

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA
AT ARUSHA**

LAND CASE NO.20 OF 2021

ZAINABU HUSSEIN LARUSAI

*(As a guardian of Said Hussein, Abdu Hussein,
Halima Hussein, Hanifa Hussein, Ally Hussein and
Hussein Hussein)*

PLAINTIFF

Vs

THE REGISTERED TRUSTEES

OF AHLUL- BAIT CENTER.....1ST DEFENDANT

THE REGISTERED TRUSTEE

OF ANSAARUL IMAMIYYAH.....2ND DEFENDANT

SHEIKH ABDULRAZAK AMIR MSUYA@

ABDULRAZAK AMIR JUMA MSUYA.....3RD DEFENDANT

RULING

Date of last order: 15-12-2021

Date of ruling: 15-2-2022

B. K. PHILLIP, J

This ruling is in respect of points of preliminary objections raised by the learned Advocate[Alute Mughwahi of Mughwahi and Co. Advocates who appears for the defendants; to wit;

- (i) *That the suit was instituted hopelessly out of time and is thus barred by section 3(1) of the Law of Limitation Act (CAP 89.R.E 2019).*
- (ii) *That the plaint is bad in law for failure to show the ground or grounds upon which the plaintiff claims exemption from the operation of the said Law of Limitation Act , contrary to Order VII Rule 6 of the Civil Procedure Code (CP 33 R.E 2019).*
- (iii) *The particulars of fraud alleged in Paragraph 16 do not constitute " fraud" in law.*
- (iv) *That the Plaint discloses no cause of action against the 2nd defendant , contrary to order 1 rule 3 of the Civil Procedure Code.*
- (v) *That the plaintiff's suit is not maintainable in law as it was instituted on behalf of and for the benefit of the plaintiff's six children all of whom are of majority age, without the permission of the Court , Contrary to Order 1 Rule 8of the Civil Procedure Code .*
- (vi) *That the Plaintiff has no ' Locus Standi" to claim that the 1st defendant wrongly acquired the suit property without the consent of the Administrator General of Trustees as required by the Law.*

The plaintiff is represented by the learned advocate Wilbald John Massawe of Mawalla Advocates.

I ordered the points of preliminary objections to be disposed of by way of written submissions. I commend the learned advocates for filling their submissions timely as ordered by the Court.

The plaintiff herein lodged this case against the defendants as a guardian of her children whose names appear at the title of this case, (Said Hussein, Abdu Hussein, Halima Hussein, Hanifa Hussein, Ally Hussein and Hussein Hussein).It is alleged in the plaint that the property located at Plot No. 39 , Block "H" with Certificate of Tittle No. 9664 situated in Arusha Municipality , (hereinafter to be referred to as " Suit Property") , which belonged to the plaintiff's husband was fraudulently transferred to the 3rd defendant instead of being transferred to the 2nd defendant as intended by the beneficiaries. The plaintiff alleged that on the 27th of November ,2020 members of the 2nd defendant , including the plaintiff herein upon following up on the affairs of the 2nd defendant , discovered that the disputed property had been fraudulently transferred to the 1st defendant instead of being transferred to the 2nd defendant. The name of the owner of the suit property had been fraudulently changed to the

name of the 1st defendant. In this case the plaintiff prays for the following orders;

- i) *A declaration that , the transfer and continued ownership and occupation of a landed property being Plot No. 39 Block "H" with Certificate of Title No. 9664 situated in Arusha Municipality to and by the 1st defendant herein was and is illegal, ineffectual and void ab initio.*
- ii) *A declaration that the landed property being Plot No. 39 Block "H" with Certificate of Title No. 9664 situated in Arusha Municipality currently in the name of the 1st defendant herein could not be transferred to the 1st defendant without approval of the Plaintiff's beneficiaries herein and the Administrator General ,*
- iii) *An order compelling the 1st defendant herein to handover the original Certificate of the Title in respect of Plot No. 39 Block "H" with Certificate of Title No. 9664 situated in Arusha Municipality and transfer the disputed property to the 2nd Defendant herein.*
- iv) *Perpetual injunction restraining the 1st and 3rd Defendants, their agents and any one acting under their authorization from*

meddling with the said disputed property contrary to the wishes of the plaintiff.

- v) General damages for mental anguish and suffering.*
- vi) Any other relief(s) and or order(s) that this Court may deem fit and just to grant*
- vii) Costs of this Court.*

Having carefully read the submissions filed by both learned advocates, including the cases laws and textbooks referred to therein, let me proceed with the determination of the merit of the points preliminary objections. I will deal with the 1st and 2nd points of preliminary objection conjointly.

