

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

**LAND CASE NO. 397 OF 2017**

**THE REGISTERED TRUSTEES OF THE EVENGALISTIC  
ASSEMBLIES OF GOD (T).....PLAINTIFF  
VERSUS**

**THE REGISTERED TRUSTEED  
OF MASJID KINYEREZI.....1<sup>ST</sup> DEFENDANT  
THE REGISTRAR OF TITLES.....2<sup>ND</sup> DEFENDANT  
THE COMMISSIONER FOR LANDS.....3<sup>RD</sup> DEFENDANT  
THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

*Date of last order: 26/11/2020*

*Date of Judgment: 11/12/2020*

**NDUNGURU, J.**

The plaintiff in this case one the Registered Trustees of the Evangelistic Assemblies of God (Tanzania) pray for Judgment and Decree against the defendants as follows:

- (i) This honourable court be pleased to declare that the 1<sup>st</sup> Defendant did fraudulently and improperly caused to be

granted the land in dispute by the 3<sup>rd</sup> Defendant  
(Commissioner for Lands)

- (ii) The honourable Court be pleased to issue an order directing the Commissioner for Lands to revoke the right of occupancy granted to the 1<sup>st</sup> Defendant over the Land in dispute.
- (iii) This honourable court be pleased to declare that, between the plaintiff and the 1<sup>st</sup> Defendant, it is the plaintiff who was/is entitled from the beginning to be allocated with the land in dispute.
- (iv) This honourable Court be pleased to issue an order directing the commissioner for Lands to proceed with the process for allocating/granting the Land in dispute to the plaintiff.
- (v) That the 1<sup>st</sup> Defendant be ordered to pay costs of this suit.
- (vi) Any other relief(s) as this honourable Court may deem fit and just to grant.

The dispute in this case is over the piece of land Plot No. 1288 Block B with Title No. 126050 registered in the name of the Registered Trustees of Masjid Kinyerezi. The land is located at Kinyerezi area in Ilala Municipality Dar es – Salaam.

Recapping the facts albeit brief from the pleading which gave rise to this suit is that; the plaintiff alleges to have started possessing the said land in dispute sometimes in 2004. That by that time the Land in dispute was not granted to any person by the relevant land allocating Authority.

That in 2010 the Plaintiff built a temporary church there at and started to conduct various religious activities. In the same year (2010) the plaintiff in the process of securing to be allocated the said land discovered that the said land was surveyed and according to the master plan it was designed for Religious Institutions. That according to the official search done by the Plaintiff to the office of Registrar of Titles it revealed that the land in dispute was not granted to any but she was were advised to confirm with the Land office of Ilala Municipality for further information. That having made application for allocation of the suit land, on 11/11/2010 the plaintiff was informed that the land which she is applying for has already been allocated to another religious institution to wit MASJID KINYEREZI. That the defendant was allocated land in 2012 while was incorporated in 2014. According to the plaintiff, the 1<sup>st</sup> defendant used wrong information and fraudulently and unprocedurally acquired the suit land. Thus this suit.

To prove the case the plaintiff paraded two witnesses with a number of documentary exhibit while the defence side had two witnesses one for the 1<sup>st</sup> Defendant and another for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants with a number of documentary exhibits

That the plaintiff's evidence rain as follows:

That Arial Mungereja testified as PW1. His evidence was to the effect that he being one of the pastors of the plaintiff assigned at Kinyerezi at the unit church known as Gethsemane temple worshipping under the Umbrella of the plaintiff has occupied the suit land since 2004 with the consent of the local authority of Kinyerezi. That in 2010 the plaintiff made an official search to the Registrar of title whereby the result was that the said land has not been located to any body but the plaintiff had to confirm it to Ilala Municipal council. The official search was admitted as "P1" PW1 went further saying following search results he wrote an application letter to the Commissioner for Land to be allocated the suit land (Exh. P2). Through the letter (Exh. P3) the Commissioner for Lands (3<sup>rd</sup> Defendant) informed the plaintiff that the land applied for has already been allocated to the 1<sup>st</sup> Defendant. PW1 told the court that he sought further information from Ilala Municipal Council who wrote to the 3<sup>rd</sup> Defendant (Exh. P4). That PW1 made another official

