IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR-ES-SALAAM

LAND CASE NO. 4763 OF 2024

MOHAMED JAFFER JUSAB.....PLAINTIFF

VERSUS

REGINALD URIA.....DEFENDANT

RULING

Date of last Order: 29/08/2024
Date of Ruling: 09/09/2024

LALTAIKA, J.

The plaintiff herein **MOHAMED JAFFER JUSAB** instituted this suit praying for judgment and decree against the Defendant as follows:

(i)	*For Declaration Order that the Defendant is a trespasser, unlawfully occupying the Plaintiff premises situated at Plot No. 521 Block 'G' Mbezi Beach, Kinondoni Municipality, Dar-es-Salaam.*
(ii)	*For orders of eviction of the Defendant from the plaintiff's premises situated at Plot No. 521 Block 'G' Mbezi Beach, Kinondoni Municipality, Dar-es-Salaam.*
(iii)	*Payment of general damages to the tune of Tshs 100,000,000/-*
(iv)	*For an order for payment of mesne profit to the tune of Tshs 200,000/= per month from the date of unlawful occupation of the premises to the date of vacant possession.*
(v)	*An order for demolition of the structures unlawfully constructed in the suit premises*
(vi)	*For any other orders the Honourable Court will deem just and for to grant.*

When the suit was called for 1st Pre-Trial Conference (commonly referred to by the popular acronym 1st PTC) on 27th day of August 2024, Messrs. **Robert Oteyo** and **Benedict Bagiliye** learned Advocates appeared for the Plaintiff and Defendant respectively. No sooner had Mr. Oteyo indicated his readiness to proceed with the 1st PTC than his fellow learned brother stated to the contrary.

It was Mr. Bagiliye's submission that it had come to his attention that the case originally commenced at the Mwananyamala District Land and Housing Tribunal (the DLHT) as Application No. 532 of 2020, in which the current defendant was the applicant. After being engaged in the matter, Mr. Bagiliye averred, he inspected the court file and became convinced that proceeding with the case would not be possible unless the Commissioner for Lands and the Attorney General (AG) were joined as parties.

The learned Counsel for the Defendant further stated that they (implying his client and he) had filed a 90-day notice to sue the government; however, before the expiration of the notice period, his client was sued. Despite raising this issue in a preliminary objection (PO), Mr. Bagiliye averred, the court ruled against them with costs. He concluded by expressing the importance of amending the Written Statement of Defence (WSD) to allow them to file

a counterclaim, which would enable the inclusion of the AG and the Commissioner for Lands.

Mr. Oteyo, Counsel for the Plaintiff, objected to the submissions made by the learned Counsel for the Defendant. He argued that the defendant was attempting to reintroduce issues after the court had already determined a preliminary objection (PO). He emphasized that the case was connected to the Mwananyamala Tribunal in Land Application No. 532 of 2020, which the current defendants, as applicants, had withdrawn.

According to Mr. Oteyo, all the arguments raised by the defendant were addressed in the ruling on the PO, and therefore, the attempt to amend the Written Statement of Defence (WSD) should be considered *res judicata* and an abuse of the court process. He pointed out that the WSD did not include any counterclaim, only a PO, and that the defendant had failed to disclose any intention to sue the government within the WSD. Mr. Oteyo concluded by strongly objecting to the defendant's request, labelling it an afterthought, and prayed for the court to proceed with the case, as the defendants were merely defendants.

Mr. Bagiliye, in his brief rejoinder, argued that the learned counsel for the Plaintiff had misunderstood his points. He clarified that the decision to withdraw the application was made with the intention of joining the Commissioner for Lands. He further noted that the plaintiff had included annexes in their submissions as well. Mr. Bagiliye emphasized that the principle of *res judicata* only applies when a matter has been heard on its merits and conclusively determined, which was not the case here.

