

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

LAND NO. 31 OF 2019

**EFRATHA J. MLAY as Administratrix of the Estate
of the Late WILLIAM JACOB NGOWI PLAINTIFF**

VERSUS

**JOSEPHINE RASIELI MREMI/JOSEPHINE
WILLIAM NGOWI 1ST DEFENDANT**

**THE REGISTERED TRUSTEES OF EVANGELICAL
LUTHERAN CHURCH IN TANZANIA -
EASTERN AND COASTAL DIOCESE 2ND DEFENDANT**

Date of last Order: 21/02/2020

Date of Ruling: 13/05/2020

R U L I N G

MGONYA, J.

In this case, the Plaintiff claims against the Defendants jointly and severally, for a declaration that the 1st Defendant's application for the certificate of title was illegal and *void ab initio* as the 1st Defendant did not have good title to the suit premises. Further, that the disposition by the 1st Defendant to the 2nd Defendant of the suit premises was as the result of lack

of good title illegal and *void ab initio*. Further to that, the rightful owners of the suit premises are the deceased's legally recognized wife of the deceased (the Plaintiff) and the deceased's his beneficiaries; and that the suit premises should be administered by the Plaintiff as the Administratrix of the deceased's estate; General damages as shall be assessed by the Court; and costs incidental to this suit.

In the event therefore, the Plaintiff prays for a Judgment and Decree, against the Defendants, jointly and severally for:

- (1) A declaration that the 1st Defendant's application for the certificate of title was illegal and *void ab initio* as the 1st Defendant did not have good title to the Plot (suit premises). That the disposition by the 1st Defendant to the 2nd Defendant of the suit premises was totally illegal and *void ab initio*; that the rightful owners of the suit premises are the deceased's legally recognized wife (the Plaintiff) and his beneficiaries and that the suit premises should be administered by the Plaintiff as the Administratrix of the deceased's estate;
- (2) General damages as shall be assessed by the Court;
and
- (3) Costs incidental to this suit.

In the initial stage of this matter, the Defendant raised two points of preliminary objection to wit:

- i. **The suit is time barred; and***
- ii. **Failure to join the Registrar of Titles and Commissioner for Lands.***

The submission of the said points of preliminary objection was done orally. However, in the course of submission, Mr. Reuben the learned Counsel for the Defendant dropped the second point and submitted only for the first point that the **suit is time barred.**

In submission of the same, the 1st Defendant's learned Counsel referred the court to paragraph 7 of the Plaint and further directed himself to **section 9 (1) of the Law of Limitation Act**, where he is of the view that the cause of action to the suit arose on **9th of December 1997 the date of the death of Late WILLIAM JACOB NGOWI** and not otherwise. The comparison was made against the date of filing the instant suit which is **5th July 2019**. On the same line, it is the Counsel's submission that the twelve years' time limit for land matters provided under **Part I on Item 22** has already lapsed for the Plaintiff to bring before the court the instant suit to recover the suit land.

In the event therefore, it is the 1st Defendant's Counsel prayer that the instant suit be dismissed with costs.

Responding to the point of preliminary objection, it is the Counsel for Plaintiff Mr. Manjeka when referring to paragraph 7 of which the 1st Defendant's Counsel said that the cause of action arose, he is of the opinion that the cause of action is not the recovery of suit *per-see*, rather it is for the court declaration that the certificate of title obtained by the 1st Defendant and later passed to the 2nd Defendant was illegal and *void ab initio* offered as the 1st Defendant did not have good title to the suit premises.

Referring to **section 9(1) of Cap. 89**, the Counsel is of the view that the same cannot apply to rule on the time limitation as even after the death of the Late Ngowi everything was calm. Until the 1st Defendant got ownership of the suit premises. Mr. Manjeka was of the view that, time started counting from the date the said ownership arose which is in the year **2012**. It is for that explanation, the Plaintiff's Counsel is of the view that the objection that the suit is time barred is misconceived.