search to the Registrar of titles whose result was that the said Land was allocated to the 1<sup>st</sup> defendant. The official search was Exh. P5 and the certificate of occupancy granted to the 1<sup>st</sup> defendant was exhibit P6. PW1 went on saying that he come to know that the 1<sup>st</sup> defendant was incorporated in 2014 while the Land was allocated in 2012 two years before incorporation as per exhibit P7 and further that the 1<sup>st</sup> defendant was never registered as shown in exhibit P8.

Upon cross examination PW1 told the court that in 2004 he went to the cell (Mtaa) leadership requesting for place for worship. That he was allocated the place temporary till on 2010 when decided to make official application to be allocated the same, having made a search. That he made a search to the Registrar of Title so that he may know if the land has been allocated or not. That when occupied the suit land in 2004 did not know that the same is already surveyed. That his problem is that Masjid Kinyerezi was not qualified to own land because when applied for was not yet registered. That Masjid Kinyerezi emerged in 2011 claiming the suit land is her property. PW1 said he is the one who requested the land on behalf of the Board of Trustees. He said the request letter (Exh. P2) did not state if the plaintiff had been occupying the place since 2004. That he had no letter which shows

that the cell (Mtaa) leadership allocated the plaintiff the suit land temporaliey. That the requested letter (Exh. P2) stated that the suit land has grasses and shrubs (Vichaka). That the 3<sup>rd</sup> plaintiff never promised to allocate the plaintiff land. That the complaint is that the 3<sup>rd</sup> defendant did not assigned reasons why denied to allocate the suit land to the plaintiff. That she is entitled to be allocated the suit land because she was on the suit land before the 1<sup>st</sup> defendant.

On re-examination, PW1 said the building was demolished because there was no building permit obtained. The society cannot be allocated land unless it is registered and incorporated.

Christomo Isaack Ngowi testified as PW2. His testimony was to the effect that, he is a secretary of the Board of Registered Trustees of Evangelistic Assemblies of God (Tanzania). That the Board was registered in 1991. It is this witness who tendered the certificate of incorporation which is exhibit "P10". He told the court that in 2010 the Pastor (PW1) told him that he wanted to request the plot of land at Kinyerezi. That he instructed the Pastor to follow procedure of requesting it. But when it is about to be allocated he will request approval from RITA as the Pastor had made search and found that the said land was not allocated to any person. PW2 testified

that later he was informed by PW1 that the said plot had been allocated to "Masjid Kinyerezi".

PW2 testimony was further that after a follow-up he came to know that the said Masjid Kinyerezi (1<sup>st</sup> Defendant) was neither registered by RITA nor by the Ministry of Home Affairs. He tendered official search done at RITA (exh. P11) saying the consent of RITA was issued on 2018 while the land was allocated in 2012. That the plaintiff was not satisfied with the decision of the Commissioner for Lands to allocated to the plaintiff as she is the one deserved to be allocated.

When cross examined , PW2 told the court that the plaintiff deserved to be allocated it because he occupied it prior to the allocation to the 1<sup>st</sup> defendant who was by then not registered. If the alternative plot is given the plaintiff is read to receive it. That the Pastor is working on behalf of the Board at his station. When PW1 requested to be allocated the plot he was told the plot has been allocated to "Masjid Kinyerezi". It is in the discretion of the Commissioner for lands to grant or refuse the application for allocation.

When re-examined, PW1 stated that it is the Pastor of the Church's duty to find the plot and make all the processes of obtaining "title". That the plaintiff started occupying the land in dispute since 2004.

