

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA DISTRICT REGISTRY)**

AT MWANZA

LAND CASE NO. 18 OF 2021

JUMANNE PHILBERT CHIZA..... 1st PLAINTIFF
MAXMILAN NTAMAKULIO.....2nd PLAINTIFF
NKWABI MSALABA.....3rd PLAINTIFF
BILALU LAUREN.....4th PLAINTIFF
FAIDA JOHN.....5th PLAINTIFF
LUCIA PETRO.....6th PLAINTIFF
PENINA MULIGWA.....7th PLAINTIFF
MISALABA KUWE 8th PLAINTIFF

VERSUS

TANZANIA FOREST SERVICES (TSF)

SHAMBA LA MITI BIHARAMULO.....1st DEFENDANT

THE ATTORNEY GENERAL.....2nd DEFENDANT

RULING

23 June & 19th August 2022

ITEMBA, J.

On 27th July 2021, Jumanne Philbert Chiza and 6 other plaintiffs filed a land case against Nyarututu Village Council, Chato District Council, Tanzania Forest Service (TFS) Shamba la miti Biharamulo and the Attorney General.

Later, on 17th November 2021 the plaintiffs filed an amended plaint which had only 2 defendants; Tanzania Forest Services (TFS) shamba la miti Biharamulo and the Attorney General.

At the hearing, the defendants raised a preliminary objection based on three legal points as follows:

- 1. The plaintiffs have no cause of action against the defendants*
- 2. The plaint is untenable and bad in law for failure to describe the suit land/premises contrary to Order VII rule 3 of the Civil Procedure Code Cap 33 R.E 2019.*
- 3. The suit is bad in law for non-joinder of the necessary party who is the Permanent Secretary, Ministry of Natural Resources and Tourism.*

The plaintiffs were represented by Mr. Yisambi Siwale advocate while the defendants had the services of Ms. Sabina Yongo and Lilian Akitanda both learned state attorneys. Hearing of the preliminary objection was by way of written submissions.

Arguing the 1st ground of the preliminary objection Ms. Yongo stated that the plaintiffs have no cause of action against the defendants. She referred to Order VII Rule 1 (e) of the ***Civil Procedure Code***. CAP 33 R.E. 2002 (CPC) which provides for a mandatory requirement that the Plaint shall contain 'the facts constituting the cause of action and when it arose'. The learned counsel defined the cause of action based on Blacks' law dictionary and case laws insisting that the plaintiffs in the instant matter

have failed to show the cause of action against the defendants and when it arose and that the said requirement is not an optional but a mandatory.

Ms. Yongo cited the decisions of the Court of Appeal in the cases of ***John M. Byombalirwa vs Agency Maritime Internationale (Tanzania) Ltd*** 1983 TLR 1 (CA) and ***Mashando Game Fishing Lodge Ltd and 2 Others vs Board of Trustees of TANAPA*** [TLR] 2002 and stated that apart from defining the cause of action, the cases clarified that in deciding whether or not a plaint disclosed a cause of action, it is the plaint that must be looked at. She then led the court to refer to paragraph 6 of the plaint which raises the claims against Nyarututu Vilage Council and Chato District Council while the plaint does not mention those two as defendants. Citing the case of ***Mashando Game Fishing Lodge and 2 Others vs Board of Trustees of TANAPA*** [TLR] 2002, Ms Yongo submitted that for any plaintiff or applicant to institute a suit they must have a right which is infringed and a loss which is suffered, therefore in the present case the plaintiff should have shown how the defendant/s have trespassed or encroached the plaintiff's property. She added that in the present case there are eight (8) plaintiffs but it is only the 1st plaintiff who has attached supporting documents, the rest of the plaintiff did not show how they are related to the land in dispute.

On the second ground the learned state attorney avers that the plaint is contravening **Order VII Rule 3 of the CPC, which** provides:

'Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and, in case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number.'

She alleges that the plaintiffs in the matter at hand have failed to describe the disputed land for this Court to resolve the controversy between the parties and make executable orders. In supporting her arguments, she referred to the decision of **Romuald Andrea @ Andrea Romuald @ Romuald A. Materu v Mbeya City Council and 17 Others** HC, Land Case No. 13 Of 2019.