Mr. Bagiliye pointed out that while his client had filed a 90-day notice, the current plaintiff sued his client over the same Plot No. 521, Block G, Mbezi Beach. He added that his client had a letter of offer for the plot, which he had obtained on 18th February 1986, while the plaintiff held a certificate. He reminded the court that they had filed a preliminary objection (PO) that was overruled. Given these circumstances, Mr. Bagiliye asserted that the only viable option for the defendant was to file a counterclaim, as provided under Order VI Rule 17 of the Civil Procedure Code (CPC), which allows parties to amend pleadings. He concluded by stating that their prayer was neither *res judicata* nor an abuse of the court process.

Premised on the above polarised discussion, and having seen that there was no sign of convergence of thought, I invoked the power of this court

under section 95 of the Civil Procedure Code Cap 33 R.E. 2019 to invite both Counsel to address me on the following points:

1. *Whether the reason for the withdrawal of the application at the trial Tribunal was well known to both parties.*
2. *Whether the case can proceed to final determination while it involves documents issues by the government.*
3. *Whether counsel for both parties think they (or any of them) is being overtly tied to technicalities/ delaying tactics/ abuse of the court process.*

I take this opportunity to register my commendation to the learned Advocates. Despite the tight schedule offered (only two days) they managed to prepare themselves for the insightful oral submissions. The next part of this Ruling is a summary of the submissions by both parties.

Mr. Oteyo stated that the matter in question was withdrawn from the Mwananyamala District Land and Housing Tribunal (DLHT) in Land Application No. 532 of 2020. He explained that the defendant had decided to withdraw the application, claiming an intention to sue the Commissioner for Lands, the Registrar of Titles, and the Attorney General (AG). The Tribunal marked the matter as withdrawn with costs, with the decision rendered on 8th September 2023.

He further noted that the plaintiff lodged the current case, No. 4763 of 2024, on 8th March 2024, which was six months after the withdrawal of the previous case. According to Mr. Oteyo, the defendant had not taken any steps to sue the mentioned parties and had not disclosed any such intention in the Written Statement of Defence (WSD). He referred to **section 6(2) and (3) of the Government Proceedings Act, Cap 5 RE 2019**, emphasizing that a party intending to sue the government must issue a 90-day notice, with copies served to the intended parties and the AG.

In the current proceedings, Mr. Oteyo emphasized, there was no attachment of the 90-day notice, nor any indication that the Commissioner for Lands, the Registrar, or the AG had been served. He added that even the plaintiff, who was the defendant in the tribunal case, had no knowledge of any such intention.

Mr. Oteyo pointed out that the WSD was silent on the issue of suing the government and that the defendant claimed to have been allocated the suit premises in 1986, which was over 30 years ago. Under the Law of Limitation, reasoned the learned Advocate, a party must obtain a permit to sue the government when the time lapse exceeds 12 years, as provided

under section 44(1) of the Law of Limitation Act, Cap 89 RE 2019. He noted that the WSD did not disclose whether such a permit had been obtained.

Furthermore, Mr. Oteyo referred to the plaintiff's plaint, particularly annex MJJ2, which included a caveat lodged by the defendant in the Ministry of Land at the Registrar's office on 21st April 2021. He submitted that the defendant was aware that the records in the Land Registry indicated that the plaintiff was the legal owner of the property.

Mr. Oteyo argued that the defendant had not taken the required steps to issue a notice of intention to sue the government, even though he was aware that the plaintiff legally owned the property. Additionally, averred the learned Counsel, the defendant had not sought compensation for any unexhausted improvements, if any existed.

On technical grounds, Mr. Oteyo submitted that the defendant's actions were a delay tactic, as the matter could have been raised earlier, and he characterized the oral claim as an afterthought. He concluded by praying that the defendant's oral application be disregarded and dismissed as a mere delay tactic so that the parties could proceed to the first Pre-Trial Conference (PTC).

