

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
MOROGORO SUB-REGISTRY  
[AT MOROGORO]**

**LAND CASE NO. 11 OF 2023**

**SAID SALEH NAHDI.....PLAINTIFF  
VERSUS**

**THE ASSISTANT COMMISSIONER FOR  
LANDS, MOROGORO REGION .....1<sup>ST</sup> DEFENDANT  
THE MUNICIPAL DIRECTOR  
MOROGORO MUNICIPAL COUNCIL .....2<sup>ND</sup> DEFENDANT  
GWANTWA A. MWALUKASA .....3<sup>RD</sup> DEFENDANT  
THE HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

08/02/2024 & 16/02/2024

**KINYAKA, J.:**

By way of Complaint lodged in this court on 1<sup>st</sup> September 2023, the Plaintiff sued jointly the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants for unlawful, wrongful and unprocedural revocation of the right of occupancy in respect of Plot No. 72, Forest Hill, Morogoro Municipality, with Certificate of Title Number 57822, registered in the name of Mohamed Abdallah Alomran, and bequeathed to the Plaintiff by a deed of gift dated 16/12/2008 (hereinafter, the "disputed property"). The Plaintiff further sued the 3<sup>rd</sup> Defendant for invading the



disputed property by erecting buildings and a fencing wall without a permit from the Morogoro Municipal Council.

Before this court, the Plaintiff prayed for orders that, the revocation of the right of occupancy is unlawful, null and void with no legal effect; the right of occupancy be restored; the legitimate interest of the Plaintiff be declared and protected; the 3<sup>rd</sup> Defendant be declared to be the trespasser and be evicted from the disputed property; permanent injunction restraining the Defendants, their agents, servants, successors, relatives, friends and any person acting in person or on their behalf from alienating, disposing of, selling or doing any act that will interfere with the lawful possession, use, occupation or ownership of the disputed property, unless by lawful means; costs of the suit; and any other relief(s).

In their respective written statements of defence, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants on one hand and the 3<sup>rd</sup> Defendant on the other hand, lodged in court on 7<sup>th</sup> November 2023 and 12<sup>th</sup> December 2023, respectively, preliminary objections on points of law. The preliminary objections raised by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants are predicated on two grounds that, the Court has no jurisdiction; and that the suit is bad in law as the Plaintiff sued the wrong party (2<sup>nd</sup> Defendant) contrary to section 14 of the Local Government

(Urban Authorities) Act, Cap. 288 R.E. 2019, (hereinafter, the "LGUAA"). The 3<sup>rd</sup> defendant's preliminary objection is based on the ground that, the suit is misconceived as the same offends the mandatory provisions of section 102 of the Land Registration Act Cap. 334 R.E. 2019 (hereinafter, the "LRA"); and Order VII Rule 1 (e) of the Civil Procedure Code, Cap. 33 R.E. 2019 (hereinafter, the "CPC").

On 08/02/2023, when the matter was called for hearing of the preliminary objections, the Plaintiff enjoyed the services of Mr. Francis Kwilabya Stollah, learned Counsel. Ms. Elifrida Mutashobya, learned State Attorney appeared to represent the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants; and Mr. Asifiwe Alinanuswe, learned Counsel represented the 3<sup>rd</sup> defendant. It was resolved that the preliminary objections be argued and determined together.

Submitting in support of the first ground of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants' preliminary objection, Ms. Mutashobya contended that the Plaintiff instituted the present suit praying for declaration that the revocation of the right of occupancy is null and void aiming at challenging administrative actions by the President in performing administrative duties. She argued that the act of the Plaintiff to question administrative action of the government body through ordinary suit instead of a judicial review is against the law and the



suit ought to be dismissed. She cited the case of **Eliezer Zacharia Mtemi and 12 Others v. AG and 3 Others, Civil Appeal No. 177 of 2018** where on page 14 of the decision, the Court of Appeal dismissed the suit for being unmaintainable as it sought to question administrative action of government bodies through an ordinary suit.