With regard to the 1st and 2nd points of preliminary objection, Mr Mughwahi's submission was to the effect that this suit has been instituted out of time, thus it is time barred pursuant to the provisions of section 3 of the Law of Limitation Act (henceforth "the LLA"). He contended that in this case the plaintiff is claiming for "*equitable reliefs*" , to wit; A declaration that the transfer of the suit property to the 1st defendant was illegal, ineffectual and " *void ab initio*" and a perpetual injunction against the 1st and 3rd defendants. Expounding on this point, Mr Mughwahi argued that a declaratory judgment and/or a permanent injunction are in nature of "*equitable reliefs* " because they are not compensatory

in money terms. He went on submitting as follows; That under item 11 of the schedule to the LLA, the limitation period for a suit claiming for an equitable relief for which no period of limitation is prescribed is six (6) years and under item 24 of the schedule to the LLA, the limitation period for any other suit not otherwise provided for is six years and the effect of declaring the transfer of the suit property to the 1st defendant illegal is to revert the ownership of the suit property to the plaintiff before it was lawfully transferred to the 2nd defendant, which in essence is a claim for recovery of landed property. I join hands with Mr Mughwahi that under item 22 of the schedule to the LLA the limitation period for recovery of land is twelve (12) years and for equitable reliefs for which no limitation period is prescribed is six (6) years.

It is a common ground that computation of time for the purpose of making determination on whether or not a case is time barred is based on the date the cause of action arose. This is accordance with the provisions of section 5 of the LLA. Mr Mughwahi contended that since this suit was filed on 27th July 2021, then was filed beyond six (6) years' limitation period prescribed by the law for declaratory reliefs sought by the plaintiff in this case. The period of six years expired in 2007. And that the suit is also filed well beyond twelve (12) years' limitation period

for suits for recovery of land. The period twelve years expired in 2013. To cement his arguments Mr Mughwahi cited the case of **Iga Vs Makerere University (1972) E.A 65**

In addition to the above, relying on the case of **Dhanesvar Mehta Vs Manilal M.Shah (1965) E.A. 321**, Mr Mughwai submitted that the object of providing limitation in filing of suits is to prevent the plaintiff from prosecuting stale claims and on the other hand is to protect the defendant after he had lost evidence for his defence from being disturbed after a long lapse of time. Also, Mr Mughwai referred this Court to a text book titled " Textbook on the Law of Limitation Act " by Shrinivas Gupta , Universal Law Publishing Co. PVT Ltd , New Delphi –Reprint 2011 which brings home a similar message to what I have stated herein above and that the Law of Limitation prevents disturbance and extinguishes stale demands, quiets title and maintains peace, and justice as by lapse of time , evidence in support of rights may have been destroyed.

On the other hand, Mr Massawe's arguments are to the effect that the cause of action arose on 27th November, 2020 when the plaintiff discovered the alleged fraud. He referred this court to provisions of section 26 of the LLA and the case of **Ms Safia Ahmed Okash (As**

administratrix of the estate of the late Ahmed Okash) Vs Ms Sikudhani Amir and 82 others, Civil Appeal No. 138 of 2016 (unreported), in which the Court of Appeal while deliberating on an appeal which was concern with a case involving allegations of fraud which was dismissed by this Court on the reason that it was time barred, the Court said the following;

"... In our view, the pleaded facts in the two paragraphs were to the effect that although the respondents invaded and parcel out the disputed property between 1974 and 1976, the appellant's claim of ownership and possession was not time-barred because it was only in September, 2011 that she became aware of the fraud perpetrated by the respondents in acquiring the disputed land. It is plain that on the basis of these facts she pleaded exemption from the web of the twelve years' limitation on the ground of fraud in consonance with section 26 of the LLA."

