

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

**AT MWANZA**

**LAND CASE No. 21 OF 2022**

**LAURENT LITO MSULA.....PLAINTIFF**

**VERSUS**

**DEUGRATIUS KUMALIJA.....1<sup>ST</sup> DEFENDANT**

**SHIJA KADALA.....2<sup>ND</sup> DEFENDANT**

**MISUNGWI MUNICIPAL COUNCIL.....3<sup>RD</sup> DEFENDANT**

**COMMISSIONER FOR LAND.....4<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....5<sup>TH</sup> DEFENDANT**

**RULING**

*Last Order date: 08.09.2022*

*Ruling Date: 09.09.2022*

**M. MNYUKWA, J.**

The plaintiff filed the present land case against the above-named defendants. In brief, the facts gathered from paragraph 6 of the Plaint provides that, the plaintiff claims against the defendants for the declaration that, sale of the disputed land at Nyashishi, Misungwi District Council which covers plot No 203-204, 289, 290 and 291 Block A, vides Certificates No. 69110, 69112, 69096 and 69117 respectively, are unlawful due to the fact that, the second defendant had no legal



capacity/locus stand to sale the land which the plaintiff has inherited from the estate of his deceased father.

It was further revealed that, the disputed land was owned under customary occupancy by the late Msule Lilimo who is the biological father of the plaintiff and he was also survived by other children. That after his death, the family meeting appointed the plaintiff to be the administrator of the deceased's estates. The plaintiff was also appointed by Bukumbi Primary Court as the administrator of his late father estate. After the appointment, he distributed the estate to beneficiaries including himself. As he was living at Morogoro, after he had completed to distribute the estate to the beneficiaries, he came back to his home place at Morogoro. After a period of almost ten years, he came back to Misungwi and he found his piece of land which he inherited from his late father was sold by his relatives to unknown person. Thus, he decided to institute the present suit to claim his right.

Upon being served with plaint which was filed in this court on 30/06/2022, Mr. Abel Ngalaba, who is representing the first and second defendants, filed the joint written statement on their behalf, the fourth and fifth defendants did not file the written statement of defence and therefore the matter proceeded exparte against them. The third defendant, through his learned counsel, Chiyengele Wandole filed the



written statement of defence accompanied by four points of preliminary objection on a point of law.

In our case at hand, the plaintiff is represented by Mr. Venatus Makori, learned counsel under the legal assistance program offered by Tanganyika Law Society. After he had been served with the written statement of defence, he quickly conceded to the 3<sup>rd</sup> objection raised by the counsel of the third respondent. The objection is to the effect that;

*“ The plaintiff sued the non-existing party who is Misungwi Municipal Council contrary to the provision of section 5 of the Local Government (District Authorities) Act, Cap 287”*

As the plaintiff conceded to the above preliminary objection, the counsel for third defendant abandoned the other three points of preliminary objection on the reason that they all have the same effect on the case at hand. In his brief submission when conceded to the 3<sup>rd</sup> preliminary objection raised by the counsel of the third defendant, Mr. Venatus Makori stated that, they have mistakenly named the name of the third defendant as Misungwi Municipal Council instead of Misungwi District Council as per the provision of section 5 of the law cited by the counsel of the third defendant. He thus prays the matter to be struck out with leave to refile so as to do the necessary amendment in the name of the third defendant. He further prays the ninety days’ notice which has



already been served to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants to remain intact so as to do justice to both parties of the case. He further prays each party to the case to bear his own costs. The counsels for both parties, that is the first, second and third defendants did not object to the plaintiff's prayers.

From the plaintiff's submissions, I entirely agree with him that, he sued the non-existing party according to section 5 of the Local Government (District Authorities) Act, Cap 287 R.E 2019. If the non-existing party is sued, is like there is no party to the suit and hence denied him the *locus stand* and if the decree is passed against him, it will be difficult to execute as the person who has no *locus of stand* had no capacity to sue or being sued.

In the case of **CocaCola Kwanza LTD v Peter John Mkenda**, Civil Appeal No 111 of 2017, this Court pointed out that:

*" .... It was improper for him to try a case against a party who in law is not in existence, not a natural or a legal entity, with no capacity to sue or even to be sued a "jurisic persona" in law."*

As the counsel for plaintiff promptly conceded to the preliminary objection raised of suing the non-existing party, the matter is hereby struck out with leave to refile within 21 days from the date of this Ruling.



Since the plaintiff had already served the statutory ninety days' notice to the third, fourth, and fifth defendants, the said notice remains intact, that is to say the plaintiff is no longer required to serve them with another 90 days' notice. As the plaintiff promptly conceded to the preliminary objection raised, I order each party to bears his own costs.

It is so ordered.



  
**M.MNYUKWA**  
**JUDGE**  
**09/09/2022**

**Court:** Ruling delivered on 9/09/2022 in the presence of parties.

  
**M.MNYUKWA**  
**JUDGE**  
**09/09/2022**