Ms. Mutashobya contended in the second ground of the preliminary objection that the Plaintiff sued a wrong party, the Municipal Director of Morogoro Municipal Council instead of Morogoro Municipal Council as required under section 14 of the LGUAA. She argued that the local government has the capacity to sue or being sued citing the case of **Temeke Municipal Director v. Nickson Njola & Another, Revision No. 564 of 2019**, on page 7 of the decision, where the High Court cited the case of **Maulid Shabani v. Temeke Municipal Executive Director & Another, Land Application No. 1030 of 2017**, and held that it is only Temeke Municipal Council that is capable to sue or being sued in its name and not Temeke Municipal Executive Director. She urged the Court to strike out the appeal if it sustains the second ground of preliminary objection. In totality, Ms. Mutashobya prayed for dismissal of the suit with costs based on the first ground of preliminary objection.



In support of first ground of preliminary objection raised by the 3<sup>rd</sup> defendant, Mr. Alinanuswe submitted that section 102 of the LRA provides for what should be done by a person who is aggrieved by the decision, order or act of the Registrar of Titles. He argued that the Plaintiff averred in the Complaint that his discontents emanate from the rectification in the land registry pertaining to the Certificate of Title No. 57822. He was of the view that the suit is a misconception and ought to be rejected as the Plaintiff ought to have appealed to this court as required by sections 102 and 99(1) (d) of the LRA.

In respect of second ground of preliminary objection, Mr. Alinanuswe submitted that deducing from paragraph 30 of the Complaint, the Plaintiff has not stated as to when did the cause of action arose against the 3<sup>rd</sup> Defendant. He contended that, it is difficult to know whether the suit is within time. He argued that the omission to state as to when the cause of action arose is an error which justifies the suit to be struck out for being incompetent. The Counsel prayed for the suit to be rejected with costs to the 3<sup>rd</sup> Defendant.

In reply to the first ground of preliminary objection raised by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants, Mr. Stollah submitted that the High Court has jurisdiction to

hear and determine all matters of disputes concerning land in accordance with section 167 of the Land Act Cap. 113 R.E. 2019 (hereinafter, the "Land Act"), section 62 of the Village Land Act, cap. 112 R.E. 2019, and section 3 of the Land Disputes Courts Act, Cap. 216 R.E. 2019 (hereinafter, the "LDCA"). He stated that the dispute in question is on revocation of the right of occupancy which is a land dispute and not an administrative action. He cited the case of **Eliezer Zacharia Mtemi** (supra) where on page 12, second paragraph, the Court of Appeal held that it is a well-known principle that jurisdiction of courts is conferred by statute. He stated that the case of **Eliezer Zacharia** (supra) was challenging the enactment of by-laws which is purely an administrative action while the present suit is not challenging administrative action. He contended that the President's action to revoke a right of occupancy being private right cannot be challenged through judicial review. He concluded that the jurisdiction of this Court in the present dispute is conferred by the above stated statutes. He prayed for the Court to overrule the first ground of preliminary objection.

On the second ground of preliminary objection, Mr. Stollah conceded that the 2<sup>nd</sup> Defendant had been wrongly joined. However, he submitted that the effect of misjoinder is not to dismiss or strike out the suit but to order the



name of a party improperly joined be struck out, and the correct name of the proper party be added as required under Order I Rule 10(2) of the CPC. He therefore prayed for the name of Municipal Director be struck out and the name Morogoro Municipal Council be added. He submitted further that Order I Rule 9 of the CPC provides that a suit should not be defeated by the reason of misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards to the rights and interests of the parties actually before it. He argued that the remedy is not to strike out or dismiss the suit, citing the case of **Francis Mwakajonga v. The Registered Trustees of the Free Pentecoastal Church of Tanzania and 8 Others**, where the High Court did not dismiss or strike out the suit but ordered striking out of the names of wrongly sued persons.

Against the first ground of objection raised by the 3<sup>rd</sup> Defendant, Mr. Stollah submitted that the marginal notes to section 99(1) of the LRA is on rectification of land register. He argued that section 99(1) of the LRA is about rectification of the land register by an order of the High Court or Registrar subject to an appeal to the High Court in the cases provided therein, contrary to the present suit whose cause of action is revocation of the right of occupancy. The Counsel argued that contrary to the dictates of section 102

of the LRA, which provides for a party aggrieved by the decision or order of Registrar to appeal to the High Court, in the present suit, there is no decision of the Registrar but an action by the President to revoke the Plaintiff's right of occupancy. He contended that revocation of a right of occupancy is not rectification of the land register. He concluded that sections 99(1) and 102 of the LRA do not apply in the present suit. He urged the Court to overrule the ground of preliminary objection.

