

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM DISTRICT REGISTRY)

AT DAR-ES-SALAAM

LAND CASE NO. 7 OF 2021

ADOLPHINA MASSABA (The Administratrix and beneficiary
of the estate of the late Kulwa Sato Massaba) **PLAINTIFF**

VERSUS

CRDB BANK PLC **1st DEFENDANT**

MEM AUCTIONEERS AND GENERAL BROKERS LTD **2nd DEFENDANT**

HENRY SATO MASSABA **3rd DEFENDANT**

M/S DOMINICK LOGISTICS (TANZANIA) LTD **4th DEFENDANT**

RULING

Date 02/03 & 03/04/2023

NKWABI, J.:

The suit that was filed by the plaintiff and the counter-claim were met with preliminary objections as follows:

The 3rd defendant namely Henry Sato Massaba through the services of Mr. Shalom Msakyi, learned counsel, in the Written Statement of Defence raised a preliminary objection that:

- a. That, this Honourable Court lacks pecuniary jurisdiction to entertain this matter.

Further, the 3rd Defendant through a notice of preliminary objection filed on 21st October, 2022 raised other two preliminary points of objection as follows:

- a. That this present suit is bad in law for contravening provisions of section 102 (1) of the Land Registration Act Cap. 334
- b. That the plaintiff has no locus standi to institute this suit.

Later, the 3rd Party or 4th Defendant in her Written Statement of Defence raised a preliminary objection against the thirty-party notice as follows:

- a. That the Third-Party Notice is offending the provisions of Order 1 Rule 14(1) of the Civil Procedure Code Cap. 33 R.E. 2019.
- b. That the Parties in the third-party notice are not party to Land Case No. 7 of 2021.

Also, there was a preliminary objection to the effect that the Reply to the Written Statement of Defence of the 4th defendant filed by the 3rd defendant (Henry Sato Massaba) is procedurally defective, illegal and prejudicial.

There was another preliminary objection raised by the counsel for the 3rd defendant in the counter-claim one Michael Pius Mkenda to the effect that the counter-claim filed by the plaintiff (Henry Sato Massaba) is misconceived, procedurally defective and illegal.

Based on the above points of preliminary objection, the defendant is praying this Court to dismiss or strike out with costs the suit.

I directed that the preliminary objections be argued by way of written submissions. Mr. Shalom Msakyi, learned counsel for the 3rd defendant argued the preliminary objection for the 3rd defendant. Mr. Michael Pius Mkenda, learned counsel, argued for the 3rd Defendant in the counter-claim, who also submitted for the 4th defendant in the original action. The reply submission on the preliminary objection was prepared by Mr. Godfrey Ambet, learned counsel for the plaintiff in the original plaint (suit).

In his submissions, in support of the preliminary objection on the point that this suit is bad in law for contravening provisions of section 102(1) of the Land Registration Act Cap 334, Mr. Shalom Msakyi advocate for the 3rd defendant (Henry Sato Massaba) argued that the plaintiff, in the reliefs, she is seeking: challenging- and questioning the legality and decision of the Registrar of Titles to grant ownership of the suit premises to the 3rd Defendant and his decision to register the Mortgage thereof where the Court has no original jurisdiction. Where, the only avenue is to appeal to the High Court within 3 months from the date of such decision. He cited **Starcom**

Hotel v. National Microfinance Bank & 2 Others, Civil Case No. 11 of 2019 where this Court had these to say:

"The law requires any aggrieved party challenging the decision or order of the registrar to appeal to the High Court within times specified, that of three months. The case at hand, the plaintiff challenges the registration of the mortgage, one which the 3rd defendant has affected. This is a decision passed 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 ..."

That position was also reiterated in the case of **Imtiaz Hussein Banji v. Dilshad Hussein Banji**, Land Case no. 101 of 2022 HC (unreported).

Mr. Godfrey Ambet learned counsel for the plaintiff contended that, neither the Registrar nor 3rd defendant notified the plaintiff upon transfer that could make the plaintiff to realize ongoing process. The respondent (The 3rd Defendant) fraudulently bequeathed to himself landed property (one of the deceased estate) plot No. 27131 located at Visiga area within Kibaha Region without the consent and knowledge of the plaintiff who is the co-

administratrix and the said property was a matrimonial home where the plaintiff currently resides. It was also added that the fact that the plaintiff is still administratrix and the beneficiary of the estate of the late Hon. Justice Kulwa Sato Massaba, she has interest and this Court is proper forum to hear and entertain the dispute on merit as instituted by the plaintiff.

Indeed, the 2nd relief prayed in the plaint is, "an order that, the 3rd Defendant is not the rightful owner of the suit properties under Plot No. 2731 at Visiga Area within Kibaha – Coast Region. But if one looks at the annexure which is the certificate of Occupancy, the Registrar registered the title in the name of Henry Sato Massaba on 17/09/2008 and the other registration of interest thereof which are subsequent.

Under section 102(1) of the Land Registration Act, the plaintiff ought to have filed an appeal against the decision of the Registrar. Even assuming that this suit is filed properly in this Court and this Court has the jurisdiction to entertain it, still it would be improperly before this Court by failure to join the Registrar to the suit. The decision that comes into assistance of the defendants is the case of **Abdullatif Mohamed Hamis v. Mehboob Yusuf**

Osman & Fatna Mohamed, Civil Revision No. 6 of 2017 CAT (unreported)


where it was stated:

"Indeed, non-joinder of the ... in the suit under our consideration is a serious procedural in-exactitude, which may seemingly breed injustice. ..."

For the reasons given above, the preliminary objection is sustained. The plaintiff's suit is struck out with costs. Also, the counter-claim by the 3rd defendant too is struck out with costs as the plaintiff therein has conceded the preliminary objection.

It is so ordered.

DATED at DAR-ES-SALAAM this 3rd day of April 2023



J. F. Nkwabi

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JUDGE