

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

**LAND CASE NO. 07 OF 2021**

**THE REGISTERED TRUSTEES  
DAWAT-E-ISLAMI FOUNDATION ..... PLAINTIFF**

**VERSUS**

**THE REGISTERED TRUSTEE OF MADRASATUL DAARU  
MUNADHAMAT DAWATIL ISLAMI FOUNDATION ..... 1<sup>ST</sup> DEFENDANT**

**THE MUNICIPAL DIRECTOR  
TEMEKE MUNICIPAL COUNCIL ..... 2<sup>ND</sup> DEFENDANT**

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

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

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

**THE REGISTERED TRUSTEES  
MASJID ISLAMIC YOMBO VITUKA ..... 6<sup>TH</sup> DEFENDANT**

*Date of last Order: 20/05/2022*

*Date of Ruling: 01/07/2022*

**RULING.**

**I. ARUFANI, J.**

This ruling is for the points of preliminary objections raised by the defendants against the suit filed in this court by the plaintiff. The points of preliminary objection raised by the first defendant are as follows: -

1. *That the suit is improper and bad in law as it is contravening section 102 (1) of the Land Registration Act, Cap 334 R.E 2019.*
2. *That the suit having been filed after the expiration of 25 years from the date the allegedly deed of gift was executed it is time barred.*
3. *That the suit against the 1<sup>st</sup> defendant is res judicata to the land case No 28 of 2018 of the High Court of the United Republic of Tanzania, Dar es Salaam District Registry.*
4. *That the suit is res sub judice to the Misc. land application No.28 of 2020 of the High Court of the United Republic of Tanzania, Dar es Salaam District Registry.*
5. *That the suit is bad in law for being an abuse of the court proceedings.*

The second, third, fourth and fifth defendants raised one point of preliminary objection which states as follows: -

1. *The suit is defective for suing wrong person, the Director of Temeke Municipal Council.*

When the matter came for hearing the above points of preliminary objection the plaintiff was represented by Mr. Othiambo Kobas, learned advocate and while the first defendant was represented by Mr. Ally Jamal, learned advocate, the second to fifth defendants were represented by Mr. Thomas Mahushi, learned State Attorney and the sixth defendant was

represented by Mr. Amal Sinda, learned advocate. The court ordered the points of preliminary objection to be argued by way of written submission.

I will start to deal with the first point of preliminary objection raised by the first defendant before going to the rest of the points of preliminary objection because is about jurisdiction of this court to entertain the plaintiff's suit and if it will be sustained there will be no need of continuing to deal with the rest of the points of preliminary objection.

The counsel for the first defendant stated in relation to the first point of preliminary objection that, section 102 (1) of the Land Registration Act, Cap 334 R.E 2019 directs the remedies for a person aggrieved by finding, act or order of the Registrar of Title is to appeal to the High Court against the act, order or decision of the Registrar of Title. He argued that, it is not disputed that after the first defendant presented to the Commissioner for Lands and Registrar of Title her certificate of title for registration, the plaintiff who had filed a caveat to the Registrar of Title was served by the Registrar of Title with thirty days' notice requiring him to present to the Registrar of Title an injunctive order from the High Court to restrain the Registrar of Title from registering the first defendant's certificate of title. He stated the service of notice was made in terms of section 78 (6) of the Land Registration Act.

He argued that, in response to the notice from the Registrar of Title the plaintiff filed in the High Court of Tanzania, Dar es Salaam District Registry Misc. Land Application No. 128 of 2017 seeking for injunctive order but thirty days expired before determination of the application and the application was withdrawn from the court on 30<sup>th</sup> August 2017. He argued that, section 102 (1) of the Land Registration Act requires any person intending to challenge the finding or order of the Registrar of Title to appeal to the High Court within three months and not to file a fresh suit in the court.

To support his submission, he referred the court to the case of **The Registered Trustees, Dawat-e-Islami Foundation V. Registered Trustees Madrasatul Daaru Munadhamat Dawaat Al Islamia & Two others**, Land Case No. 28 of 2018, HC at DSM together with the case of **Aloyce Kisenga V. Hamida Ramadhani Manara & Three Others**, Land Case No. 3 of 2015, HC Land Division at DSM (both unreported) where it was stated a person aggrieved by decision, order or act of the Registrar of Title he is required to appeal to the High Court pursuant to section 102 of the Land Registration Act and not to file a fresh suit in the court.