Responding to the second ground of objection raised by the 3<sup>rd</sup> defendant, Mr. Stollah admitted that there is lack of a statement showing when the cause of action arose in paragraph 30 the Plaint. However, he argued that the defect is curable by section 3A (2) of the CPC which provide for overriding objective principle in resolution of disputes by seeking to give effect to the fair determination of the dispute before the court, section 3B (1)(a) of the CPC that provides for just determination of the proceedings; and Order VI Rule 17 of the CPC, on amendment of pleadings. The learned Counsel prayed for an amendment of the Plaint for the purpose of inserting the time as to when the cause of action arose in that particular paragraph.

In rejoinder, Ms. Mutashobya submitted that her first point of objection was not on the jurisdiction of this court on land disputes but on administrative



actions. She submitted that all lands are vested into the President as the Trustee and it is the President who is vested with powers to revoke rights of occupancy. She contended that when the President revokes a right of occupancy over a particular land, he/she exercises an administrative duty. She stated that the principle raised in **Eliezer's case** is on the jurisdiction of the court similar to objection against the present suit. She submitted that it was wrong for the Plaintiff to prefer a normal suit while the cause of action emanates from an administrative action. The learned state attorney insisted that the preliminary objection in respect of the second ground was not on joinder or misjoinder of parties, but suing a wrong party. She reiterated her prayer for dismissal of the suit.

Mr. Alinanuswe rejoined on the second ground of preliminary objection by insisting that the proper remedy is to return the Plaint to the Plaintiff to do what he ought to have done and not an order of amendment as a result of a preliminary objection. He argued that an order for amendment may be impacted by time limitation of the suit.

Following the conclusion of the submissions by the parties, I now turn to determine each ground of preliminary objection as argued by the parties.



I must state at the outset that the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants' preliminary objection on ground of jurisdiction is misplaced. I say so because, in my understanding of the law, this Court's jurisdiction is not ousted merely on a reason that a particular suit is brought either by way of a normal suit or judicial review. The way I see it, the objection ought not to have been related to the jurisdiction of this court, rather, it ought to have challenged the propriety of the matter being preferred the way it has been. It is noteworthy that the court's jurisdiction over land matters have been provided for under sections 167 of the Land Act, 37(1) (a) and (c) of the LDCA, and 2(1) of Judicature and Application of Laws Act, Cap. 358 R.E. 2019 (hereinafter, the "JALA") which entitle this Court to entertain land disputes.

In the present matter, in their arguments in support of the first ground of objection, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants attacked the Plaintiff's suit for being improperly preferred through a normal land case instead of a judicial review.

I have considered the rival submissions of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants and the Plaintiff in respect of the formers' first ground of objection. Both sides agree that the present suit is against revocation of the right of occupancy in respect of the disputed property. While the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants' position is for the dispute to be preferred by way of judicial

review, the Plaintiff argued that the present suit is not challenging administrative action but the President's action to revoke the right of occupancy, a private right which cannot be challenged through judicial review.

Apart from the Plaintiff suing the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants for unlawful revocation of the disputed property, he also sued the 3<sup>rd</sup> Defendant for trespassing the same disputed property. The Plaintiff prayed for orders of the court to declare the revocation unlawful, null and void, restoration of the disputed property, declaration and protection of interest of the Plaintiff, declaration that the 3<sup>rd</sup> Defendant is a trespasser, and permanent injunction against the Defendants.

It is clear to me that the Plaintiff's action against the alleged wrongful revocation of right of occupancy and trespass of the disputed property, mandates this Court to determine the dispute. Apart from the jurisdiction of this Court to entertain land disputes provided under sections 167 of the Land Act, 37(1) (a) and (c) of the LDCA, and 2(1) of JALA, there is no specific law that ousts the jurisdiction of this Court to determine an action challenging revocation process and trespass of land brought before the Court through a normal suit.