In defending the suit Mbaraka Abdallah Majura stood as DW1. His evidence was to the effect that in the year 2000, the Ministry for land made announcement of sale of plots located at Kinyerezi. Formally the land was owned by residents, the Ministry acquired and paid compensation to the residents. That the said land was acquired for Gas plant project. But later the Ministry surveyed the land and decided to sell them to the people and institutions. That in the survey plan four plots were reserved for religious institutions. PW1 told the court that in 2006, himself with other leaders of the mosque visited the site to see if they could be allocated one of the plots which were reserved for religious institutions. He testified that having seen the plot they went to the Ministry and completed the application form No. 19 which was used for applying to be allocated the plot. PW1 tendered the said form as exhibit (D1). That was on 01/06/2006. DW1 went further saying their application was successful, they were allocated Plot No. 1288 Block B at Kinyerezi. That they paid all necessary fees DW1 tendered the fee assessment and receipts for payment which were marked as 'Exhibit D2'



and acknowledgment letter which was marked as Exhibit D3. DW1 said on 25/06/2011 the commissioner acknowledged them to have been allocated the said Plot in the name of Masjid Kinyerezi. The acknowledgment letter was tendered and admitted as Exh. "D4". DW1 told the court that with land officers (surveyors) from the Ministry went to the site where the plot was shown to them. Then the "title deed" by the name of Registered Trustees of Masjid Kinyerezi. (Exh. P6) was issued to 1<sup>st</sup> defendant. That in 2011 DW1 and his follow Mosque leaders started registering the society. It took almost two years for RITA to register the Society. He said in 2004 RITA issued certificate for incorporation (Exh. D7).

DW1 went further saying during the time awaiting for registration the plaintiff trespassed the suit land. That the invansion was reported to the local authority the matter was referred to the Ward Tribunal. At the Ward Tribunal the plaintiff had no any document authorizing them to be there. The matter went to the office of the District Commissioner where it was held that the 1<sup>st</sup> defendant is the lawful owner having tendered the documents. That in 2016 the plaintiff referred the matter to Municipal Director where upon submissions of documents, the plaintiff was found to have invaded the plot and was ordered to vacate within 14 days but didn't. The Municipal council

issued a demolition order, whereby the plaintiff's building was demolished. That the plaintiff failed a case before District Land and Housing Tribunal but again rushed to the court for this case. DW1 went further saying the suit land was applied by MASJID KINYEREZI. The "title deed" was issued in the name of REGISTERED TRUSTEES OF MASJID KINYEREZI. The Board is the custodian of the properties of "Masjid Kinyerezi". The survey plan No. 32896 attached with the certificate of occupancy is dated 20<sup>th</sup> April 2000 is signed by one Kifanga the Director of Survey and Mapping. DW1 prayed the plaintiff's suit be dismissed with costs.

When cross examined DW1 told the court that Masjid Kinyerezi is a religious institution. The institution must be lawfully created. That the application form No. 19 was signed by one SALUM who was a secretary of Masjid. That the Certificate of incorporation is titled the Registered Trustees of Masjid Kinyerezi. The institution was incorporated in 2014. The "title deed" was issued in 2013. It was not issued to the fictitious name. No name has been forged for the purpose of obtaining land. It was the plaintiff who referred the matter to the Ward Tribunal.

When cross examined by Mr. Chang'a Hang the learned State Attorney for the 2<sup>nd</sup> – 4<sup>th</sup> defendants, DW1 told the court it is Masjid Kinyerezi who

applied for allocation and it is allocated to Masjid Kinyerezi who paid the allocation fees and expenses. No fraud was committed by the 1<sup>st</sup> defendant in obtaining the certificate of occupancy. There was no double allocation. Even if it is found that the 1<sup>st</sup> defendant made an error such an error is curable. It cannot amount to revocation of the "Title Deed".

When re-examined DW1 told the court what is needed from RITA is the consent but RITA is not a land allocating organ.