Mr. Bagiliye, on his part, began by acknowledging that he had heard the submissions from his learned colleague. He indicated that he would be brief in his response. He explained that both parties were aware of the withdrawal of the case, and that the plaintiff had even annexed the proceedings and marked them as annex MJJ5. He stated that the matter was clearly identified as being about a land ownership dispute.

Although he was not involved at the time, Mr. Bagiliye averred, he was later engaged as counsel on 10th August 2023, and he advised his client that the issue could not proceed. Following the withdrawal, Mr. Bagiliye narrated, he was involved in preparing a 90-day notice, which was served to the Commissioner for Lands, the Solicitor General (SG), and the Attorney General (AG). However, Counsel claimed, before the notice expired, they were served with a plaint in Land Case No. 398 of 2023, which later changed to Land Case No. 25617 of 2023.

In response, Mr. Bagiliye averred, he filed their Written Statement of Defence (WSD) on 29th December 2023, raising two preliminary objections (POs) related to time limitation and the failure to join necessary parties. Unfortunately, the plaintiff withdrew the case after they had filed the POs and appeared once before the judge. He added that they found the plaintiff's

actions surprising and noted that the learned counsel had explained this in his plaint.

Subsequently, narrated the learned Counsel thoughtfully, they were served with the plaint for Land Case No. 4763 of 2024, where they raised the same POs. The case was assigned to another judge, and the court ordered the POs to be argued through written submissions. The defendant reiterated his arguments regarding the time bar and the necessity of joining the AG and the Commissioner. Ultimately, the court overruled the POs with costs. Mr. Bagiliye stated that he had no further comments on the ruling because he respected the decision of the court.

Regarding the claim that they had not attached a copy of the 90-day notice, Mr. Bagiliye argued that, as defendants, it was not the proper place to attach such a document, as it would not have served any purpose. Nonetheless, he believed it was important to serve the notice on the plaintiff as well.

On the issue of permission to sue the government, Mr. Bagiliye contended that this was inapplicable, as his client had been in occupation of the land since 18th February 1986. He asserted that time does not start

running against a person in occupation. The defendant only became aware of the dispute, Counsel averred, when he attempted to pay land rent and, upon discovering the issue, instituted the suit at the Mwananyamala-based DLHT, which was later withdrawn as previously mentioned.

Mr. Bagiliye further explained that he did not believe seeking compensation was the proper procedure, as this would only apply if the land had been acquired for public interest. He also highlighted that the defendant had lodged a caveat at the Ministry, indicating the existence of a land dispute. The learned Counsel did not go into further detail but referenced section 64(1)(a) of the Land Act, No. 113 RE 2019, which provides that any disposition of land must be in writing.

Finally, Mr. Bagiliye reiterated the relevance of their prayer and cited a recent decision of the Court of Appeal of Tanzania (CAT) in ***Tanzania Railways Corporation (TRC) v. GBP Tanzania Limited,*** Civil Appeal No. 218 of 2020 [2021] TZCA 198, delivered on 7th May 2021. In that case, the CAT stated that if a necessary party is not joined in a suit and neither party seeks to join them, the court has an independent duty to add such a party to the proceedings. The court cannot remain passive in the face of such a

defect, as it is essential for ensuring the complete adjudication of all issues presented.

He concluded by submitting that, given that the plaintiff had a certificate of occupancy issued in 2017 and the defendant had a letter of offer accepted in 1986, the court, as a trial court, should adhere to the CAT's guidance and act accordingly.

Mr. Oteyo, in his rejoinder, noted that the defendant's counsel claimed to have been engaged while the proceedings were concluding on 3rd August 2023. By that time, however, Mr. Oteyo narrated, the defendant had already closed his case, and all the witnesses had completed their testimonies. It was at this late stage that the current counsel appeared, Mr. Oteyo averred, and moved the DLHT to withdraw the case with the intention of suing the government. Mr. Oteyo pointed out that by this time, the matter had been in court for over three years.

