

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

**LAND CASE NO. 14 OF 2022**

**ABRAHAM ALLY SYKES.....PLAINTIFF**

**VERSUS**

**ARAF ALLY SYKES.....1<sup>ST</sup> DEFENDANT**

**ALHAJ ARAF SYKES AND ABDOUL ALLY SYKES  
(Surviving Executors of the late ALLY KLEIST SYKES).....2<sup>ND</sup> DEFENDANT**

**COMMISSIONER FOR LANDS.....3<sup>RD</sup> DEFENDANT**

**REGISTRAR OF TITLES.....4<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL.....5<sup>TH</sup> DEFENDANT**

**R U L I N G**

*Date of Last Order: 02.06.2022*  
*Date of Ruling: 16.06.2022*

**T. N. MWENEGOHA, J.**

Abraham Ally Sykes, the plaintiff here in above, lodged the instant suit against the five defendants above listed. However, three preliminary objections were raised against the case at hand as follows; -

- 1. That, the suit is time barred, being an objection from the 3<sup>rd</sup> to 5<sup>th</sup> defendants.**
- 2. The suit is res-subjudice as raised by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.**
- 3. The suit is an abuse of court process, from the 1<sup>st</sup> and 2<sup>nd</sup> defendants.**

On the other hand, Mr. Araf Ally Sykes, the 1<sup>st</sup> defendant herein above filed a counter claim against Mr. Abraham Ally Sykes, the plaintiff here in above. Mr. Abraham being the defendant in the counter claim, also raised a preliminary objection against the same to the effect that, the counter claim is unmaintainable for no-joinder of necessary parties.

On the 27<sup>th</sup> of April, 2022, this court ordered the parties to argue all the preliminary objections by way of written submissions, and the submissions to be filled concurrently. It was further ordered that, in determining these objections, the court will start by the preliminary objections raised against the main suit and then will proceed to determine the objection against the counter claim.

Advocate Chacha Murungu, appeared for the plaintiff, the 1<sup>st</sup> and 2<sup>nd</sup> defendants enjoyed the legal services of the learned counsel Erick Mhimba while the 3<sup>rd</sup> -5<sup>th</sup> defendants were represented by learned State Attorney Daniel Nyakia.

Starting with the objection from the 3<sup>rd</sup> to 5<sup>th</sup> defendants that the suit is time barred. The arguments of Mr. Daniel Nyakia were that, under paragraph 4,7 and 8 of the plaint, the cause of action arose in 1976 when the 3<sup>rd</sup> and 4<sup>th</sup> defendants issued the certificate of title of the disputed land to the 1<sup>st</sup> defendant. That, this suit is founded on the contract as the plaintiff has alleged that the 1<sup>st</sup> defendant obtained the title by misrepresenting himself before the 3<sup>rd</sup> and 4<sup>th</sup> defendants. Hence the case was supposed to be filed within 6 years as per section 3 of the Contract, Cap 89, R. E. 2019. He also cited the cases of **Motto Matiko Mabanga vs. Ophir Energy PLC and Others, Civil Appeal No. 121 of 2021 (unreported)** and **Hezron Nyachia vs. Tanzania Union of Industrial**

**and Commercial Workers and Organization of Tanzania Workers Union, Civil Appeal No. 79 of 2001, Court of Appeal of Tanzania(unreported).**

In reply, Mr. Murungu maintained that, the cause of action in this case arose in 2021, 13<sup>th</sup> April. Hence the case was well filed within time as the same was presented for filing to this court one year after the cause of action arose.

In addressing this issue, I perused the plaint in question and I came across paragraph 8 sub-paragraph 8.7 where it has been expressly stated by the plaintiff that, he became aware of the fraudulent misrepresentation made by the 1<sup>st</sup> defendant to obtain the ownership of the suit land on the 13<sup>th</sup> April, 2021. He learned of this fact after conducting and obtaining a search report dated 13<sup>th</sup> April 2021. It is now settled that, the cause of action in civil cases is considered to accrue when the plaintiff became aware of the wrong doings by the other party. This being the position of the law, I find no need to labour much on this point of objection, the same is baseless and it is hereby overruled.

I now address the two objection as to whether this case is res-subjudice and further that its existence amounts to an abuse of court process. These two objections as raised by the 1<sup>st</sup> and 2<sup>nd</sup> defendants will be determined together. It was the contention of Mr. Mhimba that, the instant suit is re-subjudice owing to the existence of a pending Probate matter vide Probate and Administration Cause No. 59 of 2014, before the High Court of Tanzania, at Dar es Salaam District Registry. Mr. Murungu when replying to the submissions by Mr. Mhimba on this objection was of the firm view that, the rules of res-subjudice cannot apply in the instant case.

