

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 75 OF 2017

SAMEER MOHAMED.....PLAINTIFF

VERSUS

SOPHIA BAKARI IMONJE.....DEFENDANT

Date of last Order: 28/2/2018

Date of Ruling: 18/5/2018

R U L I N G

MGONYA, J.

In response to the Plaintiff's Complaint through the Written Statement of Defence, the 6th and 7th Defendants on 31st August 2017 advanced four points of preliminary objection to the effect that:

- 1. That the Complaint is bad in law;***
- 2. That the suit is time barred;***
- 3. That the Plaintiff is not a Citizen of Tanzania;***
- 4. That the Plaintiff is fraudulent.***

The Defendants are represented by the learned Counsel Msigwa while the Plaintiff is representing himself. The Points of preliminary objection were disposed by way of written submissions as prayed by the Plaintiff who is representing himself.

On the first point of preliminary objection that the Plaintiff is bad in law, the 6th and the 7th Defendants were of the view that since it is the Government through the Commissioner for Lands who allocated the Plaintiff the disputed land with the certificate of title, then the Commissioner for Land was supposed to be a party to this litigation. Meaning that there is a mis - joinder of parties to the suit which makes the Plaintiff bad in law.

In response, the Plaintiff was of the view that the Plaintiff is not bad in law and there were no any necessity for the Plaintiff to join the Commissioner for Lands as a party since that acquisition of land to him was properly granted by the Ministry of Land.

On the second point of preliminary objection the Defendants were of the view that the Suit is time barred to the reason that the Plaintiff is claiming to own the disputed land allocated by the Commissioner for Land in the year 2003. On the other hand, the Defendant is of the view that the law requires the owner to the land to develop the located land within the period of three years from the date of issuance.

In response, the Plaintiff didn't deny the fact that he was granted the title of the dispute land by the Ministry of Land in the year 2003. Further, the Plaintiff averred that, it is that it was the fact that the person who was taking care of the said land with the condition to cultivate the short term crops, decided to sell the said property to the 1st to 5th Defendants. From the same, it is the Plaintiffs view that since the above mentioned Defendants started building houses in the year 2016 where the same came to the knowledge of the Plaintiff, then the cause of action arose in 2016 hence the suit is not time barred.

The third point of preliminary objection is to the effect that the Plaintiff is not a Citizen of Tanzania. It is the 6th and 7th Defendants view that the Plaintiff is not the Tanzania Citizen who has Asian origin. Either, neither himself nor his parents holds Tanzania passport neither denounce their original citizenship. It is from the same, the Plaintiff is not allowed to own land in Tanzania as per **Section 20 (1) of the Land Act 1999** hence he is a non-citizen.

Resisting to this point of preliminary objection, the Plaintiff denied the allegation that he is not a citizen of Tanzania and that he is a Tanzanian as well as both of his parents.

The last point of preliminary objection was to the effect that the Plaintiff is fraudulent. To this point, it is said that the Plaintiff in this case is misrepresenting himself as Sameer Mohamed. However, the

name in the alleged certificate of title do not tally with the Plaintiff's name.

Responding to this point of preliminary objection, the Plaintiff denied the allegation demanding the Defendants to cite the relevant law to the allegation.

From the above submissions, the Defendants prayed the court to uphold the points of preliminary objection and dismiss the suit with costs while the Plaintiff asked this court to overrule the entire points of preliminary objections with costs.

I have gone prudently through the submissions advanced by counsel for both camps. My mind will first address itself on the 3rd and 4th points of preliminary objection in which I would like to determine the same jointly. The core issues for these points of preliminary is whether objection qualify to be termed as preliminary objection.

Of course, the Law governing the preliminary objection has been well set in the case of ***MUKISA BISCUITS MANUFACTURING CO. LTD VS. WEST END DISTRIBUTORS LTD EALR [1969]*** where Sir Charles new Bold stated that, I quote:-

"A preliminary Objection is in the nature of what used to be demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any facts has to be

ascertain or if what is sought is the exercise of judicial discretion."