In reply the counsel for the plaintiff argued in relation to the first point of preliminary objection that, the first defendant basis of the first

point of preliminary objection is on presumption that the plaintiff's cause of action in the present suit is on the plaintiff being served with 30 days' notice by the Registrar of Titles (fourth Defendant herein) under section 78 (6) of the Land Registration Act. He stated the notice which would have been for requiring the plaintiff to present an injunctive order from the High Court restraining the fourth defendant from registering the first defendant's certificate of title.

He argued that, as averred at paragraphs 8, 20, 21, 22, 25 and 26 of the plaint and its annexures the plaintiff's cause of action is not based on the stated notice but on double allocation. He argued that, throughout the plaint, the plaintiff has neither challenged nor made any averment of being served by the fourth defendant with the notice issued under section 78 (6) of the Land Registration Act because the suit is based on double allocation of the land in dispute which is triable and adjudicated upon by the court in ordinary suit as the plaintiff's suit.

He submitted that it is not known where the first defendant gathered the information imposed to the plaintiff. He went on submitting that, section 102 (1) of the Land Registration Act is not applicable in the circumstances of the present suit. He argued the first point of preliminary objection does not arise from the plaintiff's pleadings and its annexures but from the first defendant's own pleadings which call for evidence to be

led to bring the suit to section 102 (1) of the Land Registration Act. To support his argument, he referred the court to the case of **John M. Byombilwa V. Agency Maritime**, [1983] TLR 1 where it was stated in deciding the cause of action has been disclosed only the plaint and nor reply to the written statement of defence is required to be looked.

He stated the position to be taken from the above case is that in deciding on preliminary objection the court should only look at the plaint and its annexure and not otherwise. He also referred the court to the case of **Mukisa Biscuits Manufacturing Co. Ltd V. West End Distributors Ltd**, [1969] EA 696 where it was stated preliminary objection is supposed to be raised where all facts pleaded by the other side are correct and it cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. He distinguished the cases of **The Registered Trustees, Dawat-e-Islami Foundation** and **Aloyce Kisenga** cited by the counsel for the first defendant by stating they were not dealing with the double allocation. At the end he prayed the first point of preliminary objection to be dismissed with costs.

After considering the rival submission from the counsel for the parties the court has found proper start by having a look on what is provided under section 102 (1) of the Land Registration Act which the counsel for

the first defendant has argued has been contravened by the plaintiff's suit. It states as follows: -

*"Any person aggrieved by a decision, order or act of the Registrar may appeal to the High Court within three months from the date of such decision, order or act:"*

The wording of the above quoted provision of the law is very clear that whoever is aggrieved by the decision, order or act of the Registrar of Title is required to appeal to the High Court and not to institute a normal suit in the court to challenge the decision, order or act of the Registrar of Title. The court has found what can be grasped from the submission of the counsel for the first defendant is that, while arguing the suit before the court is challenging the decision of the Registrar of Title who refused to heed to the caveat lodged in his office by the plaintiff to object certificate of occupancy of the land in dispute to be issued to the first defendant the counsel for the plaintiff is arguing the suit before the court is about double allocation of the land in dispute.

The court has found as stated in the case of **John M. Byombalilwa** (supra) it is true as rightly argued by the counsel for the plaintiff that, in order to be able to know what is the cause of action in the plaintiff's suit the court is required to look into the plaint and its annexures alone and not otherwise. While being guided by the stated position of the law the

court has gone through the plaint and found the plaintiff has averred at paragraph 8 of the plaint that he is a lawful owner of the land in dispute.

The plaintiff averred at paragraphs 10 to 19 of the plaint that, the land in dispute was given to them by the first defendant as a gift and after being given the land and handed all original documents of ownership of the land by the first defendant they sought for the ownership of the land to be transferred to them. The plaintiff stated that, on 22<sup>nd</sup> August, 1996 the second defendant issued a letter of offer to them over the land in dispute. The plaintiff went on averring at paragraph 20 of the plaint that, after accepting the offer and paid all the requisite fees they applied for certificate of occupancy of the land in dispute from the second defendant and while awaiting to be issued with the same they surprised to have discovered the fourth defendant was in the process of issuing certificate of occupancy to the first defendant over the same land in dispute. He stated on 7<sup>th</sup> September, 2017 the fourth defendant issued certificate of occupancy No. 178605 to the first defendant.

The court has found it is from the above stated facts of the case the plaintiff is praying the court to declare them lawful owner of the land in dispute. They are also praying the letter of offer issued by the second defendant to the first defendant on 19<sup>th</sup> August, 2008 be declared illegal



and nullity and the certificate of title number 178605 issued to the first defendant by the fourth defendant be declared illegal and nullity.