In respect of the third ground of Preliminary objection, the learned counsel contends that the suit is bad in law for failure to join the necessary party in the suit who is the Permanent Secretary for the Ministry of Natural Resources and Tourism, contrary to **Section 6 (3) of the Government Proceedings Act** CAP 5 as amended by **Section 23 of the Written Laws (Miscellaneous Amendments)** Act No.1 of 2020. She contends further that, the 1st defendant who is TFS, is a semi-autonomous Government Executive Agency established by Government Notice Number 269 of 30th July 2010 under the Ministry of Natural Resources and Tourism

which is a creature of the Executive Agency Act, Cap 245. Therefore, the plaintiffs were supposed to join the ministry which the agency operates under its supervision. In support of the last argument, the learned state attorney cited the decision in the case of ***Stanslaus Kalokola v Tanzania Building Agency and Mwanza City Council***, Civil Appeal No. 45 of 2018; and she urged the Court to hold that the suit has no legs to stand on and it should therefore be dismissed with costs.

In the other side, Mr. Siwale opposed the arguments advanced by the respondent's counsel. He firstly pointed out that Civil Procedure Code Act Cap 33 R.E 2002 which was cited by the counsel for the respondents does not exist. In respect of the first ground of preliminary objection, he avers that the plaintiffs have a cause of action against both defendants, the plaint shows how the first defendant has infringed the rights of the plaintiffs through trespassing to the suit land. He added that provisions under ***Section 6 (3) of CAP 5***. (supra), requires for the Attorney General to be joined as a necessary party in any suit against the Government. To support his arguments he cited, ***Muller: Code of the Civil Procedure 13th Edition*** on Page 144 in which cause of action is defined to mean that every fact that if traversed would be necessary for the plaintiffs to prove to support his right to the judgment of the Court.

Replying to the second ground, the learned counsel for the plaintiffs contends that the law which has been cited by the counsel for the respondents does not exist and he thinks that the counsel for the defendants has negligently misdirected this Court and he prays this ground to be dismissed for lack of merit.

Regarding the third ground, the learned counsel for the plaintiffs avers that Tanzania Forest Services (TFS) falls within the ambit of Section 4 of the Interpretation of Laws Act which defines a public corporation. He added that in respect of Section 6(3) of the Government Proceedings Act as amended by Section 25 of the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020, the first defendant has been properly sued. He insists that the law requires in all suits against the Government the Attorney General must be joined as a necessary party and not otherwise. He also took the view that according to provisions under Order I Rule 9 of the CPC the suit shall not be defeated by the reason of misjoinder or non-joinder of parties. Finally, he prayed for the Court to regard the interests of the parties and proceed to determine the matter on merits.

In her rejoinder, the learned counsel for the respondents stated that the amended plaint does not indicate the cause of action against the first defendant. She retaliated that there must be essential facts that are

necessary for plaintiffs to prove before they can proceed with the suit. She further contended that the plaint only states that the land was allocated to the plaintiffs but there is no document attached to support the same. In supporting her averments, she cited the decision in the cases of ***Mashando Game Fishing Lodge and 2 Others vs Board of Trustees of TANAPA*** and ***John M. Byombalirwa vs Agency Maritime International (Tanzania) LTD*** (supra).

In respect of the second point of objection which faults the plaint that it is untenable and bad in law for failure to describe the suit land she submitted that, since the plaint only mentioned that the land belongs to the plaintiffs without further clarification and proof of the other plaintiffs and their relation to the suit land, the suit land is not properly identified or described by the plaintiffs, hence entertaining such a land suit will be an academic exercise and wasting of court's time.

On the wrong citation of law, she conceded with the averments by the learned counsel for the plaintiffs that the proper citation was supposed to be ***Civil Procedure Code Cap 33 R.E 2019*** and not Civil Procedure Act 33 R.E 2002. She stated that the wrong citation was a clerical error, yet, it did not exempt the plaintiffs from complying with the law by stating the cause of action. She prayed the court to adopt the principle of overriding objection for justice to be done.

