

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DEVISION)
AT DAR ES SALAAM**

LAND CASE NO. 126 OF 2019

**ROSE ROZER 1ST PLAINTIFF
ANNE MOHAMED 2ND PLAINTIFF
EVANS BUHIRE 3RD PLAINTIFF
ROBERT C. SHAURI 4TH PLAINTIFF**

VERSUS

**NATIONAL INSURANCE
CORPORATION OF TANZANIA 1ST DEFENDANT
BARAZA LA KISWAHILI LA TAIFA (BAKITA) 2ND DEFENDANT**

RULING

S.M. MAGHIMBI, J:

In this suit, the claim arises from breach of right of pre-emption and denial of the right of first plaintiff refusal to buy houses No. 7 and No.6. The second defendant is alleged to have occupied house No. 4 and 5 while the third plaintiff occupied house No. 3 and the fourth plaintiff occupied house No. 8 in Plots No. 75-78 Block 45 "B" Kijitonyama in Kinondoni District of Dar-es-salaam Region which the plaintiffs were eligible as tenant purchasers of the said houses by virtue of being the employees of the 1st defendant. In their detailed plaint, the plaintiffs pray for judgment and decree against the defendants as follows:

1. That this Honorable court issue a judgment and decree that the plaintiffs have the right of pre-emption over the said houses and declares the purported sale between the 1st defendant and the 2nd defendant of the houses plot No. 75 – 78 Block 45 "B" Kijitonyama, Dar es Salaam is null and void.

2. This court be pleased to declare that the 1st, 2nd 3rd and 4th plaintiffs are eligible to buy the houses in dispute or that they have the 1st right of refusal before it is sold to third parties.
3. Permanent injunctive order restraining the defendants from alienating the plaintiffs from purchasing of the houses.
4. The plaintiffs be paid general damages for inconveniences caused by the defendants at the sums of not less than shillings 200,000, 000/= per each plaintiff to be determined by the court.
5. Any other relief (s) this Honorable court deems fair and just to grant
6. Costs of the suit.

While filing his Written Statement of defence, the 1st defendant filed along a notice of preliminary objection on point of law that:

1. The plaintiff has no locus standi to sue the 1st defendant
2. The plaintiff has no cause of action against the 1st defendant.
3. The plaint does not disclose the cause of action against the 1st defendant.

The objections were disposed by way of written submissions whereby the 1st defendant's written submissions were drawn and filed by Mr. Christopher Bulendu, learned advocate while the plaintiffs' submissions were drawn and filed by Mr. Barnaba Luguwa, learned advocate.

Determination of the objection will begin with the 2nd and 3rd points of objection and if need still be, I will determine the first point of objection. In his submissions to support the objection, Mr. Bulendu submitted that in their plaint, the plaintiffs have stated very clear that, the houses were sold by the government, and at that particular time the 1st defendant was a specified corporation under the receiver manager. That the 1st defendant didn't have any property, the properties of the 1st defendant were under

the receiver manager. He argued that there is nowhere in the plaint which indicates that the 1st defendant sold or even advertised the sale of the houses in dispute. Since the disputed houses were sold by the Government under the receiver manager and there is nowhere in the plaint showing the 1st defendant sold the said houses in dispute, then the plaintiffs have no cause action against the 1st defendant.

He submitted that the term cause of action has been clearly defined in the case of **Peter Keasi VS The Editor, Mawio Paper and Jabir Idrissa, Civil Case No. 145 of 2014, High court of Tanzania (Dar es Salaam District Registry) at Dar es Salaam**, where the court refers the definition of the term cause of action as per **John Mwombeki Byombalirwa VS Agency Maritime Internationale (T) Ltd [1983] TLR 1**, that,

“The expression cause of action is not defined under the Civil Procedure Code 1966 but may be taken to mean essentially facts which it is necessary for the plaintiff to prove before he can succeed in the suit”

He submitted further that Order VII Rule 1 (e) of the Civil Procedure Code Cap 33 R.E 2002 provides that, the plaint shall contain the facts constituting the cause of action and when it arose. He argued that in the case of Peter Keasi (Supra) the court held that the question whether a plaint discloses a cause of action must be determined upon a perusal of the plaint alone, together with anything attached so as to form a part of it. He argued that from the plaint, there are no facts which constitute cause

action against the 1st defendant hence the plaint total does not disclose cause of action against the 1st defendant.

