

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 68 OF 1994

DOMIN P. K. G. MSHANA.....PLAINTIFF

VERSUS

ALMASI CHANDE.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

R U L I N G

KALEGEYA, J.

In this preliminary objection, the 1st defendant challenges "that the Plaintiff has no interest in the suit and hence lacks any cause of action against the first defendant", while, the plaintiff Counters by saying that he is the owner of plot No. 173, Block C 11 Tabata, Dsm region, and that 1st Defendant is either a trespasser or an illegal allocatee by the 2nd defendant.

Facts undisputed are that in June, 1987, the plaintiff was allocated the disputed plot for which she proceeded and paid the necessary fees and secured a certificate of title No. 34258. On 23\2\93 the Commissioner for lands issued a letter of offer over the same plot to 1st Defendant who also proceeded to pay the requisite fees. The 1st Defendant is the new allocatee while the 2nd Defendant, the Attorney General, is sued on behalf of the Minister for Lands, Housing and Urban Development.

The plaintiff insists that he is the right allocatee of the plot in dispute while defendants maintain that her title was revoked. The plaintiff goes further by saying that if there was any revocation and re-allocation it was illegal, null and void, as the revocation was not done by the President as required by Law.

With the above set of facts can it be said that the Plaintiff lacks interest in the matter and so is a cause of action? With respect, I am very far from buying that kind of argument. Here we are not concerned with who is right and who is wrong. We are not concerned with what the defence will offer in prosecuting their rights. The details of how the offers and alleged revocation was made are matters of evidence and that will be brought out during the trial. Here we are simply interested in the existence or otherwise of the cause of action, and in doing that we don't have to look at the defence but simply at the plaint. The guiding principle is as was pronounced in JERAJ SHARIFF & SONS VS CHOTAI FANCY STORES (1960) EA at page 375, where it was stated, among others,

"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".

As to what a "cause of action" is, a persuasive commentary by Mulla, On Civil Procedure, 13th Edition, which gives synopsis of various decisions and which has been adopted with approval in our jurisdiction runs as under,

"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 judgement 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 (x). It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded (y). It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree (z). Everything which if not proved would give the defendant a

right to an immediate judgement must be part of the cause of action (a). It is, in other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit (b). But it has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It is a media upon which the plaintiff asks the court to arrive at a conclusion in his favour (c)". (Alphabets refer to the Author's footnotes).

Now, treading on the above, the plaint read together with its annexures portrays plaintiff as the allocatee of the disputed plot and it alleges that 1st defendant has gone into it as well. It would be monstrous to say that on this alone the plaintiff has no interest or cause of action. That is clearly established, and whether or not she would be entitled to the reliefs claimed will depend on evidence. Raising and arguing the preliminary objection in the manner and style projected by defendant is tantamount to arguing the substantative suit and this is not the occasion.

For the clear reasons discussed above the preliminary objection is overruled.

(L. B. Kalegeya)
JUDGE

Delivered on.....

(L. B. Kalegeya)
JUDGE