On the last point of objection, she insisted that the first defendant (TFS) cannot be sued in land cases without involving its Ministry unless it is on contracts as provided under **Section 3 (6) (b) and (c) of the Executive Agencies Act**, Cap 245. She stated further that suing the first defendant in her name will lead to difficulties in executing orders of the Court. Based on these contentions she urged the Court to dismiss the amended plaint with costs.

Having cautiously reviewed the preliminary points of objection and submissions by both counsels thereof, the profound question which requires the attention of this Court is whether the raised points by the respondents carry weight.

It is the argument by the respondents in respect of the first ground that, the plaintiffs have failed to establish the cause of action against the defendant's contrary to provisions of the law. This view is down rightly discounted by the plaintiffs who hold the view that the same has been discharged correctly.

The relevant provision to guide the court, as cited by respondent is Order VII Rule 1 (e) of the **Civil Procedure Code**. CAP 33 R.E. 2019 which states that:

'The plaint shall contain the following particulars-

(e) the facts constituting the cause of action and when it arose;'

Further, **Mulla on Civil Procedure, 13th Edition**, which was cited by the counsel for the plaintiffs defines the cause of action as follows:

'A suit is always based on a cause of action. There can be no suit without a cause of action and such cause of action having accrued to the plaintiff.

'A cause of action' means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court (w). In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue

This position of law has been long established in various case laws.

In the decision of ***Jeraj Shariff & Sons v. Chotai Fancy Stores*** [1960]

E.A. 375 it was stated thus:

*'The question whether a plaint discloses a cause of action **must be determined upon a perusal of the plaint alone**, together with anything attached so as to form part of it and upon the assumption that any express or implied allegations of fact in it are true.'* (emphasis supplied).

See also the case of ***Stanbic Finance Tanzania Ltd v. Giuseppe Trupia & Another*** [2002] TLR 221.

Deducing from the above cited position that a cause of action has to be determined from the facts as pleaded in the statement of claim such as a plaint. To start with, the plaint vaguely states that the land in dispute is located in Chato Geita, that it is approximately measuring 80 acres and exceeds Tshs. 80,000,000. In respect of the cause of action, I wish to reproduce what transpires in paragraph 6 of the amended plaint;

'That, apparently back in 2017, the Nyarututu Village Council and Chato District for no apparent reason and without paying any compensation whatsoever to the plaintiffs, entered into the suit land with intent to acquire the same. That, the 1st defendant currently is using the disputed land by planting trees and cultivating seasonal crops.'

As stated earlier, the amended plaint has TSF and the Attorney General as defendants, and the paragraph which establishes cause of action mentions Nyarututu Village and Chato District council as the one who unlawful entered in the suit land.

Therefore, there are no facts whatsoever which disclose a cause of action against the respondents. The said paragraph 6 only levels a general

allegation against the first defendant that she is currently using the disputed land by planting trees and growing seasonal crops.

Unfortunately, these allegations are not supported by any piece of testimony in any of the annexures attached to the plaint, the narration has failed to connect the first defendant to any specific role in the alleged trespass which establishes the cause of action. The defendant is not mentioned anywhere in the said paragraph and it cannot be known how they are related to the case at hand. It is also unseen as to when did the said cause of action, if any arose. Based on these gaps, it is my considered opinion that the plaint does not raise the cause of action sufficiently against the first defendant. In respect of the second defendant who is the Attorney General, the law dictates for him to be joined in all proceedings against the government. Having held that the statement of fact has failed to establish a cause of action against the first defendant, which is supposedly a Government institution, there is technically no room for the 2nd defendant to be joined as a party. Therefore, the first preliminary point of objection succeeds.

As stated by Mulla (supra) that there can be no suit without a cause of action, under the circumstances, where it is ruled out that there is no cause actions established, this suit is left with no legs to stand.

Consequently, having left with no proper suit before the court, there will be no value in determining the remain two points of objection.

Based on the first ground on preliminary objection, the suit is hereby struck out with costs.

It is so ordered.

DATED at **MWANZA** this 19th day of August 2022.