That, under Section 8 of the Civil procedure Code, Cap 33 R. E. 2019, for a matter to be re-subjudice, it should involve the same parties, litigating over the same subject matter and the reliefs should be the same. Above all, the matter should be pending in court. He insisted that, Probate and Administration Cause is not the same as a Land matter. Hence Probate and Administration Cause No. 59 of 2014 cannot taken to be the same as the Land Case No. 14 of 2022. The parties in the two cases are also different, same is for the reliefs.

I agree with Mr. Murungu in this part. The arguments by the counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants in their objections are highly misplaced. The principle of re-subjudice cannot be applied in the circumstances at hand. The two matters, vide Probate and Administration Cause No. 59 of 2014 and the Land Case No. 14 of 2022 are totally different case, with different subject matters and reliefs including the parties. It is therefore a misconception on part of the counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants to claim the instant case is res-subjudice and an abuse of court process. Their objections are also overruled.

I turn to the objection by Mr. Abraham against the counter claim, also raised as a preliminary objection against the same to the effect that, the counter claim is unmaintainable for no-joinder of necessary parties. Mr. Murungu maintained in his submissions that, in paragraphs 16, 17 and 18 of the counter claim, the plaintiff has claimed that the suit land was owned by his late father, one Ally Kleist Sykes, but he did not implead the executors of the estate of the late Ally Kleist Sykes in his counter claim.

Furthermore, in the same counter claim, the plaintiff made express and specific reference to the Registrar of Titles who is alleged to have issued a title to him. The plaintiff in the counter claim also seeks relief from this

court that a Caveat lodged by the defendant be vacated. The same can only be vacated if the court orders the Registrar to do so. In absence of the Registrar of Titles as a necessary party in the counter claim, the same must fail.

Moreover, if the Registrar of Titles is impleaded, the Attorney General also must be joined. All these were not done by the plaintiff in the counter claim, hence the same is not maintainable as per sections 6(3) and (4) of the Government Proceedings Act, Cap 5 R. E. 2019. The same position was taken in the case of **Leonard Peter versus Joseph Mabao and 2 Others, Land Case No. 4 of 2020, High Court of Tanzania at Mwanza(unreported)**.

In his reply, Mr. Mhimba for the plaintiff in the counter claim was of the view that, the plaintiff in the counter claim has no legal claim against the executors of the estate of the late Ally Kleist Sykes, hence there is no need to join them in the counter claim. That, absence in the proceeding as far as the counter claim is concerned will not bar this court from passing an effective decree.

That, the same is for the Registrar of Titles and the Attorney General. The plaintiff in the counter claim has no legal claim against them, hence like the executors aforementioned, they are not necessary parties. That after all, the Registrar of Titles and the Attorney General cannot be joined at this stage of a counter claim as they need to be served a 90 days' notice as per Section 6(2) of the Government Proceedings Act, Cap, 5 R. E. 2019.

Again, I fully subscribe to the arguments by Mr. Murungu. The counter claim is not maintainable owing to non-joinder of the necessary parties so named herein above in his submissions. The submissions by Mr. Mhimba

that, the plaintiff in the counter claim has no legal claim against the said parties are unfounded. He has narrated clearly in his claim on how the suit land came under his possession and ownership from his late father. It is necessary those who stepped into the shoes of his late father to be joined as parties on behalf of his late father. As for his claim regarding the Caveat against him to vacated, the same need to be executed by the office of the Registrar. His/her presence in this suit is necessary, **see Leonard Peter vs. Joseph Mabao and 2 Others, (supra)**. Impleading the registrar of Tittles brings in the Attorney General of Tanzania.

The arguments that, they cannot be joined at this stage owing to the requirement of the 90 days' notice under Section 6 (2) of the Government Proceedings Act is baseless. This being a counter claim, it is not a new suit rather a cross suit, where the notice served to the government while initiating the main suit suffices to inform the government of the existence of another claim separate from the main case. It is because, a counterclaim arises out of the main suit and not a fresh suit that is being instituted. Therefore, the objection has merits. The same is sustained.

In the event and for the afore-given reasons, the main case shall proceed to be heard until its final determination. The counter Claim is hereby struck out. Costs to follow the events.

It is so ordered



  
**T. N. MWENEGOHA**  
**JUDGE**  
**16/06/2022**