However, Law J.A. Judge sitting in the same panel with Sir Charles Newbold had this to state, I quote:-

" So far as I am aware a preliminary objection consists of a point of law which has been pleaded or which raised by clear implication out of pleadings and which id argued as preliminary objection may dispose of the suit."

The court of Appeal of Tanzania in the case of ***COIWO (I) OTTU UNION AND ANOTHER VS. HONOURABLE IDDI SIMBA MINISTER OF INDUSTRIES AND TRADE AND OTHER {2002}*** ***TLR*** at page 888 Kisanga, JA reiterated the same position held in the case of ***MUKISA*** where he held that:

"A preliminary Objection should raise a point of law which is based on ascertained facts not on a fact which has not been ascertained and if sustained a preliminary objection should be capable of disposing of the case."

In view of the above authorities, the following principles have been developed to guide courts in dealing with preliminary objections which are:

a) There must be a point of Law either pleaded or arising by implication from the pleadings.

- b) There must be a pure point of law which does not need scrutiny of evidence;***
- c) Determination of point of law in issue should not depend on the discretion of the court; and***
- d) If sustained should dispose of the matter.***

To clear the atmosphere, I shall now turn to examine the extent to which the 3rd and 4th points of preliminary objection in the instant case meets the tests laid down in MUKISA at page 700 DE.

The real question in controversy at present is whether the Plaintiff is the citizen of Tanzania and whether the Plaintiff is fraudulent. Honestly, with transparent conviction, these two points do not qualify the test of preliminary objection and that the same cannot dispose the case at this stage. Further, indeed by the nature of the said point, then same needs **scrutiny of evidence**. This is contention of fact which is yet to be ascertained in a trial by the abduction of real evidence. It follows therefore these points of objection does not qualify to be a pure of law since the objection is inadequate to meet the test of being preliminary objection. For the reasons stated above, I find that the purported third and fourth points of preliminary objection fails to meet the test laid down in **MUKISA'S** case, and thus they are hereby overruled.

Next, I shall venture my determination on the first point of preliminary objection. Without flicker of doubt, the same has no merit, since non joinder of parties do not defeat the suit. The cause of action is against the Defendants only. The point of preliminary objection is **overruled.**

Turning to the second point of preliminary objection, it is my firm view that the suit has no merit since the same is of declaratory order. The law of limitation to this suit is six (6) years. From the record, the suit was instituted on 13th March 2017 while the cause of action arose in 2016, hence the suit is not time barred. This preliminary objection too is overruled.

All said and done, I am firm that all the points of preliminary objection raised by the 6th and 7th Defendants are meritless and deserved to be dismissed and indeed are **DISMISSED WITH COSTS.**

The case is to proceed on merit.



L. E. MGONYA

JUDGE

18/5/2018

COURT: Ruling delivered in the presence of Advocate Msigwa, 1st Defendant, 2nd Defendant, 5th Defendant and Ms. Emmy B/C in my chamber today 18th May, 2018.



L. E. MGONYA

JUDGE

18/5/2018

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 366 OF 2016

**PETER LUGUWA
DESDELIA NJITANGO
EZEKIEL MLENGULE
JONSON MNYELEME
JOSEPH GUBUKA**

.....**PLAINTIFFS**

VERSUS

**IMMANUEL MLANDA.....1ST DEFENDANT
EDISON MSITU.....2ND DEFENDANT
RUSIA NACHENGA.....3RD DEFENDANT
BARAKA MSITU.....4TH DEFENDANT
MATILDA LUGUWA.....5TH DEFENDANT**

Date of Last Order: 20/4/2018
Date of Judgement: 11/5/2018

J U D G M E N T

MGONYA, J.

The Defendants having failed to make appearance though notified of the hearing date, the Plaintiffs through the services of Mr. Bujabuso learned Counsel applied and were permitted to proceed *Exparte* hence this Judgment.