At this juncture I am now inclining to the merits of this objection. In the records it shows that the deceased had demised on 9th December **1997**. Further, that the Plaintiff claims to be the Administratrix of the estate of the deceased **WILLIAM JACOB NGOWI** who is believed to be the lawful owner of the disputed suit premises until the time of his death.

From that time until the date of filing the instant suit it is a fact that **21 years** have passed. Further it is a well-known law that the time limit for recovery of land is **12 years** under **the Law of Limitation Act, Cap. 89 (Supra)**.

According to the **Law of Limitation Act Cap. 89 [R. E. 2002], section 9 (1)** provides for the institution of suits of this nature. For ease of reference, hereunder is the provision of **section 9 (1) of the Law of Limitation Act (supra)**:

"Where a person institutes a suit to recover land of a deceased person, whether under a will or intestacy and the deceased person was, on the date of his death, in possession of the land and the last person entitled to the land to be in possession of land, the right of action shall be deemed to have accrued on the date of the death."

It is undisputed that the suit premises in dispute claimed by the Plaintiff as mentioned under paragraph 5 of the Plaint lawfully belonged to the deceased **WILLIAM JACOB NGOWI** until the day he passed away. Therefore, from the provisions above, I find it hard to apply the provision of **Section 9(1) of the Law of Limitation Act (supra)**. Under the circumstances as elaborated in the pleadings, the cause of action to me accrued when the 1st Defendant got the ownership of the suit premises from the relevant Authority as seen in the 1st

Defendant's Title Deed as attached to her pleadings. Going by the provision of **section 9 (1) of Cap. 89** as stated above, **justice will be denied.** I say so since everything was just normal until the year that the 1st Defendant got ownership. Then, how can the time run in the midst of harmony? It is only until when something abnormal arise, that is to say until when the controversy unto the property arose, particularly on ownership of the suit premises.

Under the circumstances of this case, I am of the firm view that the Applicable law is **section 5 of the Law of Limitation Act (supra)** which states:

"Subject to the provisions of this act, the cause of action, in respect of any proceedings, shall accrue on the date on which the cause of action arises."

In the circumstances of this case and from the contents of the plaint, the court can be in position to determine when the cause of action accrued within the ambits of **section 5 of Cap. 89**, as the Cause of Action is said to have accrued against the 1st Defendant at the time when she got the Title of the land regardless its legality or otherwise which is now the issue before the court. disputed property was sold to. It would not be proper for the 1st Defendant to claim that the cause of action arouse **21 years** ago since she came into occupation in **2013**. In the event therefore, **I find the point of objection**

on time barred devoid of merits; and in the circumstances is accordingly overruled.

On the other side, the 1st Defendant's Counsel decided to drop the 2nd point of preliminary objection advanced earlier, I wonder as to why he decided to do so. Despite of his decision I have gone through the pleadings of this matter and since the said point of preliminary objection is withdrawn, I have decided to resurrect the same ***suo motto*** for the reasons I am going to address below.

Having gone through the pleadings, I have noted that the 1st Defendant have the valid Title Deed over the disputed land from the competent Authority, regardless of the procedure used to obtaining the same. The said land is well recognised through the Plaint, currently registered as **Plot No. 2787, Block "A" and L.O No. 492246.**

Under the circumstances, and from the Plaintiff's prayer to this suit, the execution of the prayers sought (i.e. declaration over the land title) would require both **administrative** and **legal action** by the non-joined land allocation Authority in justifying or verifying the rightful ownership and title of the contested plot of land. The court has also observed that principles of Natural Justice also demanded that the non-joined party be impleaded. The land allocating Authority also shouldered the responsibility (in allocating the land), hence

could in no way be excluded as party to the suit. At this juncture, it is apparent to state that the **Registrar of Lands** who issued a Title Deed be joined as a party to the suit together with **the Attorney General** as a necessary party.