DW2 Adelfrida Camilius Lekule the Land Officer from the office of the Assistant Commissioner for Land testified to the effect that the plot No. 1288 block B located at Kinyerezi is among the plots which survey was done in 2000. In that Survey plan four plots were reserved for religious institutions. She said three plots were offered to Christian denominations and one plot which is No. 1288 was given to Islamic institution. It was given to the Registered Trustees of Masjid Kinyerezi (1<sup>st</sup> defendant). DW2 told the court that all procedures of allocating it to the 1<sup>st</sup> defendant were adhered. The 1<sup>st</sup> defendant applied for the plot by filing the special application form No. 19. That was in 2006 (Exh. D1) that the 1<sup>st</sup> defendant paid all requisite fees as assessed by the office of the commissioner for Land (referred Exh. D2). That the Commissioner issued acknowledgment letter to

the 1<sup>st</sup> defendant then the Title Deed was issued in the name of "Registered Trustees of Masjid Kinyerezi". The witness said after the allocation was already done then the plaintiff arose wanting to be allocated the said plot. That she was informed that the said plot has been allocated to Masjid Kinyerezi. (Identified Exh. D4 & D5). The witness told the court the allocation being done lawfully it cannot be revoked. Revocation can only be done where the allocatee has failed to meet the conditions set in the Certificate of Occupancy (Title deed) or where title was obtained fraudulently. Further the commissioner for Lands had discretion to grant or refuse the application. The criteria is that he must be satisfied that the applicant is entitled to, the way the plot is planned to, and that who applied first. The witness said the allocation was proper, this suit has no merit at all it be dismissed with costs.

Upon cross examination by the counsel for the 1<sup>st</sup> defendant, DW1 told the court that, the allocation was proper, the 1<sup>st</sup> defendant filed the application form No. 19 and later paid all necessary fees. The plaintiff never applied to be allocated the said land. The plaintiff wrote a letter which is not the procedure and was told the said plot has already been allocated to the 1<sup>st</sup> defendant. DW2 said land can be allocated even to group of people.

Incorporation is not a criteria for land allocation as provided under section 19 of the Land Act. The 1<sup>st</sup> defendant applied for the land in dispute 2006. She was incorporated in 2014 while the Title was issued in 2013. That RITA could not give consent to the organization which was yet registered.

When cross examined by Mr. Abedinego advocate for the plaintiff DW1 told the court that the 1<sup>st</sup> defendant applied through Form No. 19 by the name of Masjid Kinyerezi. That in 2011 the Masjid Kinyerezi informed the commissioner that she is in the process of registration. The name appears in the certificate of Incorporation is the same with which appears in the "Title Deed". The name Tabata added in the Certificate of Incorporation is a mere location where the society is located. That the plot cannot be located twice. That in 2006 the 1<sup>st</sup> defendant existed as Masjid Kinyerezi. Rectification was done after the Society was registered and that is within the power of the commissioner.

That being the summary of the plaintiff and defendants' evidence, the issues calling for determination are;

- (i) Whether the first (1<sup>st</sup>) defendant was legally allocated the land in dispute.

- (ii) Whether the plaintiff was more qualified to be allocated with the land in dispute.
- (iii) What reliefs are parties entitled.

As far as the first issue is concerned, that is, whether the 1<sup>st</sup> defendant was legally allocated the land in dispute. DW1 evidence is clear that the plots were sold by the Ministry to the individuals and religious institutions for those reserved for religious purpose. That the mode of application was by completing Land form No. 19 (Exh. D1). Further that the 1<sup>st</sup> defendant made payment of all requisite fees and expenses (Exh. D2) and the Commissioner for Lands acknowledged the payments (Exh. D3). That upon compliance with all the procedural requirement the Commissioner for Lands upon satisfaction exercised the powers vested to him under **Section 26 of the Land Act (Cap 113 R.E. 2002)** granted the right of occupancy to the 1<sup>st</sup> Defendant. Similar was the evidence of DW2 who testified for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendant. In her evidence DW2 told the court that the Certificate of Occupancy (Exh. P6) was issued by the Commissioner for Lands Upon being satisfied that all legal procedure were complied with. It was further the evidence of DW2 who is the officer in the office of the Commissioner for

Lands that no fraud or any illegality was committed in granting the 1<sup>st</sup> defendant plot No. 1288 block B Kinyerezi.