The President's revocation of a right of occupancy under sections 45(1) and 48(3) of the Land Act involves a legal process initiated by and upon recommendation by the Commissioner for lands culminating to its approval by the President. Although the President's approval of revocation as provided under section 49(1) and (3) of the Land Act may be termed an administrative action, it emanates from legal process which takes course upon the coming into effect of a notice of revocation issued by the Commissioner for lands. [See section 48(1), (2) and (3) of the Land Act]. In the present suit, it is the process, procedure and absence of cause for revocation that is being challenged by the Plaintiff as reflected in paragraphs 14 through to 24 of the plaint.

Even if the President's approval for revocation is administrative in nature, a judicial review cannot be an automatic recourse, especially if there are other available legal remedies against a revocation decision. It is a well-established position that for an action to qualify for judicial review, a party aggrieved by an administrative decision must exhaust available legal remedies within his reach. It means that there must be none-existence or unavailability of other remedies including an appeal, revision or a normal suit for one to justify an action through judicial review. In the case of **Felix Mselle v. Ministers for**

**Labour and Youth and Three Others, Misc. Civil Cause No. 221 of**

**1999** (unreported) Kyando, J. stated that:-

*"Judicial review is the power of the High court to exercise its supervisory jurisdiction over proceedings and decision of inferior tribunals or authorities, bodies or person charged with the performance of public act, duties, not statutory but inherent power of the High Court. It should however be understood that exhaustion of local remedies is the corner stone of judicial redress of every disputed issue."*

I know of similar suits where the parties were aggrieved by revocation of Htheir rights of occupancy whose suits were determined by the High Court predicated through normal land cases. These include **Land Case No. 227 of 2012 between Tanzania Milling Company Limited v. Attorney General and the Commissioner for Lands**, whose **Civil Appeal No. 98 of 2020** between the same parties was allowed by the Court of Appeal by an order compensating another plot of land to the Appellant for unlawful revocation in its decision delivered on 07/12/2023; **Land Case No. 12 of 2011 between Ramadhan Selemani Kambi v. the Commissioner for Lands, the Registrar of Titles and the Honourable Attorney General** whose **Civil Appeal No. 14 of 2020** between same parties was allowed by





the Court of Appeal by an order restoring the Appellant's right of occupancy in its decision dated 09/03/2023; and Civil Case No. 15 of 1994 between **Mrs. Zubeda Ahmed Lakha v. Hajibhai Kara Ibrahim, the Minister of Lands, Natural Resources and Tourism and the Attorney General** whose **Appeal No. 238 of 2018** was allowed by the Court of Appeal by declaring the revocation illegal and restoring the right over ownership of the property upon the Appellant in its decision dated 24/05/2022.

I agree with Mr. Stollah that the case of **Eliezer Zacharia Mtemi** (supra) is distinguishable from the present suit. In the said case, the appellants challenged, among other things, that G.N. No. 353/2004 which established Karatu Township Authority, the 4<sup>th</sup> Defendant, was not preceded by a requisite resolution from Karatu District Council, the 3<sup>rd</sup> Defendant; and that in issuing that Government Notice, the Minister of Local Governments and Regional Administration, the 2<sup>nd</sup> Defendant, acted outside his powers. As part of their claims, the Appellants, among other reliefs, prayed for a declaration of the trial court that an order of the Minister to establish Karatu Township Authority is inoperative and/or of no legal effect for being *gazetted* without being first signified by resolution of Karatu District Council. In the appeal against the decision of the High Court, the action of the Minister being





purely administrative and which no any other remedy was available, the Court of Appeal held the suit unmaintainable because it sought to question administrative actions of government bodies through an ordinary court by a normal civil suit. The only remedy in the said suit was through judicial review different from the present suit where recourse is through a normal land case.

From the above observations, it is my finding that although the High Court is the only avenue with exclusive jurisdiction to issue prerogative orders, the jurisdiction of the High Court cannot be ousted if a normal suit against the decision revoking a right of occupancy is preferred through a normal land suit, and especially in this case where the Plaintiff sues for both revocation and trespass of the disputed property. Indeed, by preferring a normal suit, the Plaintiff has exhausted the available legal remedy where, had it not been available, judicial review would have been the only available remedy. It follows that the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants' first ground of objection is devoid of merit, and is hereby overruled.

