

TANZANIA / JUDGMENT

MSAFIRI MAKINDI MTIGANDI

COURT
TANZLIIDECIDED
8 July 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA LAND CASE NO. 56 OF 2023 MSAFIRI MAKINDI
MTIGANDI.....PLAINTIFF VERSUS MWANZA CITY
COUNCIL.....1st DEFENDANT THE ATTORNEY
GENERAL.....2ND DEFENDANT AYUBU ASHIBERI @ AYUBU
ASHIBELI NDIMILA.....3RD DEFENDANT

RULING

19th June & 08th July, 2024. Kilekamajenga, J. The instant case prompted a filing of points of objection from the third defendant:

1. That, the plaintiff's complaint is incurably defective for failure to comply with a mandatory provision of Order VII Rule 1(i) of the Civil Procedure Code, Cap. 33 RE 2019.
2. That, the Plaintiff's suit is incompetent for failure to join the Commissioner for Land and Registrar of Titles as necessary parties to this suit. When the matter came for hearing of points of preliminary objections, Mr. Paul Boman for the first defendant prayed to withdraw the points of objection for the plaintiff to amend the complaint in order to join the Commissioner for Land and Registrar of Titles. On the other hand, the learned advocate, Mr. Constatine Mutalemwa for the plaintiff had no objection to the prayer to withdraw the points of objection. He informed the court that, the disputed land is registered and a certificate of title was issued in the name of Pamela Dalia Mgalula. Therefore, the Commissioner for Land, Registrar of Titles and Pamela Dalia Mgalula are necessary parties to be joined in this case. The same parties must be properly pleaded. He invited the court to invoke its powers under I Rule 10(2) of the CPC to direct Pamela Dalia, Commissioner for Land and Registrar of Titles to be joined in this matter. The learned State Attorney, Ms. Maria Matata for the first and second defendant had no objection to withdrawing the points of objection nor joining the Commissioner for Land and Registrar of Titles. She however invited the court to provide clear guidance in respect of section 6(2) of the Government Proceedings Act. Responding further to this point, Mr. Mutalemwa was of the view that the Government Proceedings Act does not affect the provisions of the Civil Procedure Code, especially Order I Rule 10(2). In his view, the procedure allows the court to order the amendment of the complaint and join the Commissioner for Land and Registrar of Titles without complying with the provisions of

section 6(2) of the Government Proceedings Act. He insisted that, if the 90 days notice is issued, it will prejudice the plaintiff who is almost time barred. He further argued that, section 6(2) of the Government Proceedings Act does not amend Order I Rule 10(2) of the Civil Procedure Code. He referred the court to the case of *Nuru Hussein v. Abdul Ghani Ismail Hussein*, Civil Appeal No. 33 of 1998, CAT at 2 Arusha on page 5. On his side, Mr. Paul Boman for the third defendant argued that Order I Rule 10 (2) of the Civil Procedure Code does not do away with the requirement of the Government Proceedings Act. If the Commissioner and Registrar of Titles are joined without the required notice (90-days notice), they may be prejudiced. In his view, there are several remedies which the counsel for the plaintiff may apply in case the matter is time-barred. The competing arguments from the learned advocates invite this court to consider the application of the contested provisions of the law, namely, Order I Rule 10(2) of the Civil Procedure Code, Cap. 33 RE 2022 and section 6(2) of the Government Proceedings Act. For clarity and further discussion, I wish to display, Order I, Rule 10(2) of the Civil Procedure thus: “10 (2) 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.”³ Without putting many words in the above provisions of the law, the court has the power to strike out the name of any party in the suit who has been improperly joined. Equally, the court has the power to order the addition of any person for proper adjudication of the case. The court may do so upon application made by a party or on its motion for the interest of justice and fair trial. The order to add a defendant shall be effected by amending the plaint. See, Rule 10(4) of the same Order. In this case, the plaintiff intends to add the Commissioner for Land and Registrar of Titles as one of the defendants. However, the learned State Attorney representing the first and second defendants was of the view that, the Commissioner for Land and Registrar of Titles may only be added as co-defendants in this case upon fulfilment of section 6(2) of the Government Proceedings Act which provides that: 6(2) No suit against the Government shall be instituted, and heard unless the claimant previously submits to the Government Minister, Department or officer concerned a notice of not less than ninety days of his intention to sue the Government, specifying the basis of his claim against the Government, and he shall send a copy of his claim to the Attorney-General and the Solicitor General. 4 The above provision of the law does not need further interpretation that, the Commissioner of Land and Registrar of Titles are government officials who cannot be sued without a prior notice of ninety (90) days. The same notice must be copied to the Attorney General and Solicitor General. While the plaintiff’s counsel does not dispute the fact that the Commissioner for Land and Registrar of Titles are government officials who fall under the provision of section 6(2) of the Government Proceedings Act, he invited the court to invoke Order I Rule 10(2) of the Civil Procedure Code that empowers the court to add any necessary party to a suit. I entirely, subscribe to the plaintiff’s views that, section 6(2) of the

Government Proceedings Act does not amend the powers vested to this court under Order I, Rule 10(2) of the Civil Procedure Code. However, the two laws were intended to operate in harmony. While the Civil Procedure Code empowers the court to add or strike out any party to a suit, the power to add the government in any proceedings must comply with section 6(2) of the Government Proceedings Act. I am aware, that the notice of 90 days to the Commissioner and Registrar of Titles may render the suit time-barred. Unfortunately, there is no provision circumventing the mandatory requirement of the provisions of the Government Proceedings Act. For that reason, the plaintiff is given the discretion to add the Commissioner for Land and Registrar of Titles in this matter which will necessitate the amendment of the 5 plaint. Otherwise, this court will not invoke the powers of Order I, Rule 10(2) of the Civil Procedure Code at the expense of section 6(2) of the Government Proceedings Act. It is so ordered. DATED at Mwanza this 08th Day of July 2024. Ntemi N. Kilekamajenga. JUDGE 08/07/2024 Court: Ruling delivered this 08th Day of July 2024 in the presence of the learned State Attorney Mr. Felician Daniel for the second and third defendants. 6 Ntemi N. Kilekamajenga. JUDGE 08/07/2024 7

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