Mr. Bulendo submitted further that in the case of **Stanbic Finance Tanzania Ltd VS Giuseppe Trupia and Chiara Malavasi [2002] TLR 217**, it was held that when deciding on whether or not a cause of action is disclosed, we only have to cast our eyes within the four corners of the plaint. That by looking at the four corners of the plaint, there is nowhere the plaintiffs show to have cause of action against the 1st defendant. He concluded that since the plaint itself does not disclose cause of action as against the 1st defendant, his prayer was that the suit struck out with costs

In his reply, Mr. Luguwa submitted that in the famous case of **John M. Byombalirwa Vs Agency Maritime International (Tanzania) Ltd (1983) TLR 1**, the court was on the view that in deciding whether or not the plaint discloses a cause of action, only the plaint should be looked at. He argued that basing on that stand; the plaintiffs have categorically stated within paragraph 4,6,8,9,12,14,17 and 23 of their plaint and annexure thereto. That it is unfortunate that Mr. Bulendu is misdirecting himself by citing irrelevant cases to the matter at hand and failed to show from the plaintiff's plaint itself that it lacks cause of the action.

He submitted further that Mr. Bulendu is misdirecting this court by stating that the houses in issue were sold by the government. That in para 17 of the plaint, it is clear that the said houses in issue were not among the houses which were listed by the Tanzania Building Agency for sale and that the sale was executed between the 1st and 2nd defendants. Further that a sale Agreement which is annexed in para 10 of the plaint as annexure AB 5, it is the 1st and the 2nd defendants and not the Tanzania

Building Agency or the Government of the United Republic of Tanzania which executed the said sale of the suit houses. He then argued that the 1st and 2nd defendants are public corporations with powers to sale and buy, to sue and be sued in their registered names.

Basing on the above submission, Mr. Luguwa concluded that since it is crystal clear that the counsel for 1st defendant failed to show error on point of law that would defeat/ object the existence of this suit, his prayer was that this Honourable Court be pleased to dismiss with costs the all the preliminary objections raised by the 1st defendant and the court proceed with the plaint on merit.

In rejoinder, Mr. Bulendo submitted that Mr. Luguwa is not aware of what is cause of action and what does it mean when we say the plaint does not disclose cause of action. That in the cited cases of **Peter Keasi** and that of **John Mwombeki Byombalirwa**, the term cause of action was defined and insisted that the plaintiffs have no cause of action against the 1st defendant. He argued that the paragraphs 4,6,8,9,12,14,17 and 23 which Mr. Luguwa has put a lot of energy to explain that they disclose cause of action do not show any cause action against the 1st Defendant. That they clearly state about the receiver managers of the 1st defendant and the Government, who advertised the sale and the sold the disputed house and not the 1st defendant. The fact that the sale agreement is bearing the name of the 1st defendant is not an issue because the property were in the name of the 1st defendant although they were placed under the receiver manager that. He reiterated his submission in chief that since the plaintiffs have no cause of action against the 1st defendant the suit be struck out with cost

Having considered the submissions of the parties on the objection and having thoroughly read the plaint, I have noted that Para 6 of the plaintiff states:

*"That in the process of Reform of the parastatal sector in Tanzania, the 1st defendant **was placed under PSRC and later on the 12th June 2009 under now defunct Consolidated Holding Corporation as receiver Manager** of the 1st defendant advertised through the Daily News paper and later on was placed under Treasury Registrar and to date it has been de-specified under G.N No. 748/2018 which was published on 7th day of November, 2018 and during the commencement of the restructuring process of the 1st defendant in the year 2009, the assets of the defendant were vested under Consolidated Holdings Corporation including the houses in dispute as well as the fate of their employment contract."*(Emphasis is mine)

