

TANZANIA / JUDGMENT

kinyatta tindamanyile vs godfrey mheruka and others 2020 tzhc 282 31 march 2020

COURT
TZHCDECIDED
31 March 2020

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IN THE HIGH COURT OF TANZANIA AT BUKOBA CIVIL CASE NO. 1 OF 2017 KINYATTA
TINDAMANYILE..... PLAINTIFF VERSUS GODFREY MHERUKA..... ,1st
DEFENDANT CHARLES RWENTABAZA..... 2nd DEFENDANT PROTACE
MATABARO..... 3rd DEFENDANT

RULING

Masoud, J. The plaintiff herein, one Kinyatta Tindamanyile, instituted this suit against the above mentioned defendants. The suit concerns the alleged trespass of the defendants into the plaintiff's suit premises and destruction by the defendants of the plaintiff's houses. The allegation by the plaintiff is that the unlawful act was carried out on 20/02/2017 by the defendants accompanied by a troop of unknown armed people. According to the plaintiff, the unlawful act of the defendants were duly reported to the police although no action was taken against the alleged wrong doers on the pretext that the first defendant was the boss of the Kagera Regional Police Commander. The plaintiff is thus claiming for a declaration that the defendant unlawfully destroyed the said houses valued at Tshs 80,000,000/-, i compensation of the destroyed houses to the tune of Tshs 80,000,000J-, interest on the claimed compensation at a commercial rate of 21% per annum from the date the cause of action arose until the judgment is delivered, costs of the suit and any other relief the court may deem fit and just to grant. The defendants disputed the suit. They filed a joint written Statement of Defence which was accompanied by a notice of preliminary objection. The preliminary objection was to the effect that the suit has been filed in sheer disregard of the principle of necessary party. There is therefore no joinder of the necessary party. I heard the counsel for defendants and the plaintiff on the above point of preliminary objection. While the defendants were represented by Mr Jovin Rutainura, learned Advocate, the plaintiff was represented by Mr A. Chamani, learned Advocate. I attentively heard the learned counsel's rival submissions which reflected each side point of view on the objection. Mr Rutainura maintained that the suit could not stand for the plaintiff's failure to implead necessary and proper parties. The necessary parties were NARCO, and Kitanda Village Council, while the proper party was the Attorney General. I was referred by the defendants' Advocate to paragraph 6

and 9 of the plaint. According the learned Advocate, the paragraphs consist (pf averments that drive home the objection. I was similarly shown that the first defendant is the District Commissioner for Karagwe, while the third defendant is the Chairman of Katanda Village Council. I was told that the said defendants are public officers who could not be sued on their individual capacities. The foregoing argument relied respectively on section 10 of the Government Proceedings Act, cap, 15 R.E 2002 as amended, and section 26 of the Local Government (District Authorities) Act. Authorities cited in support of the arguments advanced on the objection and herein considered included Ramadhani Kisuda and Another vs Adam Nyalundu and Another [1998] TLR 69; Mwesiga Revelian v/s The Karagwe District Militia Advisor and AG Civil Case No. 13 of 2016 (unreported); Berabera Ujamaa Village vs Abubakar Bura

[1983] TLR 219; and Haruna Ramadhani vs District Executive Director, Kyerwa District and Yasin Juma, Civil Case No. 9 of 2015. On his part, Mr Chamani, learned Advocate for the plaintiff, had it that the alleged necessary parties and the proper party were neither mentioned nor inferred by the plaintiff's pleading nor likely to be affected by the reliefs sought. The argument was buttressed by the case of Bank of Tanzania vs Said A. Batinda and Others, CAT Civil Application No. 74 of 1998 and followed by an overarching argument that the objection does not at all arise from the plaint. It was consequently insisted by Mr Chamani that there is nothing on the pleading to connect the alleged necessary and proper parties to the suit. The objection is accordingly baseless and should be dismissed. On a different note, Mr Chamani maintained that the objection does not at all qualify as a preliminary point of objection regarding the conditions enunciated in the celebrated authority of Biscuit Manufacturing Mukisa Co. Ltd vs. West End Distributors Ltd

(1969) EA 696. The authority was according to the learned Advocate also used in the case of TCCL vs Burundi Tobacco Co. Ltd, Civil Case No. 7 of 2004. The case of Rev. Christopher Mtikila vs Augustino Mrema [1993] TLR 60 was also cited in relation to the circumstances under which public officers could be personally sued for tortious liability arising in the cause of exercising their official duties. I on my part upon careful perusal of the plaint in the light of the rival submissions of both Advocates, I am inclined to agree with the Advocate for the plaintiff that the objection is not meritorious. There is nothing in the plaint suggesting that the defendants are being sued as public officers. There is equally nothing in the pleading linking in any way the alleged necessary and proper parties to the cause of action which is hinged on tortious liability. The claim that the first and third defendants are public officers is not supported by any factual allegation averred in the plaint. Even if the defendants are public officers, I agree with the counsel for the plaintiff that there are not immune to tortious liability. The argument in support of the objection used paragraph 6 and 9 of the plaint to drive home the point. My scrutiny of the paragraphs shows that

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 BUKOBA CIVIL CASE NO 1/2017 KINYATTA TIBAM A N YILE.....
 PLAINTIFF VERSUS GODFREY MHERUKA..... 1st DEFENDANT
 CHARLES RWENTABAZA..... 2nd DEFENDANT
 PROTACE
 MATABARO..... 3rd DEFENDANT
 PROCEEDINGS Date: 31/03/2020

Coram: Hon. J. M. Minde - DR Applicant: Absent Respondent: Absent B/Clerk: Lilian Paul Mr. Seth (Adv) for the Plaintiff Mr. Jovin (Adv) for the Defendant Mr. Seth: This matter is scheduled for ruling today Order: Ruling delivered this 31st day of March, 2020 in the presence of Mr. Seth (A d v g ^ ^ r ^ ^ h e Plaintiff and Mr. Jovin (Advocate) for the Defendant. the alleged houses of the plaintiff were destroyed by the three i defendants who were accompanied by an armed troop of unknown person. The paragraphs also show the actions which were taken following the destruction of the houses as opposed to claiming any relief from such authorities. The reliefs sought have also nothing suggesting that the alleged necessary and proper parties should have been impleaded. There is nothing on the plaint or arising from the plaint that supports the point of objection. The objection is at best based on extraneous matters which are not pleaded in the plaint, and which also do not at all arise from clear implication of the pleading. I need not labour any further on the point. In the result, and for the foregoing reasons, the preliminary point of objection is hereby overruled. The plaintiff is accordingly awarded costs;] It is so ordered. S-Q /kfr" " S. Masoud Judge 6

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Prepared on 14 October 2026 · Esheria