

IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
LAND CASE NO. 101 OF 2022

IMTIAZ HUSSEIN BANJI ..... PLAINTIFF

VERSUS

DILSHAD HUSSEIN BANJI ..... DEFENDANT

**RULING**

*Date of last Order: 24.08.2022*

*Date of Ruling: 26.08.2022*

**A.Z.MGEYEKWA, J**

On 5<sup>th</sup> May, 2022 IMTIAZ HUSSEIN BANJI, the Plaintiff herein, instituted this suit against DILSHAD HUSSEIN BANJI seeking the following four reliefs.

- a) *A declaratory order that this Honourable Court be pleased to declare that the Plaintiff is the lawful owner of the landed property.*
- b) *That this Honourable Court be pleased to declare that the Certificate of Title issued was invalid.*
- c) *Costs of the suit.*
- d) *Any other relief(s) this Honourable Court seems fit to grant.*

The Defendant filed a Written Submission Defence and they raised a point of Preliminary Objection as follows:-

1. *That this suit is bad in law as it contravenes the provision of section 102 of the Land Registration Act, Cap. 334 [R.E 2019].*

When the matter was called for a hearing of the preliminary objection on 24<sup>th</sup> August, 2022, the Plaintiff enjoyed the legal service of Mr. Shalom, learned counsel whereas, the Defendant had the legal service of Ms. Deothera Ruta, learned counsel.

In the wake of the preliminary objection, the main suit had to be kept at abeyance pending the determination of the preliminary objection.

The course taken by the Court was to accede to the practice in this jurisdiction founded upon prudence which has it that a court seized with a preliminary objection is first required to determine that objection before going into the merits or the substance of the case or application before it.

See the cases of **Shahida Abdul Hassanali Kassam v Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999 and **Thabit Ramadhani Maziku & Another v. Amina Khamisi Tyela & Another**, Civil Appeal No. 98 of 2011; both are unreported decisions of the Court.

In the hearing of the preliminary objection, it was Ms. Ruta, learned counsel, who kicked the ball rolling. She started his onslaught by submitting that the suit *is bad in law as it contravenes the provision of*

*section 102 of the Land Registration Act, Cap. 334 [R.E 2019]. She submitted that the cited provision touches the jurisdiction of this court.*

Ms. Ruta stated that the Plaintiff has lodged the instant suit before this court on 5<sup>th</sup> May, 2022, and in his Plaintiff particularly paragraph 6 the Plaintiff has stated that he was never issued with a Certificate of Title despite of numerous efforts taken. She added that the Plaintiff seeks for declaration order of this court be pleased to declare him a lawful owner of the landed property and to find that the CT issued is invalid. The learned counsel for the Defendant continued to submit that reading the Plaintiff's reliefs, it is clear that the decision of the Registrar of Titles issued the CT to the Defendant in 2009. To buttress her contention Ms. Ruta cited the case of **Starcom Hotel v National Microfinance Bank & two Others**, Civil Case No. 11 of 2019, and another case with a similar footing of **Mawenzi Farms Ltd v Hudson Paulo Saria & 3 Others**, Land Case No. 08 of 2017, **Twiga Ltd & Another v Jeron Hans & Another**, Land Case No. 72 of 2017 and **Salum Seif and Saidi v The Registrar of Titles & Others**, Land Case No. 353 of 2009. It was her submission that in all cited cases the court stressed that section 102 of the Land Registration Act must be adhered to.

The learned counsel went on to submit that the Registrar registered a title back in the year 2009 and the Plaintiff annexure 1D3 reflects the same.

She added that from 2009 when the Title was issued to the Defendant to 2022 when the Plaintiff lodged the present suit is a lapse of 19 years. She claimed that they are wondering why the Plaintiff is lodging a case after a lapse of 19 years after the issuing of the Title while the law provides 3 months. She went on to submit that in the case of **Mawenzi Farms** (supra), the issue of time limit was raised whereas the Plaintiff challenged the issuance of CT after 7 years and this court ordered that the law must be adhered to.

On the strength of the above submission, Ms. Ruta urged this court to find that the Plaintiff has failed to challenge the decision of the Registrar of Title on which this court has no jurisdiction to entertain this matter and further the time to lodge the complaint had lapsed.

Mr. Shalom, learned counsel for the Plaintiff resisted the preliminary objection. The learned counsel stated that section 102 of the Land Registration Act provides that the party who is dissatisfied with the decision of the Registrar may appeal to the High Court. He stated that the word may is not couched on a mandatory term, the same implies that they can use other routes to challenge the decision of the Registrar. Mr. Shalom went on to submit that the qualification placed by the counsel for the respondent violates the principle of dominacillitie which gives room for the party to sue anyone at a competent forum.