On this point I would like to refer to the case of ***SHAIBU SALIM HOZA VS. HELENA MCHACHA (AS LEGAL REPRESENTATIVE OF AMERINA MCHACHA DECEASED), CIVIL APPEAL NO. 7 OF 2012, CAT AT DAR ES SALAAM (Unreported)***, where it was held that; it was improper for the suit to proceed before the subordinate and the High Court without the Dar es Salaam City Council who had allocated the land to the deceased. Following the fact that, the said Dar es Salaam City Council was the necessary party to such proceeding. The Court of Appeal thus, quashed and nullified the proceedings and judgments of the two courts below it, and ordered for fresh proceedings upon joining the Dar es Salaam City Council.

In land suits therefore, a person who is alleged in pleadings to have conferred land title to the parties or any of them by one means or another (such as by allocation or sale), and the person to whom the title was so conferred, are necessary parties to the suit.

Owing to the discussion on the law demonstrated above, I am inclined to state that, the non-joinder of the Authority

(Registrar of Lands) fit squarely in the legal description of the term "necessary parties" as far as the suit under consideration is concerned. This particular view is based on the following factors which have been approved by various local and foreign precedents, as important factor to consider in determining who is a necessary party to a suit; that both parties in the matter at hand put reliance on the acts and decisions of the said Authority regarding the respective ownership to the land at issue.

Moreover, as the concerned Authority is responsible for the allocation of land and approval of title, then it is therefore, be found responsible for its act at the end of the trial of this case. Furthermore, it would be improper and against the principles of natural justice for the court to make any order against it since the said Authority is not a party to the proceedings and such orders will not bind it in law. Again, the Registrar of Lands is obvious directly interested in the outcome of the case since he may be responsible for his respective acts.

Additionally, this court is of the opinion that, by adding the said Authority in the proceedings of the case at hand, it would be in a better position to effectually and completely adjudicate upon the controversy between the parties. In fact, without it, **no order can be made effectively.** The Authority is vital to the settlement of all questions in the suit. This is

irrespective of the fact that no relief is prayed against them. The position is also irrespective of whether or not they would be barred by the result of this suit. Actually, this court is of further view that, joining the above Authority in the suit at hand will ultimately avoid a multiplication of litigation in case one party will lose the case and decide to claim for any remedy against the said Authority.

In determining this issue too, as pointed earlier, there is no way the exclusion of the Attorney General as a necessary party to the proceedings, will do. In the event therefore too, the Hon. Attorney General to be joined as a necessary party to these proceedings is inevitable.

At this juncture, I am of the view that, it is incumbent to define who is a necessary party in law. I did not find any definition of the term "**necessary party**" in the statutes of this Land. However, case law has strived to plug the *lacuna*. In spite of the omission in the written law just mentioned above, the **Civil Procedure Code** gives guidance on who may be joined in a suit as Plaintiff and as Defendant. According to **Order 1 Rule 1 of the Civil Procedure Code, Cap. 33 [R.E. 2002]**, all persons may be joined in one suit as Plaintiffs in whom the right to relief alleged to exist in each Plaintiff, arises out of the same act or transaction; and the case is such of a character that, if such person brought separate suits, any

common question of law or fact would arise. The Civil Procedure Code provides further, under **Order 1 Rule 3 (Supra)** that, all persons may be joined as Defendants against whom any right to relief which is alleged to exist against them arises out of the same act of transaction; and the case is of such a character that, if separate suits were brought against such person, any common question of law or fact would arise. The provisions of law just cited above were emphasized by the Court of Appeal of Tanzania (CAT) in the case ***ABDULLATIF MOHAMED VS. MAHBOOB YUSUF OTHMAN AND ANOTHER, Civil Revision No. 6 of 2017 CAT.***

