

TANZANIA / JUDGMENT

LAURENT DEEMAY TLAQ 2222 Edited

COURT
TANZLIIDECIDED
12 July 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI CIVIL CASE NO 5187 OF 2024 LAURENT DEEMAY
TLAQ..... PLAINTIFF VERSUS DISTRICT EXECUTIVE DIRECTOR
OF HANANG DISTRICT COUNCIL..... 1st DEFENDANT THE ATTORNEY
GENERAL..... 2nd DEFENDANT

RULING

21st June & 12th July, 2024 KAMUZORA, J The Plaintiff in this case is suing the Defendants for the claim of 15 acres of land. The Plaintiff is complaining that the 1st Defendant has illegally issued a notice of intention to cancel the customary right of occupancy with No. 30HNN/2170 legally issued to him by Balangdalalu village. The Plaintiff thinks that the 1st Defendant is not a proper authority to issue notice of intention to cancel customary right of occupancy which gives ownership right to the Plaintiff. To him, only the village which allocated him the land can issue a notice of intention to cancel the customary right of occupancy. His prayer to this court is for the declaration Page 1 of 11 that the Plaintiff is the lawful owner of the suit land and the 1st Defendant's notice is illegal. In their written statement of defence, the Defendants raised three points of preliminary objections but when arguing in support of the objection, the counsel for the Defendants opted to abandon the first point thus, the same will not be captured in my discussion. The following are the points of objections argued by the counsel for the Defendants;

1. That, the suit is incompetent and bad in law for suing the wrong party.
2. That, the plaint is bad in law for accommodating citation of laws contrary to Order VI Ru/e 3 of the Civil Procedure Code [Cap 33 R.E 2019] and principles governing pleadings. When the matter was called for hearing of the objection, the Mr. Pastor Kong'oke appeared for the Plaintiff while Ms. Zamaradi Johanes appeared for the Defendants. Counsel for the parties opted to argue the objections by way of written submissions. Before I determine the points of objection, I noted that the plaintiff instituted a civil suit against the defendant. The facts in the plaint show that the plaintiff is challenging the 1st defendant's action of issuing a notice of intention to cancel a customary right of occupancy over ownership of land to the plaintiff. In his prayers, the plaintiff sought for a declaration order that such notice is illegal and a declaration that the plaintiff is the Page 2 of 11 legal owner of disputed land. Parties were called to address the court on whether the facts and prayers sought in the plaint is