The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants' second ground of preliminary objection that the suit is bad in law for suing the Municipal Director of Morogoro Municipal Council instead of Morogoro Municipal Council contrary to section 14 of the LGUAA, has been conceded by Mr. Stollah. However, he urged the Court to

invoke Order I Rule 9 and 10(2) of the CPC and the decision in the case of **Francis Mwakajonga** (supra) to strike out the wrong name and add the correct name as the anomaly constitutes misjoinder or non-joinder of a party. On my part, I do not accept the course suggested by Mr. Stollah. The omission constitute suing a wrong party and not misjoinder or non-joinder of a party whose consequence is to strike out the suit. In the case of **Respicius Emillan Mwijage v. Municipal Director, Ilala Municipal Council (Land Case 27 of 2021) [2021] TZHCLandD 842 (26 October 2021)** the suit was struck out for suing the Director of Ilala Municipality who was a wrong party as he was a mere employee of the council and not a legal person. Equally, in the matter under consideration, the Plaintiff sued a wrong party whose wrath is to strike out the suit. The second ground of preliminary objection is therefore sustained.

I now turn to determine the 3<sup>rd</sup> Defendant's first limb of preliminary objection that the suit is misconceived as the same offends the mandatory provision of section 102 of the LRA. Mr. Alinanuswe argued that the Plaintiff's discontents emanate from the rectification in the land register pertaining to the Certificate of Title No. 57822 by the Registrar of Titles whose proper cause of action was to appeal to the High Court under sections 102 and



99(1) (d) of the LRA. I find the ground of objection misplaced. I agree with Mr. Stollah that the decision revoking the right of occupancy is made by the President upon recommendation by the Commissioner for lands. Such decision does not constitute rectification of the land register under section 99(1) of the LRA that would require the Plaintiff to appeal to the High Court. In the process of revocation under section 48(1) (iii) of the Land Act, the Commissioner for lands normally notifies the Registrar of the services of the notice of revocation which shall require the Registrar to record the same in the land register. To put it differently, if there was any rectification made by the Registrar of Titles upon revocation, the same was occasioned by the decision of the President to approve revocation, the subject of a cause of action in the present suit. The Plaintiff's suit is against the President's revocation and not the rectification by the Registrar of the land register. My reading of section 99(1) of the LRA did not lead me to find any instance of rectification in the present dispute that would require the Plaintiff to appeal to this Court under section 102 of the LRA. Based on my above observations, the first limb of the 3<sup>rd</sup> Respondent's preliminary objection is overruled.

As for the second ground of the 3<sup>rd</sup> defendant's point of objection, Mr. Stollah has conceded to the fact that the suit is misconceived as it offends the





mandatory provisions of Order VII Rule 1 (e) of the CPC. He urged the Court to invoke the overriding objective principles under section 3A (2) and 3B (1) (a) of the CPC and allow the Plaintiff to amend the Plaint under Order VI Rule 17 of the CPC in order to insert time when the cause of action arose. I am not convinced with the invitation by Mr. Stollah. The overriding objective principle cannot be used to rectify a fundamental error like in the present suit where the Plaintiff omitted to state when the cause of action arose against the 3<sup>rd</sup> Defendant. It is my considered view that an amendment cannot be allowed after a preliminary objection has been raised. That will be tantamount to preempting the preliminary objection as it was observed by the Court of Appeal in the case of **Njake Enterprises Ltd v. Blue Rock Ltd & Another (Civil Appeal 69 of 2017) [2018] TZCA 304 (3 December 2018)**[Extracted from [www.Tanzlii.org](http://www.Tanzlii.org)]. It follows that the 3<sup>rd</sup> Defendant's second ground of preliminary objection has merit and is hereby sustained.

On sustaining the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Defendants' second ground of objection and the 3<sup>rd</sup> Defendant's second ground of objection, I find the suit unmaintainable for being incompetent. Consequently, the same is hereby struck out. Considering the fact that the Plaintiff conceded to the grounds of



preliminary objection which have been sustained, I make no order as to costs.

It is so ordered.

**DATED at MOROGORO** this 16<sup>th</sup> day of February 2024.



**H. A. KINYAKA**

**JUDGE**

**16/02/2024**