In addition, Mr. Massawe submitted that the plaint has to be read holistic not in piecemeal and that the permanent injunctive reliefs are antecedent to the order and prayers for nullification of the sale and consequential transfer to the 2nd defendant. He went on arguing as follows; that the suit property was donated by way of unconditional *waqf* and is held in trust by the 1st defendant on behalf of its members, the plaintiff among

others. Relying on the provisions of section 18 of the Law of Limitation Act, he argued that there is no limitation in bringing an action against a person in whose property has become vested in trust for any specific purpose and the suit is aimed at recovering the trust property or is in respect of any fraud , misconduct or fraudulent breach of trust to which the trustee was a party or privy to

The plaintiff stated in paragraph 11 of the plaint that it was until 27th of November 2020 when he discovered the alleged fraud in respect of the suit property. For easy of reference paragraph 11 of the plaint is reproduced hereunder;

Paragraph 11. "That , on 27th November ,2020 members of the 2nd defendant , including the plaintiff herein upon following up on the affairs of the 2nd defendant discovered that the disputed property had been fraudulently transferred to the 1st defendant instead of the 2nd defendant herein and that, the name of the owner had been fraudulently changed to the name of the 1st defendant . A copy of land rent payment assessment indicating the name of the 1st defendant herein as current registered owner is attached herewith as annexure ZH2"

On the strength of the holding of the Court of Appeal in the case of **Ms Safia Ahmed Okash** (supra) I agree with Mr. Massawe that the cause

of action arose on 27th November 2020, upon the plaintiff's becoming aware of the alleged fraud as alleged in paragraph 11 of the plaint.

I have taken into consideration Mr. Mughwai's contention that the plaint did not disclose the exact date and month when the cause of action arose, on the ground that in the plaint there is a general reference to the year "2000" and "sometimes in the year 2001", contrary to the provision of Order VII rule 1 (e) of the Civil Procedure Code. With due respect to Mr Mughwai as I have alluded herein above paragraph 11 of the plaint states specifically that the plaintiff discovered the alleged fraud on 27th November 2020. The paragraphs which make a general reference to the Year "2000" and "sometimes in the year 2001" are just giving the narrations on what transpired between the plaintiff and the 3rd defendant which led to the transfer of the suit property to the 1st defendant instead of being transferred to the 2nd defendant.

From the foregoing, in my considered view Mr. Mughwai's arguments in respect of the 2nd point of preliminary objection, that the plaintiff has not stated the ground(s) upon which she claims exemption from the operation of the LLA, contrary to Order VII rule 6 of the CPC has no merits. As held by the Court of Appeal in the case of **Ms Safia Ahmed Okash** (Supra), on the basis of the facts concerning the alleged fraud

the plaintiff pleaded exemption from the web of twelve years' limitation on the suits for recovery of land and six years' limitation on the suit for equitable reliefs, in compliance with the requirement of section 26 of the LLA. Likewise , Mr. Mughwai's argument that the plaintiff does not have specific paragraphs showing the grounds relied upon to bring into play the provisions of Order VII rule 6 of the CPC and that the plaintiff is not at liberty to plead or not to plead any ground for exemption from the operation of the Law of Limitation is misconceived because the paragraph 11 of the plaint states categorically that the plaintiff discovered the alleged fraud on 27th November 2020. I have read the case of **Iga Vs Makerere University (Supra), AICC Vs Loishoki Nicholas Mossoni and 3 others, Land Case No. 12 of 2015 (HC) Arusha (unreported)** which has been cited by Mr. Mughwai. With due respect to him, the same does not support his aforesaid contention.

Also, I have taken into consideration Mr Mughwai's argument that the provisions of section 26 of the Law of Limitation Act is not automatically applicable in this case because there is no express allegation in the plaint that the alleged fraud was concealed or that the manner it was concealed by the said 1st defendant , the plaintiff could not , with reasonable diligence , have discovered the alleged fraud. He maintained

that the plaintiff had means of discovering the fact that the transfer had been made in favour of the 1st defendant not in favour of the 2nd defendant, on the ground that there is no any allegation in the plaint that the plaintiff had been suffering from any physical incapacity or legal disability or that she travelled abroad and was not present in Arusha. Mr. Mughwai cited the provision of section 19(1) of the Law of Contract Act, which provides that where consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is voidable at the option of the party whose consent was so caused, provided that if such consent was caused by misrepresentation or by silence or fraud within the meaning of section 17, the contract nevertheless is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

To my understanding there is no any legal requirement that there should be paragraphs in the plaint stating specifically that the plaintiff was not able to discover the alleged fraud with reasonable diligence. No wonder Mr. Mughwai did not cite any provision of the law to that effect or case law. After all, proving that the plaintiff was not capable of discovering the alleged fraud by reasonable diligence is a matter which requires evidence. It is a matter of mixed law and fact, thus it cannot be determined at this

stage and lacks the quality of a valid point of Preliminary objection. As correctly submitted by Mr. Massawe, a point of preliminary objection has to be a pure point of law. (See the case of **Mukisa Biscuits Manufacturing Co. Ltd Vs West End Distributorss Ltd (1969) E.A 696.**)

