

IN THE UNITED REPUBLIC OF TANZANIA
THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

CIVIL CASE No. 11 OF 2019

STARCOM HOTEL.....PLAINTIFF

Versus

NATIONAL MICROFINANCE BANK.....1st DEFENDANT

ANNA INVESTMENT CO. LTD.....2nd DEFENDANT

REGISTRAR OF TITLES.....3rd DEFENDANT

RULING

23rd July, – 3rd September, 2020

J. A. DE - MELLO J;

A Preliminary Objection has been raised by the **3rd Defendant** which states;

- I. That, the suit is hopelessly 'Time Barred'.**
- II. That, the suit is bad in law to contravening the provision of sections 102(1) of the Land Registration Act Cap. 334 R.E 2002.**
- III. That, the Court has no jurisdiction to entertain this matter.**
- IV. That, the suit is bad in law and untenable for contravening sections 6 (2) of the Government Proceedings Act, Cap. 5 R.E 2002.**

On the **11th June, 2020**, written submissions prayed and, duly granted displayed the following pattern; By the **3rd Defendant** on or before the **30th**

June, Reply by the **Plaintiff** on the **14th of July**, Rejoinder if any, on the **23rd of July 2020**. Record confirms compliance by both.

It is the **3rd Defendant's** submissions, while joining the **1st** and, **2nd** grounds that, Notice to show cause was issued on the **16th January, 2019** as per **paragraph 7** of the **Plaint**, within **thirty (30)** days as to why the **Plaintiff's farm No. 596 under C.T No. 5358 at Mahenge Village in Iringa Municipality** should not be registered with a mortgage, following failure procure restraining order against the **3rd Defendant's** name. Citing **section 102 (1)** of the **Land Registration Act, Cap. 334** of an avenue to appeal to the High Court within three months against the order of the Registrar. Opting for a suit as opposed to an Appeal and, horribly nine months late, renders the suit out of time. The case of **Yussuf Vuai Zyuma vs. Mkuu wa Jeshi la Ulinzi TPDF & Others, Civil Appeal No. 15 of 2009 (Unreported)** and, that of **Zathocodawu Members Represented by General Secretary of Zathocodawu vs. Managing Director of C.R.J.E Zanzibar, Civil Appeal No. 26 of 2014 (CA) (Unreported)**, as to consequences of being **Time Barred** of which **section 3** of the **Law of Limitation Act Cap. 89** provides for dismissal . Further that, **section 102 (1)** of the **Land Registration Act, Cap. 334**, makes it mandatory for Notice be issued by the one aggrieved prior to lodging an Appeal, if at all. This, has similarly not done. Submitting on the **3rd** ground, and making reference to the case of **Thomas Ngawaiya vs. The Attorney General and 3 Others, Civil Case No. 177 of 2013 (Unreported)**, of the contravention of **section 6 (2) of the Government Proceedings Act** for **mandatory ninety days (90) Notice**, the **3rd** Defendant being a

Government institution. Based on the above, he prayed for dismissal of the suit with costs.

Resisting the objections, the Plaintiff submits that, the suit is timely lodged, considering cause of action that, arosed around the **16th of January, 2019**, leading to its filing on **22nd January, 2019**. With regard to second point of objection, the Notice from the 3rd Defendant was issued on the **16th of January 2019** and less than the **thirty (30)** days given, with the Plaint filed on the **22nd of January 2019**. In absence of any decision, order or act as per **section 102 (1)** of the **Land Registration Act, Cap. 334**, for the Plaintiff to Appeal. It is her further view that, this suit precedes the decision, order or act in which the Notice dated **31st December 2018** would take effect after one month. The objection is misconceived to fit the provision of **section 102 (1)** of the **Land Registration Act, Cap. 334**.

Addressing the ninety days Notice against a Government institution, allegedly contravened, can similarly not stand because this is not an Appeal. Records indicates the filing of this on **22nd January, 2019**, initially against the two Defendants. Following grant to amend on **19th March, 2019**, vide a letter dated **20th March, 2019** for joining of a necessary party, the 3rd Defendant is evidenced by **annexure SH-1**. The two case laws referred to by the 3rd Defendant, are irrelevant not supportive of the objections raised, he observed, following the position above.

Rejoining, the **3rd Defendant** reiterates what he has submitted in chief pointing out that, the Notice to show cause attracted an Appeal and not a suit. Neither is the same within time nor ninety days notice in accordance with the law. The judicial notice suggested considering un pleaded Notice, is

an afterthought he insists. **Section 59 (1) of Cap. 6** is misconceived as well, he points out.

I will for sequence and, consistency purposes, address the objections in the same pattern of joining the first and second ground jointly.

Section 102 (1) of the of the **Land Registration Act, Cap. 334, R.E 2019;**

"Any person aggrieved by a decision, order or act of the Registrar may appeal to the High Court within three months from the date of such decision, order or act"

The law above requires any aggrieved party challenging the decision, or order of the Registrar to appeal to the High Court within time specified, that of three months. The case at hand, the Plaintiff challenges the registration of the mortgage, one which the **3rd Defendant** had effected. This is a decision already passed, which falls under the ambit of **section 102 (1) (a)** . It was improper for the Plaintiff to institute a fresh suit but, an Appeal.. With this ground alone and, notwithstanding the two Notices objections, it suffices to dispose the suit at this outset.

I am left with no option other than dismissing the suit with costs.

I order.


J. A. DE- MELLO
JUDGE

3rd September, 2020