awardable in a civil suit. In response Mr. Pastor Kong'oke submitted that the prayer for the plaintiff to be declared the lawful owner was misplaced and wrongly raised. He however insisted that, since the prayer for the order by the District Executive Director (DED) is a proper prayer awardable in civil suit, the plaintiff be allowed to amend the plaint to remove the prayer over ownership. He referred the case of Emmanuel R. Maira Vs. District Executive Director of Mbulu District Council, Civil Application No. 66 of 2010 Tanzlii (2010) TZCA 87 Page 4. He added that the decision of the DED can be challenged by a civil suit and not necessarily by way of judicial review thus the prayer to challenge the decision of the DED is maintainable. He referred the case Stg. Silvester S. Nyanda Vs. Inspector General of Police & AG, Civil Appeal No. 64 of 2014, CAT at Mwanza Tanzlii (2014) TZCA 2T5. On the other hand, Mr. Hans Mmbando, learned State Attorney submitted that the prayer to be declared lawful owner of the suit land was wrongly raised in a Civil suit which is not a land suit. To him, such defect renders the suit incompetent before this court. He therefore prayed for the suit to be struck out for being incompetent. He conceded to the fact Page 3 of 11 that the notice can be challenged through either judicial review or normal civil suit. In considering the submission by the counsel for the parties, I agree with the counsel for the parties that the 1st defendant's notice of intention to cancel the customary right of occupancy over ownership of land against the plaintiff can be challenged by either judicial review or normal civil suit. There is no doubt that the plaintiff filed a civil suit and included in his reliefs, a prayer to be declared as the lawful owner of the land to which a notice of intention to cancel the right of occupancy is issued. It is also not disputed that such prayer cannot be awarded in civil suit rather in land matter. I however agree with Mr. Kong'oke that since the prayer for ownership is not the only prayer in the plaint, and since other remaining prayer is maintainable in civil suit, the remedy for including the wrong prayer is not to strike out the plaint rather to allow amendment. Having determined the above issue that was raised suo mottu by this court, I also find it important to address the points of objection raised by the defence counsel. In her submission in support of the 1st point of objection Ms. Zamaradi submitted that the suit is incompetent for the Plaintiff sued a wrong party. She explained that under our laws, the first Defendant has no powers to sue or being sued. She referred to section 12 of the Local Government (District Authorities) Act Cap 287 R.E. 2002 and insisted that a proper party capable to sue or being sued is Hanang District Council and not the District Executive Director of Hanang District Council. She also referred the decision of the Court of Appeal in M/S Mkurugenzi Nowu Eng Vs Godfrey M. Mpezya, Civil Appeal No. 188 of 2018 Tanzlii and the decisions in Temeke Municipal Director Vs. Nixon Njolla & Mariam Chimbala, Revision No. 564 of 2019, HC Tanzlii and Maulid Shaban Vs Temeke Municipal Executive Director and Farida Mohamed Said (Administratrix of the estate of Jabar Said), Mise. Land Application No. 1030 of 2017, HC Tanzlii. Ms. Zamaradi further submitted that the remedy available where a wrong party is sued is to strike out the suit. She referred to Order 1 Rule 10 (2) of the CPC and the decision in Respicious Emilian Mwijage Vs. the Municipal Director, Hala Municipal council & others, Land Case No. 27 of 2021, HC, Tanzlii. She therefore urged this court to strike out the suit. On the 2nd point of objection, Ms. Zamaradi submitted that the plaint is bad in law for

accommodating citation of laws contrary to Order VI Rule 3 of the CPC. That, paragraph 7 of the plaint has referred to the Village Land Act Cap 114 R.E 2019 contrary to the law and procedures governing pleadings which requires the plaint to only contain a statement in concise Page 5 of 11 form of the material facts on which the party's pleadings rely. She insisted that the pleadings which contain law is incompetent and the remedy is to strike it out. In reply to the first point, the counsel for the Plaintiff submitted that the remedy under Order 1 Rule 10(2) of the CPC which was cited by the counsel for the Defendant is not to strike out the suit rather the name of a party wrongly joined in the suit. He added that the decision in all cases cited by the counsel for the Defendants which concluded that the remedy is to strike out the suit are per incurium made in forgetfulness of the requirement under the law. He added that, the High Court in the case of Ramadhan Sambejo Mongu Vs District Executive Director of Musoma Municipal and 3 others, Tanzlii [2022] TZHC 121 was correct to say that the remedy is to order removal of the wrong party and join the right party and not to strike out the whole plaint. He added that where the case law conflicts the provision of the statute, the provision of the law will prevail. He referred to the case of National Bank of Commerce Vs Jackson Nahimawa, (1978) LRT,39. The counsel for the Plaintiff prayed for this court to disregard the cases cited by the counsel for the Defendants. On the second point that the plaint contained law, the counsel for the Plaintiff submitted that, the cited provision of Order VI Rule 3 of the Page 6 of 11 CPC only prohibits inclusion of evidence in the plaint. He was of the view that the counsel for the Defendant confused the requirements in the affidavits under Order XIX Rule 3 of the CPC and the decision in Uganda Vs Commissioner of Prison, Ex parte Michael Matovu (1961) 1EA,514. He added that, even where the law and practice prohibit affidavit from containing provisions of the laws, the remedy is to expunge the offensive paragraphs. He referred the decision in Benedict Mumello Vs. Bank of Tanzania, Tanzlii [2006] TZCA 12. He prayed for this court to refer to Order VI Rule 6 of the CPC and strike out only the offensive content and not the whole plaint. In concluding, the counsel for the Plaintiff prays for this court to order for necessary amendments to accommodate the substantive justice in considering the decision in the case of Ramadhan Sambejo Mongu (supra). In rejoinder, Ms. Zamaradi reiterated the submission in chief and added that the counsel for the Plaintiff failed to properly interpret the law. She insisted that suing the wrong party is bad in law and the defect goes to the root of the case. That, the only remedy available under the law is to strike out the pleadings. I have considered the submission by the counsel for the parties. I have also considered the provisions of the law cited as well as case laws. From his submission, the counsel for the Plaintiff do not dispute the fact Page 7 of 11 that the Plaintiff sued a wrong party. His concern is on the remedy available where a wrong party is sued. He does not agree with the submission by the defence counsel that the remedy is to strike out the suit. To him, the remedy is to strike out the party who is wrongly joined and join a proper party through amendment. He invited this court to disregard all cases cited by the defence counsel for the decisions are per incurium based on a glaring oversight of the provision of Order 1 Rule 10(2) of the CPC. I agree that some of the cases cited by Ms. Zamaradi are distinguishable to the matter at hand specifically on the remedy available when a wrong party is sued. In M/S