In addition I am in agreement with Mr. Massawe that the provisions of section 26 of the LLA freezes time for certain actions for the benefit of the injured party until he has discovered the fraud , mistake or misrepresentation. What is required to be proved is the existence of fraud and the alleged fraud has to be proved during the hearing. In the plaint the plaintiff is supposed to plead that there was fraud. In the case of **Ms Safia Ahmed Okash** (supra) the Court of Appeal observed the following;

"...plaintiff did not have to demonstrate or prove fraud in her plaint. What she needed to do at the pleading stage was stating facts on which her claim was founded, which in this matter included an allegation of fraud".

However, I am in agreement with Mr. Mughwai that the provisions of section 18 of the LLA relied upon by Mr. Massawe in his arguments is not applicable in this case since the suit property has not been vested to the 1st defendant for any specific purpose. The issue here is the transfer

of the suit property to the 1st defendant. The 1st defendant is not a "trustee" in the sense and meaning provided under the provisions of section 18 (2) of the LLA.

With regard to the third point of preliminary of appeal, Mr. Mughwai, submitted that the particulars of the alleged fraud do not constitute fraud in law, on the ground that there are no specific allegations with full particulars as to what the fraud was, how ,by whom and when it was committed. Both learned advocates submitted in detail on what is fraud and have referred me to a number of text books and the Blacks Law dictionary. This point should not detain me and I think there is no need of reproducing the excerpts from the text books referred to me by the learned advocates as well as the arguments raised by the learned Advocates. In short all of the concern raised by Mr. Mughwai on this point calls for better or more information concerning the alleged fraud, and as correctly submitted by Mr. Massawe, Mr. Mughwai has lodged in this Court a request for better particulars on the alleged fraud. Under the circumstances it is obvious that Mr. Mugwahi's argument aforesaid is redundant because he has requested to be provided with better particulars on the alleged fraud which will clear his concerns.

In addition to the above, whether or not the particulars of fraud alleged in paragraph 11 of the plaint does not constitute fraud " In law" , it is a matter which requires evidence to be established. And with due respect to Mr. Mughwai, I agree with Mr. Masawe a plaint has to be read as a whole together with all annexures attached thereto. The narrations in the plaint in totality shows the plaintiff's allegation that there was fraud. In my considered view it is not correct to single out paragraph 16 of the plaint as the only paragraph which states the alleged fraud in exclusion of other paragraphs.

Furthermore, Mr. Mughwai, contended that the plaintiff alleged that the signature on the transfer form of the Right of Occupancy was forged. Forgery is criminal offence and does not fall within the meaning of fraud. Again, I decline to agree with Mr. Mughwai's approach of singling out one paragraph in the plaint in exclusion of others. Whatever the case, I have said earlier in this ruling the allegation for fraud has to be proved during hearing.

Coming to the 4th point of preliminary objection, that is the plaint discloses no cause of action against the 2nd defendant, contrary to Order 1 Rule 3 of the CPC, In his submission, Mr. Mughwai referred this court

to the case of **Musanga Ngwanda Vs Japhet Wanzangi and 8 others (2006) TLR 351**, in which the Court held that

"a cause of action is the total sum of all allegations upon which the right to the reliefs claimed is founded. A plaintiff's cause of action is therefore, not only the right which he asserts but the infringement of it by the defendant"

He went on submitting that the plaintiff did not allege that the 2nd defendant had infringed any other rights and according to what is pleaded in the plaint the 2nd defendant was a beneficiary of unconditional *wakf* and if anything, he could have joined the 2nd defendant as a plaintiff against other defendants but that could not be done without its consent.