From the statement of the para, it is undisputed by the plaintiffs that by the time the houses were sold to the 2nd defendant in 2009, the 1st defendant was still a specified corporation and the Consolidated Holdings Corporation (CHC) was then the receiver manager and she is the one who advertised the sale and executed them. The fate of the CHC is not to be left untold, it is undisputed that after PSRC delivered its mandate, its role was then moved to the CHC whose main mandate was to continue and finalize what PSRC started. In 2012-13, CHC functions were brought to an end and its roles were now moved to the office of the Treasury Registrar. By then, the Office of the Treasury Registrar was a department within the Ministry of Finance & Planning and later on the department changed the office into an autonomous body, TRO which though still under the Ministry

of Finance and Planning, it is an autonomous body and operates as standalone corporation. Vide Government Notice No. 203/2014; the TRO was entrusted with extra responsibilities of handling the functions left by the defunctant CHC. Therefore any claim against the CHC has not evaporated in thin air, but were taken over by the TRO. In their plaint, the plaintiffs also admit that the CHC was then placed under the Treasury Registrar who is now in existence. Therefore since the plaint establish that the CHC is the one who advertised the sale of the disputed property, the claim should have been against the said CHC or its successor who is now the TRO.

Furthermore, in their para 9 of the plaint, the plaintiff averred:

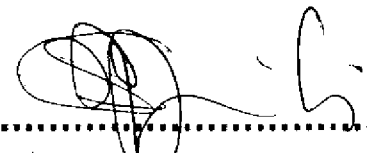

*"That on 16th October, 20009 **the Government advertised through Habari Leo Newspaper and other newspaper which confirmed its decision on purchasing ail buildings belonging to the 1st defendant herein through Tanzania Building Agency**"*

In that para, the plaintiffs admit that it is the Government that decided to purchase all buildings belonging to the first defendant through the Tanzania Building Agency and the plaintiff admit that they received notice that the TBA will be inspecting and valuating the houses. The plaint hence establish clearly that at the time of the purported sale, the first defendant was a specified corporation and it was the PSRC which was taking care of the assets of the first defendant, and later on the CHC. The plaintiffs further admit that the 1st defendant was de-specified in 2018 after the sale was executed. Even in his submissions in reply, Mr. Luguwa admitted on page 2 that by operation of law, while under specification, its property ought to be under the hands of the receiver, which in their plaint they

identified the receiver to be the PSRC and that it is while in the hands of the receiver, the properties were placed under TBA to be sold.

Having made those findings, it is settled that the plaintiffs cannot have a cause of action on the 1st defendant who was de-specified in 2018 for acts which were done in 2009 when he was a specified corporation and the purported sale was done under the supervision of the PSRC. The blame would have gone to the 1st defendant if the PSRC had ceased to exist without any succession plan, but that is not the case at hand as I have elaborated above. Therefore suing the 1st defendant for acts done when she was specified is not proper. As the plaintiffs in their pleadings throw the blame on the way the PSRC handled the sale and given the undisputed fact that at the time the 1st defendant was a specified corporation, then the plaintiffs have no cause of action against the 1st defendant to sue her in isolation of the Treasury Registrar. Section 40 of the Written Laws (Misc. Amendments Act) (No. 3) of 2016 has given the right to the Attorney General to intervene in any suit against the Treasury Registrar, with the word "shall" used in the Section, and since the same Section further provides for the applicability of the Government Proceedings Act, Cap. 5 R.E 2019, this suit cannot be left to stand. The same is hereby struck out.

Dated at Dar es Salaam this 06th day of May, 2020



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S.M. MAGHIMBI
JUDGE