From the above stated facts of the case of the plaintiff and the reliefs the plaintiff is claiming from the court it is the finding of this court that, it is true as argued by the counsel for the plaintiff that it is averred at paragraphs 22 and 26 of the plaint that issuance of letter of offer by the second defendant to the first defendant on 19<sup>th</sup> August, 2008 while the second defendant had already issued a letter of offer over the same land in dispute to the plaintiff on 22<sup>nd</sup> August, 1996 is double allocation. However, the court has found in the circumstances of the case at hand the averment of double allocation as a cause of action in the suit at hand is just a trick of finding the way of challenging the decision or act of the Registrar of Title to refuse to issue a certificate of occupancy to the plaintiff and in lieu thereof issued the same to the first defendant. To the view of this court and as rightly argued by the counsel for the first defendant the said decision or act of the Registrar of Title was supposed to be challenged by way of appeal and not by way of lodging a fresh suit in the court as it was done by the plaintiff.

The court has arrived to the above view after seeing there is no any fact averred in the plaint to establish the plaintiff has ever been issued with certificate of occupancy over the land in dispute so that it can be said

issuance of certificate of occupancy to the first defendant is double allocation. The court has found that, although the plaintiff has demonstrated in their plaint that they were issued with letter of offer on 22<sup>nd</sup> August, 1996 and the first defendant was issued with letter of offer over the same land on 19<sup>th</sup> August, 2008 but to the view of this court the said letters of offer cannot establish a cause of action of double allocation where a certificate of occupancy has been issued to one of the parties. The above view of this court is getting support from the case of **Sarjit Singh V. Sebastian Christom**, [1988] TLR 24 where it was held that: -

*"A right of occupancy is created by the approval of the applicant's application for the grant of the same (i.e right of occupancy)."*

Since application made by the plaintiff to the third and fourth defendants to be issued with certificate of occupancy over the land in dispute was not approved and no certificate of occupancy has ever been issued to the plaintiff but the certificate of occupancy was issued to the first defendant the court has failed to see how the plaintiff can be heard to argue there is double allocation in the case at hand. To the contrary the court has found as rightly argued by the counsel for the first defendant the plaintiff ought to challenge the decision or act of the Registrar of Title to issue certificate of title to the first defendant by way of appeal as

provided under section 102 (1) of the Land Registration Act and not by way of filing fresh or ordinary suit in this court.

The argument by the counsel for the plaintiff that section 102 (1) of the Land Registration Act is invoked where the Registrar of Title has issued a notice under section 78 (6) of the Land Registration Act is not correct interpretation of the cited provision of the law as that provision is also applicable when a person wishes to challenge any other act, order or decision made by Registrar of Title. The above view of this court is getting support from the case of **Aloyce Kisenga** (supra) which was followed by this court in the case **The Registered Trustees, Dawat-e-Islami Foundation** (supra) where it was stated the decision, order or act of the Registrar of Title can only be challenged in accordance with the provision of section 102 (1) of the Land Registration Act and not otherwise.

The argument by the counsel for the plaintiff that the cited cases are distinguishable from the case at hand as were not dealing with double allocation has been found is devoid of merit as he didn't show how the position of the law stated in the said cases are distinguishable for the cases at hand. In the premises the court has found the first point of preliminary objection raised by the first defendant is meritorious and deserve to be upheld. Having arrived to the above finding the court has found the first point of preliminary objection is enough to dispose of the

plaintiff's suit and there is no need of indulging into dealing with the rest of the points of preliminary objection raised by the defendants.

Consequently, the first point of preliminary objection raised by the first defendant is hereby upheld. The plaintiff's suit is struck out for being improperly filed in the court and in contravention of section 102 (1) of the Land Registration Act and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 01<sup>st</sup> day of July, 2022.



I. Arufani

**JUDGE**

01/07/2022

**Court:**

Ruling delivered today 1<sup>st</sup> day of July, 2022 in the presence of Mr. Michael Kabekenga, Advocate holding brief of Mr. Othiambo Kobas, Advocate for the plaintiff and in the presence of Mr. Mustapha Mgaya, Trustee for the first defendant together with presence of Mr. Thomas Mahushi, State Attorney for the second, third, fourth and fifth defendants but in the absence of the sixth defendant. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

**JUDGE**

01/07/2022.