In rebuttal, Mr. Massawe submitted that the 2nd defendant has been joined in the suit as a necessary party to enable the court to determine the case properly and issue orders which could be implemented. He referred this Court to prayer No .(iii) in the plaint which reads as follows;

" An order compelling the 1st defendant herein to handover the original Certificate of Title in respect of Plot No. 39 Block "H" with certificate of Title Number 9664 situated in Arusha Municipality and transfer the Disputed Property to the 2nd defendant herein"

Mr. Massawe insisted that the above quoted relief if at all is granted by the Court cannot be successfully effected if the 2nd defendant is not a

party to this suit. To cement his argument Mr. Massawe cited the case of **Tanzania Railways Corporation (TRC) Vs Gbp (T) Limited , Civil Appeal No. 218 of 202 (CAT- Bukoba)** (unreported) , in which the Court of Appeal made the following observations;

" Ascertaining whether a party is a necessary party or not in the context of Order 1 Rule 10 (2) of the CPC , in Farida Mbaraka and Farida Ahmed Mbaraka Vs Domina Kagaruki, Civil Appeal No. 136 of 2006 (unreported) the court stated that ;

" under this Rule , a person may be added as a party to a suit (i) when he ought to have been joined as plaintiff or defendant and is not joined as so or (ii) when if without his presence , the question on the suit cannot be completely decided."

Another case cited by Mr. Massawe is the case of **Abdullatif Mohamed Hamis Vs Yusuf Osman and Fatna Mohamed , Civil Revision No. 6 Of 2017** (unreported)

Moreover , relying on the provisions of Order 1 rule 7, Mr. Massawe submitted that the law allows a plaintiff who is doubtful as to the person from whom he is entitled to obtain redress to join two or more defendants in order that the question as to which of the defendants is liable and to what extent , may be determined as between all parties. Also, he cited

the provision of Order 1 rule 9 of the CPC which provides that a suit cannot be defeated by reason of misjoinder or non-joinder of a parties.

I rejoiner Mr. Mughwai insisted that the 2nd defendant is not a necessary party in this case.

I hasten to say right away that I am inclined to agree with Mr. Massawe that the 2nd defendant is a necessary party in this case. As well submitted by Mr. Massawe the reliefs sought by the plaintiff touches the 2nd defendant. It has to be noted that the position of the law is clear that a court cannot issue orders to a stranger to a case, that is to person who is not a party to the case. Since, in this case the plaintiff prayers are direct mentioning the 2nd defendant it is obvious that the 2nd defendant is a necessary party in this case. Under the circumstances, Mr. Mughwai's argument that there is no cause of action against the 2nd defendant thus he has to be removed from this case cannot hold water. As observed by the Court of Appeal in the case of **Tanzania Railways Corporation** (Supra), there are two scenarios in which a party can be joined in a case, that is either there is cause of action against him or he is a necessary party for enabling the Court to issue orders which are necessary and implementable in resolving the dispute between the parties. In conclusion, I find the 4th point of preliminary objection to have no merits.

With regard to the 5th point of preliminary objection, that is *That the plaintiff's suit is not maintainable in law as it was instituted on behalf of and for the benefit of the plaintiff's six children all of whom are of age of majority, without the permission of the Court, Contrary to Order 1 Rule 8 of the Civil Procedure Code*, Mr. Mughwai's argument is to the effect that the plaintiff has filed this case in contravention of Order 1 rule 8 of the CPC since she has not sought and obtained consent from the court to file a representative suit on behalf of his children. To cement his arguments he cited the case of **Lujuna Shubi Ballonzi Sr Vs The registered Trustee of the CCM (1996) TLR 203**, in which the Court made the following findings;

"Although the plaint does not expressly say so, it is plain that the plaintiff purported to file the suit on behalf of himself and also on behalf of all Tanzanians who are not members of the Ruling Party. But as the suit has been filed without adopting the procedure laid down in Order 1 Rule 8 of the Civil Procedure Code it is incompetent in Law The suit is strike out with costs"

Mr. Massawe's response was to the effect that the case of **Lujuna Shubi Ballonzi** (supra) is distinguishable for the case in hand because the plaintiff is not suing on behalf of all Tanzanians but she instituted the case in her capacity as the guardian of the deceased's children, the beneficiaries of the suit property. Expounding on this point, Mr. Massawe

argued that certificate of title of the suit property attached to the plaint shows that the suit property was held in the name of the plaintiff as the guardian of the deceased's children and the same was transferred to the 1st defendant direct from the guardian. He was emphatic that "a guardian" is not synonymous to "a representative" in a representative suit.

In rejoinder, Mr. Mughwai, argued that there is no difference between the word "representative" and "guardian" and the distinction purported to be drawn by Mr. Massawe is none existent. He insisted that in both cases the representative or the guardian has legal authority over the personal or property or affairs of the other persons (s) being represented or protected.

