succeeded before the Tribunal. However, he explained that the decision had been overturned on technical grounds. He acknowledged that both parties were asserting ownership over the disputed land and contended that there was justification for costs not to be awarded. In the interest of equity, he prayed that the court decline to order costs. Having considered the submissions of the parties and the record before me, I am satisfied that the preliminary objection raised is meritorious. The law is settled that a suit must be instituted against all necessary parties to ensure that the court can effectively and completely adjudicate upon and settle all questions involved in the matter. The omission to join the Registrar of Titles and the Attorney General in this suit is not a mere procedural irregularity but a fundamental defect that renders the entire suit incompetent. It is trite law that where the ownership of land is in dispute and title documents are involved, the Registrar of Titles is a necessary party. Likewise, under section 6(3) of the Government Proceedings Act, [Cap. 5 R.E. 2019], where the government or any of its officers is affected by the reliefs sought, the Attorney General must be joined as a necessary party. Failure to comply with these legal requirements renders the suit incompetent and liable to be struck out. On the issue of costs, the general principle is that costs follow the event, as provided under section 30(1) of the Civil Procedure Code, [Cap. 33 R.E. 2019]. The defendants have persuasively argued that the plaintiffs have exhibited a lack of diligence, given that this matter has been repeatedly struck out on various procedural grounds. The plaintiffs were aware of the legal requirements yet proceeded without taking corrective measures, thereby occasioning unnecessary costs and inconvenience to the defendants. Accordingly, I find that the defendants are entitled to costs. The plaintiffs have repeatedly failed to cure procedural defects, which has not only delayed justice but has also compelled the defendants to defend claims that were bound to be struck out. For the foregoing reasons, I make the following orders:

1. The suit is hereby struck out for being incompetent. 2. The plaintiff shall bear the costs of this application. It is so ordered. E.I. LALTAIKA JUDGE 28.02.2025 Court: Ruling delivered in Court Chambers in the presence of the following: Mr. Armando Swenya, learned Advocate for the Plaintiff. Mr. Frank Chundu, learned Advocate for the 2nd, 3rd, 4th, 5th, 6th, 7th, 9th, 10th, 11th, 14th, 15th, and 17th, Defendants. Mr. Amani Mwakolo, learned Advocate for the 1st and 12th Defendants and Ms. Precious Hassan, learned Advocate for the 19th Defendant

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Prepared on 14 October 2026 · Esheria