The contentions argument is that the 1<sup>st</sup> defendant was allocated the suit land while she was neither incorporated under the Trustees Incorporated Act or under the Societies Act and therefore she fraudulently and improperly caused the Commissioner for Lands grant to her land in dispute.

It is evidence by DW1 & DW2 that the land was surveyed in 2000. According to the survey plan our plots were reserved for religious institutions. That the 1<sup>st</sup> defendant made application to be allocated the land in dispute through Land Form No. 19 in 2006. That the application was done by Masjid Kinyerezi. The title deed which was issued in 2012 is in the name of "Registered Trustees of Masjid Kinyerezi". Further the said Trustees was incorporated in 2014. But again the consent to own property was issued by RITA on 26<sup>th</sup> January 2018.

The above being the position it goes without saying that when Masjid Kinyerezi applied to be allocated the suit land she was not a registered Body and when the title deed was issued in the name of the Registered Trustees of Masjid Kinyerezi, the said Trustee was legally not existing. Even when

owned the suit land she had no consent to own it. Can it be said the land was illegally allocated to the 1<sup>st</sup> defendant?

Knowing that neither Administrator General Nor RITA are the Land allocating authorities and the Laws related to, do not govern land allocation and matter incidental to, I am inclined to look at the Law relating to land allocation particularly the Land Act Cap 113, which is applicable in land matters in Mainland Tanzania. This is as per section 181 of the Land Act No. 4 of 1999 (Cap 113 R.E. 2019). As to who is eligible to be allocated land in Tanzania.

Section 19(1) of the Act provides:

- (1) The right to occupy Land which a citizen, a group of two or more citizens whether formed together in an association under this or any other law **or not**, a partnership or a corporate body in this Act called "right holders" may enjoy under this Act are hereby declared to be
  - (a) A granted right of occupancy.
  - (b) A right derivative of a granted right of occupancy in this Act called a derivative right **(Emphasis added)**.

From the working of the above cited provision of law I am of the settled mind that Masjid Kinyerezi was eligible and qualified to apply for and be



allocated the land. Again if I go back to the law governing Trustees that is the Trustees Incorporations Act (Cap 318 R.E. 2002). Section (1) provides:

*" A trustee or trustees appointed by a body or association of person bound together by customs religion, kinship or nationality , or established for any religious, educational, literary scientific, social or charitable purpose, and any person or person holding any property on trust for any religious, educational, literary, scientific, Social or charitable purpose may apply to the administrator General for incorporation as a body Corporate".*

While Section 3 of the same Act provides:

*"Notwithstanding section 2, a trustee or trustees **holding** property in trust for any religious educational, literary, Scientific, Social or Charitable purpose who has not been incorporated under any law or whose incorporation is not provided by any law **shall** apply for incorporation under this Act"* (Emphasis added).

Looking at these two provisions of law, section 2(1) make it optional for association of persons bound together by customs, religion, kinship to apply for incorporation. While section 3 of the Act make it mandatory for incorporation particularly when it holds property on trust of beneficiaries.

Going back to the case at hand, in the light of section 19 of the Land Act (Cap 113 R.E 2019) and section 2 and 3 of the Trustees Incorporation Act (Cap 318 R.E 2202) it is my firm view that the trustees may acquire and hold property for the association or organization prior to incorporation, as was done by Masjid Kinyerezi . Who applied for allocation of land just as an association bound by religion in 2006 which was granted in 2012 prior to incorporation which was done 2014.