The law also recognizes two kinds of parties among those who can be joined in one suit. These are **necessary parties** on one hand, and **non-necessary parties** on the other; see the ***ABDULLATIF case (Supra)*** taking inspiration from a decision by the Supreme Court of Uganda in the case of ***DEPARTED ASIANS PROPERTY CUSTODIAN BOARD V. JAFFER BROTHERS LTD [1999] 1 EA 55.*** In deciding this case, the Ugandan Supreme Court had considered the English Case in ***AMON V. RAPHAEL TUCK AND SONS LTD [1956] 1 ALL E. R. 273.*** It is therefore, imperative to clearly differentiate between the two kinds of parties before I describe in detail who a necessary party is. According to the holding in the ***ABULLATIF case*** as fortified by the above foreign

decisions just cited above, and according to my understanding of these decisions, a **non-necessary party** is a person who has merely to be joined in the suit. He is also commonly referred to as a proper party. However, a **necessary party** is a person who has to be joined in the suit yes, but **whose presence before the court is necessary for it to effectively and completely adjudicate upon the questions involved in the suit.** In other words, a court can effectively and completely adjudicate upon the dispute between the parties even in the absence of a non-necessary party. Nonetheless, the court cannot do so without a **necessary party.**

The following two tests have therefore, been set by courts for testing whether or not a particular party is necessary party (as Defendant):

- (a) There has to be a right of relief against such a party in respect of the matters involved in the suit and;
- (b) The court must not be in a position to pass an effective decree in the absence of such a party.

These dual tests were underlined by the CAT in the ***ABULLATIF case (Supra) following the Indian case of BENARES BANK LTD, V. BHAGWANDAS, A.I.R (1947) All 18,*** by the full bench of the High Court of India in the case ***of DEPUTY COMN HARDOI V. RAMA KRISHNA, AIR***

(1953) S. C. 521. The CAT in the **ABULLATIF** case therefore, defined a necessary party in the following words which I quote for a readymade reference:

"...a necessary party is one in whose absence no effective decree or order can be passed. Thus, the determination as to who is a necessary party to a suit would vary from a case to case depending upon the facts and circumstances of each particular case. Among the relevant factors for such determination include the particulars of the non-joined party, the nature of the relief claimed as well as whether or not, in the absence of the party, an executable decree may be passed."

In our jurisdiction, statutory law also recognizes the existence of a necessary party to the suit before the court and the significance of joining him where he is not joined. It gives powers to the court to join such a party. **Order 1 Rule 10 (2) of the Civil Procedure Code** for example, demonstrates such cognizance, it reads:

"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.***" (Bold emphasis is mine).

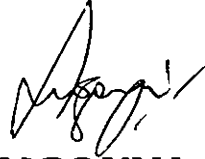
It is from the above explanation, I am of the firm observation that **the suit is improper before the court for not impleaded the Registrar of Lands and the Attorney General as a necessary party**, the stand that I had from the moment I went through the parties' respective pleadings.

For the above reasons, I have determined the issue of time barred **negatively** and suo motto the point of omission in joining the Registrar of Titles and Attorney General that, **the suit was erroneously filed and cannot be heard as it is for the above stated reasons.** It is therefore improper and incompetent before this court and liable to be struck out.

From the above findings and reasoning, I consequently **struck out the Suit.** In case the Plaintiff still wishes, she may file a proper suit involving the **Registrar of Lands** and necessary party (**the Attorney General**) as demonstrated above.

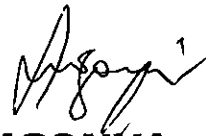
Since the point which made the suit to be struck out was initiated by the court *suo motto*, I proceed to order that **each party should bear own costs.**

Order accordingly.



L. E. MGONYA
JUDGE
13/05/2020

Court: Ruling delivered in the presence of Mr. Julius Manjeka, Advocate for the Plaintiff, Mr. Erick Denga, Advocate for the 1ST Defendant, Ms. Irene Mchau, Advocate for the 2nd Defendant and Ms. Janet Bench Clarke in my chamber today 13th May, 2020.



L. E. MGONYA
JUDGE
13/05/2020