The learned Counsel further stated that the plaintiff did not admit to being served with the 90-day notice as alleged by the defendant. According to him, it took the defendants six months to appear in court and file their

Written Statement of Defence (WSD). He strongly argued that it was not true that the plaintiff had surprised the defendants with this case.

On the issue of Land Case No. 398 of 2023, which later changed to Land Case No. 25617 of 2023, Mr. Oteyo clarified that when the matter was called for hearing, the defendant defaulted in appearing. Consequently, the preliminary objections (POs) raised by the defendant were marked as "abandoned," and the suit was marked as withdrawn with leave to refile on 15th February 2024. Following that decision, the plaintiff lodged the current matter before the court.

Regarding the attachment of the 90-day notice, Mr. Oteyo asserted that it was essential for the defendant to include the notice to demonstrate that the necessary steps were being taken. He reiterated that the plaintiff had not been served with such notice. He further argued that a tenant becomes a trespasser immediately upon failing to pay the rent. He dismissed the argument that payment of land rent by the defendant indicated ownership, emphasizing that anyone can pay land rent, and such payment does not demonstrate ownership. Concerning the caveat, Mr. Oteyo remarked that it was lodged after the case had been struck out.

Lastly, Mr. Oteyo addressed the case law cited by the defendant, asserting that it was distinguishable because it involved a landlord-tenant dispute. He argued that the defendant could have applied to the Ministry for a grant, but they had tried and been rejected. He concluded by submitting that it was not proper for the defendant to sue the government in this case, and he prayed that the court disregard the defendant's submissions.

I have dispassionately considered the rival submissions. I have also carefully examined the court records and the authorities cited. The defendant's counsel has contended that the case involves government documents, including land titles, which necessitates the joinder of the Commissioner for Lands, the AG, and the Registrar of Titles. This argument is supported by section 6(2) of the Government Proceedings Act, Cap. 5 RE 2019, which requires that any suit against the government must involve a 90-day notice. The defendant claims to have issued such notice but failed to attach a copy to their WSD.

It is a well-established principle that necessary parties must be joined to ensure the effective and complete adjudication of disputes. In the case of **Tanzania Railways Corporation (TRC) v. GBP Tanzania Limited**, (supra) the Court of Appeal underscored the court's duty to ensure that all

necessary parties are before it. In this case, the plaintiff claims ownership of the suit property based on a certificate of title, while the defendant relies on a letter of offer. Given that both the Commissioner for Lands and the Registrar of Titles are responsible for issuing and regulating such documents, their participation is essential for resolving the core issue of ownership. Failure to join them would prevent the court from fully adjudicating the dispute.

The non-joinder of the AG, the Commissioner for Lands, and the Registrar of Titles undermines the court's ability to determine the issue of ownership conclusively. The plaintiff's claim that the defendant is a trespasser and the defendant's claim to have been allocated the suit property in 1986 cannot be effectively determined without involving these governmental entities.

While the plaintiff has argued that the defendant's application constitutes an abuse of court process, I respectfully disagree with Mr. Oteyo. The issue of necessary parties was raised during the preliminary objection but was not conclusively addressed in the context of the CAT decision cited. The court must prioritize substance over technicalities, as enshrined in the Overriding Objective Principle under section 3A of the Civil Procedure Code

(supra). The court's duty is to ensure that justice is served by joining all necessary parties, even if it results in delays.

In the upshot, the suit is hereby struck out for failure to join the Attorney General, the Commissioner for Lands, and the Registrar of Titles as necessary parties. The plaintiff or the defendant is at liberty to refile the suit upon proper joinder of the necessary parties. Since the Ruling emanates from an issue raised by the Court ***Suo motu,*** I make no order as to costs.

It is so ordered.

E. I. LALTAIKA
JUDGE
09/09/2024

Court:

Consent Judgement delivered this 9th day of September 2024 in the presence the Defendant who has appeared in person, and in the absence of the Plaintiff and his Advocate.

E. I. LALTAIKA
JUDGE
09/09/2024