The fact that consent to own/acquire property was issued after the landed property has already been granted . It is my view that due to the prevailed circumstance, the 1<sup>st</sup> defendant could have not sought consent before her incorporation. The fact that the 1<sup>st</sup> defendant applied for consent while the property is already in her hands is cured by the provisions of section 10 of the **Trustees Incorporation** Act which gives blessing to the property acquired before incorporation as if were acquired after incorporation. The section provides:

*(10) "After an incorporation of any trustee or trustees under this Act every donation, gift and disposition of land or any interest therein lawfully made (but not having actually) taken effect ) or thereafter lawfully made by deed, will or otherwise to or in favour of the body or association of the person by whom, the trustee*

*were appointed, if any, or the trustees or trustees or otherwise for the purpose of the trust, shall take effect as if the same has been made to, or in favour of, the body corporate for the like purpose."*

Further the law under section 8(1) of Act (Cap 318 R.E. 2002) gives the legal personality to the Trustee or Trustees after it has been incorporated or granted the Certificate of Incorporation. The provision does not refer to what took place to the Trustee before That is why the Certificate of Incorporation refers on future events as one of the conditions contained in the Certificate states.

*" ..... that such body corporate shall not, without first obtaining my consent in writing acquire any estate or interest in land; and secondly, that such body corporate shall not without like consent....."*

Related to the first issue which is also very contentious is the allegation that the 1<sup>st</sup> defendant fraudulently and improperly caused the disputed land to be granted to her. The allegation has been pleaded at paragraph 6 of the plaint. The paragraph reads:

*(6) "That the plaintiffs claims against the defendants are declaration that the 1<sup>st</sup> Defendant did fraudulently and improperly caused to be granted the land in dispute....."*

The same appears in the prayers of the plaintiff. The prayer no. 1 reads

*(1) " This honourable court be pleased to declare that the 1<sup>st</sup> defendant did fraudulently and improperly caused to be granted the land in dispute by the 3<sup>d</sup> Defendant (Commissioner for Lands)*

Our law is very clear on how the pleadings should be when a party relies on fraud in Civil matter. Order VI Rule 4 of the Civil Procedure Code (Cap 33 R.E. 2002) provides:

*" In all cases in which the party pleadings relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence and in all others cases in which particulars may be necessary to substantiate any allegation, such particulars (With dates and items of necessary) shall be stated in the pleading".*

The above portion of law was also stated in the case of **Musoke V. Mayanja [1995-1998]** 2 EA 205 the Supreme Court of Uganda quoted the case of **Okello V. Uneb Civil Appeal No. 12 of 1987**. Where the Court stated:

*"It is well established that where the party relies on fraud, that the fraud must be specifically pleaded and that particulars of fraud alleged must be stated on the face of the pleadings"*

Further to the above there are abundant authorities on the standard of proof on such allegation. In **Ratilal Gordhanbhai Patel vs. Lalji Mkanji (1957)** EA 314 at 316, the esthete Court of Appeal for East Africa held.

*"Allegation of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required".*

See also **Omary Yusuph v. Rahma Ahmed Abdulkadr** [1987] TRL 169 and **City Coffee Ltd v. The Registered Trustee of Iloilo Coffee Group Civil Appeal No. 94 of 2018** (CAT) Unreported).

Subscribing the above, and in view of the foregoing it is clear that the allegation of fraud in Civil cases, the particulars of fraud, being a very serious allegation must be specifically pleaded and the burden of proof thereof, although not that which is required in criminal cases of proving the case beyond reasonable doubt; it is heavier than a balance of probabilities generally applied in Civil Cases.

Back to the case at hand, para 6 of the plaint simply state that the 1<sup>st</sup> defendant fraudulently and improperly cause the disputed land to be granted to the 1<sup>st</sup> defendant. Not complaint nor particulars of the alleged forgery came forth. Further to that PW1 and PW2 never testified on the alleged fraud. But on the said allegation DW2 the officer from the Commissioner for Lands officer's testimony negated the allegation. DW2 said all the legal procedures were followed and that commissioner for Lands was satisfied and thus used his discretion to grant the 1<sup>st</sup> defendant the certificate of occupancy.