Upon perusing the pleadings and the case laws cited by Mr. Mughwai, let me say outright here that I am inclined to agree with Mr. Massawe that the plaintiff lodged this case in her capacity as the guardian of the deceased's children not as the representative of the deceased's children. In fact at the title of this case, it is well indicated that the plaintiff filed the case in her capacity as the guardian of the deceased's children whose names are also indicated thereto. As correctly submitted by Mr. Massawe, filing a case as a representative of the co-plaintiffs is quite different from filing a case as a guardian. With due respect to Mr. Mughwai, the

provisions of Order 1 rule 8 of the CPC is not applicable in this case. The provision of Order 1 rule 8 of the CPC caters for situations where there are numerous person having same interests in one suit, then with the permission the Court one or more of such person may sue on behalf of others. I agree with Mr. Mughwai that the deceased's children are now of the age of majority, but since the transfer of the suit property was effected while the deceased children were minors and the same has never been in the names of the deceased's children, I joint hands with Mr. Massawe that the right person to institute this case is the plaintiff her capacity as the guardian of the deceased's children because she is the only one having locus to sue in respect of the suit property. This point of preliminary objection fails as well.

With regard to the last point of preliminary objection, that is *That the Plaintiff has no 'Locus Standi' to claim that the 1st defendant wrongly acquired the suit property without the consent of the Administrator General of Trustees as required by the Law.* Mr. Mughwai argued that the plaintiff had no *locus standi* to sue the defendants on the allegation that no consent was obtained from the Administrator General to acquire the suit property as required by "the Law" Mr. Mughwai contended that "the Law" referred to by the plaintiff in the plaint is "the trustees

Incorporation Act (Cap. 318 R.E 2019)".Under the circumstances the suit could only be instituted by the Attorney General as a guardian of the "public interests" or with his written consent , not the plaintiff. He invited this court to strike out this case on the ground that no consent was obtained from the Attorney General to institute this case. To cement his arguments he cited that case of **Lujuna Ballonzi** (supra).

In rebuttal, Mr. Massawe, referred this court to the case of **Peter Mpalanzi Vs Christina Mbaruka Civil Appeal No. 153 of 2019** (unreported) it cited the case of **Lujuna Shubi**, (supra) with approval, and said the following;

"Locus stand is governed by the common law according to which a person bringing a matter to court should be able to show that his right or interests has been breached or interfered with. The High Court has the power to modify the applied common law so as to make it suit local conditions..... Locus standi is a rule of equity that a person cannot maintain a suit or action unless he has an interests in the subject matter. Unless a person stands in a sufficient close relation to the subject matter so as to give a right which requires protection or infringement of which he brings the action, he cannot sue it."

Mr. Massawe's argument is to the effect that the lack of consent of the Administrator General cannot deprive the plaintiff and the beneficiaries

of the suit property their right to claim the suit property. He contended that there is no law which gives exclusive right to the Administrator General to sue in respect of trust property. He cautioned this court that upholding this point of preliminary objection will lay down a very bad precedent through which beneficiaries of trust property will be forced to stand aside and watch the trust property is being squandered or misused.

In rejoinder, Mr. Mughwai insisted that the plaintiff contravened the provisions of section 67 of the CPC. He contended that the remedy available to the beneficiaries of the trust is to move the Attorney General to sue the trustee or apply for a consent of the Attorney General to institute a case.

I have read the contents of paragraph 12 of the plaint which is the basis of this point of preliminary objection. In short that paragraph explains what was discovered by the members of the 2nd defendant concerning the transfer of the suit property, that is at the time of perfecting the transfer of the suit property, the 3rd defendant and other trustees of the 1st defendant were not legally appointed and registered trustee of the 1st defendant and that no consent had been obtained from the Administrator general for the 1st defendant to own the suit property as required under the law. With due respect to Mr. Mughwai, his argument in respect of this

point of preliminary objection is completely misconceived because according to the plaintiff's claims, the suit property is not a trust property. It is a property that belonged to the deceased's estate which has been wrongly transferred to the 1st defendant and the beneficiaries are challenging the transfer. In my understanding, the issue on the consent from the Attorney General to sue or the Attorney General's powers to sue in respect of the property does not arise here. Paragraph 12 of the plaint just narrates some of the shortcomings in the whole process of the transfer of the ownership of the suit property into the 1st defendant. Thus this point of preliminary objection has no merits.

From the foregoing it is the finding of this court that all points of preliminary objections have no merit and are accordingly hereby dismissed. Costs will be in course.

Dated this 15th day of February 2022




B.K.PHILLIP

JUDGE