Mkurugenzi Nowu Eng (supra) the court concluded that the decision of the CMA was wrong for it was made against the wrong party who was wrongly sued. Similarly, in Temeke Municipal Director Vs. Nixon Njolla & Mariam Chimbala, (supra) the decision was nullified for the court discovered that a wrong party was sued and hence a decision was made against a wrong party. This court in the above two cases did not deal with the remedy where a party was wrongly sued but the decision is yet to be made, or whether, the pleadings could be amended or the suit has to be struck out where a party is wrongly sued. Page 8 of 11

However, in Maulid Shaban Vs Temeke Municipal Executive Director and Farida Mohamed Said (supra) and in Respicious Emilian Mwijage Vs. the Municipal Director, this court dealt with the remedy where a wrong party is sued. In the above two cases, the suit was struck out for being filed against a wrong party. In those two cases this court did not discuss the gist of Order I Rule 10 (2) of the CPC, a reason the Plaintiff's counsel think that they should be disregarded. I have gone through the above provision and the same read: - "The court may, at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added." The above provision is very clear and gives powers to the court to strike out the name of a party improperly joined to the suit and order for a party to be added to a suit. My interpretation to the above provision is that, the addition of a party will be sensible only if there is proper proceeding before the court. Having struck out a party to the suit, it must be shown that the suit will still stand before the court for an order adding another party to be effective. In the matter at hand having ordered the striking out of the 1st Defendant who is a main party to the case, the suit becomes incompetent. Thus, it becomes unpracticable to add a party to an incompetent suit. This would have been different where there are many Defendants whom, upon the striking out one of the Defendants, the suit will still stand the competency before the court. In the case of Ramadhan Sambejo Mongu Vs District Executive Director of Musoma Municipal and 3 others (supra), which was cited by the counsel for the Plaintiff, the circumstance was different from the matter at hand. The court in the above case dealt with the remedy available where there is misjoinder of a party under Order I Rule 9 of the CPC and not remedy where a wrong party is sued as per Order I Rule 10 (2) of the CPC. As opposed to the case at hand, in Ramadhan Sambejo Mongu Vs District Executive Director of Musoma Municipal and 3 others (supra) the striking out of the name of the 1st Defendant did not affect the suit as there was another Defendant thus, the suit could still be competent. But in the matter at hand, striking out the name of the 1st Defendant amounts to no competent suit for the 2nd Defendant is only a necessary party whose presence depends on the 1st Defendant being a party to the suit. I therefore find merit in the first point of objection and the same is hereby sustained. Having sustained the 1st objection, I will not labour much on the second point in which the inclusion of the law in the plaint is challenged. I agree with the Plaintiff's counsel that the

error is not fatal and could not affect the whole plaint and its remedy is to expunge the offending paragraph. But since the first objection is sustained and goes to the root of the case, I proceed on striking out the suit with costs. DATED at BABATI this 12th Day of July, 2024 D.C. KAMUZORA JUDGE Page 11 of 11

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/324436/source_file/9434914dc2eaff32/LAURENT_DEEMAY_TLAQ_2222_Edited.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/laurent-deemay-tlaq-misjoinderofparties-tanzlii-2024>

Prepared on 13 October 2026 · Esheria