From the above analysis made I find the 1<sup>st</sup> defendant was substantively and procedurally legally allocated the land in dispute. Thus the first issue responds affirmatively.

As to the 2<sup>nd</sup> issue: Whether the plaintiff was more qualified to be allocated the land in dispute. The plaintiff's evidence is that she is dully incorporated under the Registered Trustees Act. (Cap 318 R.E. 2002) and that she has occupied the said suit land from 2004. That she was temporarily invited by the local leader to use the land for worship activities. That having been there for such a long time in 2010 started to formerly apply to be allocated the suit land.

Further it is the plaintiff's evidence that she made an official search to the office of Registrar of Titles where it was found that the suit land was not allocated to anybody. Thus wrote a letter (Exh. P1) requesting to be allocated.

To the contrary there are ample and strong evidence as testified by DW1 and DW2 that the suit land was surveyed way back 2000 as shown in the survey plan attached with the certificate of occupancy (Exh. P6). This means that when the plaintiff landed at the suit land from where she was the land was already surveyed thus the local leaders had no mandate or control over surveyed land. As if it was not enough, the plaintiff made a search to the office of the Registrar of title who told her to confirm with Ilala Municipal. There is no evidence as to whether the plaintiff bothered to go to Ilala Municipal Council. The reason as to why she was refereed to Ilala Council is quite simple that the land applied for is located within Ilala Council thus it is the Council which is at the best position to know the status than the Registrar of Titles because sometimes land allocation application processes originates at the council's Land office.

Further to the above, it is the Commissioner for Lands who is land allocating authority not the Registrar of Titles thus the plaintiff misdirected herself by going to the Registrar of Titles.

As stated above, one of the reasons which the plaintiff finds legitimacy that the land had to be allocated to her is that she was there from 2004 till when the 1<sup>st</sup> defendant appeared in 2010. As stated above the suit land being surveyed before the plaintiff occupied it, the occupation of the plaintiff was unlawful thus could not warrant her to be allocated.

Notwithstanding, can it be said that the plaintiff had applied for to be allocated the suit land. Application for the right of occupancy is matter of Law. The procedure is provided for Under **Section 25(1)** of the Land Act. (Cap 133 R.E. 2002 now 2019). The law is that the application is submitted on a prescribed form No. 19 (GN. 71 of 2001) accompanied by a photograph and subscribed fees. The same was the testimony of DW1 who said to had filled the application form No. 19. The testimony of DW2 was also that application is done by completing the form No. 19. But PW1 when testified told the court that he wrote a letter (Exh. P1) requesting to be allocated the land in dispute. It is



that the plaintiff never complied with the legal requirement thus it was as good as if the never applied for the same.

Having gone so yonder, I am of settled mind that the end issue responds negatory. In the premises the Plaintiff's case is bereft of merit.

As far as the 1<sup>st</sup> defendant's counter claim, I am of the Settled view that counter claim being a suit like any other, needs a proof to the standard required that is to the preponderance of probability. I have not found the evidence to prove it to the standard required. The first defendant has directed all her missiles in defending the suit against him leaving the counter claim hanging. I hereby dismiss it accordingly.

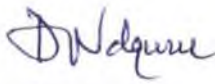
Being said done I find the plaintiff has failed to prove her case to the standard required by the law in Civil Suits which is to the balance of probability.

I hereby dismiss the plaintiff's case on its entered. I further declare the 1<sup>st</sup> defendant a lawful owner of the disputed land plot No. 1288 Block B. Kinyerezi. The costs to follow event.

As far as the order to costs for the 1<sup>st</sup> defendant I order the costs be paid to one counsel/advocate only not both two of them.

It is so ordered.



  
**D.B. NDUNGURU**  
**JUDGE**  
**11/12/2020**

Right of Appel explained.