Mr. Shalom submitted that section 99 of the Land Registration Act, Cap. 334 gives this court and the Registrar concurrent jurisdiction to entertain such suit and give the necessary orders. He refuted that the Plaintiff is aware that the Registrar issued a Certificate of Title to the respondent in 2018. He stated that in the 6<sup>th</sup> paragraph, the Plaintiff title was issued in 2018 without specifying that they were aware of the existence of the said title. The learned counsel for the Plaintiff is claiming for ownership of the land parcel and there is no any application that is placed before the Registrar of Title that mandates an appeal to be placed before this court.

The learned counsel for the Plaintiff continued to submit that in the cited cases, the claim was brought to the attention of the Registrar and he determined the claims thus, parties were bound by section 102 of the Land Registration Act contrary to the suit at hand. He continued to submit that in the essence of the above it is this court to receive cases of this nature without mandating the necessity of the involvement of the Registrar. Mr. Shalom claimed that the Defendant's counsel is translating the provision contrary to what is an indent for. In his view, this court should not entertain such kind of objection since the same will open a Pandora hence the court decision will act as a bottleneck to access of justice and will violate Article 13 (1) of the Constitution of the United Republic of Tanzania.

On the strength of the above submission, Mr. Shalom beckoned upon this court to overrule the objection and allow parties to be heard on merit without being barred by any technicalities whatsoever.

In her rejoinder, the counsel for the Defendant reiterated her submission in chief. She encountered the counsel's argument that an appeal is an administration issue. She stated that the counsel has not cited any cases with such holding, thus, she urged this court to disregard Mr. Shalom's submission. Ms. Ruta contended that the counsel for the Plaintiff tried to mislead this court by citing section 99 of the Land Registration Act, Cap. 334 that this court has concurrent jurisdiction over the registrar. It was her submission that there is nowhere stated that the High Court and the Registrar have concurrent jurisdiction.

The counsel for the Defendant submitted that the provision gives the High Court power to rectify the subject to appeal to the High Court. From this section 99 of Cap. 334 gives a picture of any decision from the Registrar of Title with grievances that ought to appeal to the High Court. She added that in any case, it has been on the law that where there are grievances the matter shall be instituted at the law court or tribunal, and in the case of Board such as land registry, they have a department that deals with grievances of land matters. Ending, Ms. Ruta this court has to adhere to

section 102 of the Land Registration Act Cap. 334. She urged this court to consider the two issues of jurisdiction and time-barred.

The issue which I am called upon to resolve in this ruling is whether the preliminary objection raised by the Defendants is meritorious. I have carefully summarized the submissions made by learned counsels for the Plaintiff and Defendant. The Defendants' counsels have locked horns with the Plaintiffs' counsel on the issue *whether the suit is bad in law as it contravenes the provision of section 102 of the Land Registration Act, Cap. 334 [R.E 2019]*. Each part opposes the version of the other. The cited section 102 (1) of the Land Registration Act, Cap. 334 is related to a decision of the Registrar of Title whereas any party aggrieved by the decision or order or act of the Registrar may appeal to the High Court.

Conversely, following the same section of the law, the parties who have any grievances in land matter involving a registered land are required to settle the matter at the Registrar of Title and not lodging a suit at the High Court. The aggrieved party in accordance to section 102 of the Land Registration Act, Cap. 334 [R.E 2019] can challenge the Registrar of Title's decision by the way of an appeal before this court against the decision or order of the Registrar of Titles within time specified under the Act. The essence behind this is that the Registrar of Title is the one who

authorized to the issuance of a Certificate of Title, hence, he is in a better position to solve the dispute related to registered land.

In my considered view and rightly pointed out by Ms. Ruta the matter at hand attracts the attention of the Registrar of Title. I am saying so because the Plaintiff's claims are related to a registered land. In his Complaint he is complaining that the Registrar of Title has never issued a Certificate of Title despite his numerous efforts, instead, the Registrar issued a Certificate of Title in the name of Dilshad Punja Hussein Banji. To substantiate his claims he attached a copy of the Certificate of Occupancy. The Plaintiff on paragraph 7 continued to complain that he is not aware of the transfer of the property, all of his complaints attracts the attention of the Registrar of Title.

In the upshot, for the reasons epitomized above, I proceed to sustain the objection raised by the Defendant' counsel and dismiss Land Case No.101 of 2022 without costs.

Order accordingly.

DATED at Dar es Salaam this 26<sup>th</sup> August, 2022.



  
A.Z.MGEYEKWA  
**JUDGE**  
26.08.2022



Ruling delivered on this 26<sup>th</sup> August, 2022 via video conferencing whereas  
the Plaintiff was remotely present.



  
A.Z.MGEYEKWA

**JUDGE**

26.08.2022