

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 222 OF 2023**

**PAUL ROBERT MBWANA ..... PLAINTIFF**

***VERSUS***

**ASIA JUMA ABDUL** (Administratrix of the estate of the late  
Brigedia General Abdul Kassim Mtingas)..... **1<sup>ST</sup> DEFENDANT**

**COMMISSIONER FOR LAND** ..... **2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL** ..... **3<sup>RD</sup> DEFENDANT**

**RULING**

*28<sup>th</sup> August & 15<sup>th</sup> September, 2023*

**L. HEMED, J.**

The plaintiff herein filed the instant suit against the defendants  
praying for the following orders: -

- (a) A declaration that the Plaintiff is the rightful owner of  
Plot No. 342/22 Block "A" Boko, Dar es Salaam; and*
- (b) That your honourable courts (sic) nullify the title  
owned by the 1<sup>st</sup> defendant.*
- (c) That your honourable court order 2<sup>nd</sup> defendant process  
(sic) title to the Plaintiff.*

- (d) *The Respondent be ordered to pay the Applicants of this suit; and*
- (e) *Any other relief the Honourable Tribunal (sic) may deem fit and justified. (sic)"*

The brief back ground of what led to this ruling is as follows: The plaintiff claims to have bought the suit property known as Plot No. 342/22 Block "A" Boko, Dar es Salaam on the 30<sup>th</sup> day of January, 2000 from Mr. Swela Abdalah. He then unsuccessfully applied to the 2<sup>nd</sup> defendant for the certificate of occupancy, hence this suit.

The defendants disputed all the plaintiff's claims *vide* the written statement of defence. The 1<sup>st</sup> defendant also raised a preliminary objection on point of law to the effect that: -

*"On the strength of Annexure PSM 9 and Annexure PSM 14 to the Plaint as well as prayer/relief (b) as prayed by the Plaintiff; the Plaintiff has preferred a wrong forum to challenge the decision of the Commissioner for Lands. (The 2<sup>nd</sup> Defendant) the same being in contravention to section 26(5) of the Land Act, Cap 11 R.E 2019 under which this court lacks jurisdiction to entertain this matter."*

The preliminary objection was argued by way of written submissions. The plaintiff was represented by **Capt. Ibrahim Mbiu Bendera**, learned advocate while **Mr. George Kawembe Mwiga**, learned advocate acted for the 1<sup>st</sup> defendant.

Submitting in support of the preliminary objection, Mr. Mwiga referred to Section 26(1) of the Land Act, which empowers the Commissioner for Lands to determine any application for a right of occupancy. He argued that section 26(5) of the Act, requires a person aggrieved by the decision of Commissioner to appeal to the Minister responsible for lands.

He asserted that, the plaintiff at paragraph 9 of the plaint, tried to inform the court that, he had undertaken efforts to apply to the 2<sup>nd</sup> defendant to be granted the right of occupancy of the suit property and that the 2<sup>nd</sup> defendant was to exercise such power under section 26(1) of the Land Act. He stated that, the plaintiff has pleaded in paragraphs 10, 12, 13 and 18 of plaint, that the application was rejected by the 2<sup>nd</sup> defendant. Mr. Mwiga was of the view that, upon rejection, it was the duty of the plaintiff to appeal to the Minister.

He averred that, the decision by the 2<sup>nd</sup> defendant cannot be challenged by way of a Civil Suit, rather it can be overturned by the

Minister under Section 26(5) of the Land Act. He therefore prayed for the matter to be dismissed with costs for being wrongly brought before this court.

In reply thereof, Mr. Bendera prayed for the preliminary objection to be dismissed with costs on the reason that, the plaintiff joined the 2<sup>nd</sup> defendant as the necessary party, who can answer some of the facts that arose out of the cause of action. He stated that, in the absence of the 2<sup>nd</sup> defendant, this court cannot accord complete relief prayed by the plaintiff.

The learned counsel for the Plaintiff submitted that, the letter from the 2<sup>nd</sup> defendant dated 27<sup>th</sup> March, 2012, shows that, the letter of offer in dispute with reference No. DCC/LD/61359/1AK dated 26<sup>th</sup> November 1999, was not issued or was not made under section 26(1) of the Land Act (supra). He contended that, since the Land Act, being Act came into force on the 1<sup>st</sup> day of May, 2001, *vide* GN No. 485 of 2001, it is not applicable to the letter of offer issued prior 1<sup>st</sup> May 2001. To bolster his argument, he cited the case of **Evans G. Minja & 6 Others vs Bodi ya Wadhamini Shirikia la Hifadhi ya Taifa TANAPA**, Labour Revision No. 37 of 2020, High Court (Labour Division) at Moshi, at page 10, where it was held that, the provision of a new Act is not expected to

act retrospectively.

In rejoinder submission on the issue concerning the 2<sup>nd</sup> defendant's involvement in the matter at hand, Mr. Mwiga submitted that, the cause of action is basically founded on, and against the 2<sup>nd</sup> defendant's decision rejecting the application by the plaintiff for the grant of right of occupancy and not otherwise. Regarding the contention by the plaintiff that the letter of offer issued to the 1<sup>st</sup> defendant dates back 1999 when the Land Act was not in operation, Mr. Mwiga stated that, the preliminary objection is not about when the letter of offer was issued, rather, it is about the 2<sup>nd</sup> defendant action rejecting the application by the plaintiff for grant of the right of occupancy, 11 years after the coming into force of the Land Act.

Having gone through the rival submissions of both parties, the issue for determination is whether the preliminary objection has merits. The records reveal that, the plaintiff had applied to the Commissioner for Lands for the grant of the right of occupancy. However, the said application was rejected on the reasons specified in the letter dated 27/03/2012 with reference No. LD/263756/22 (Annexure PSM 9 to the plaint), that he was not entitled for grant of GRO. Aggrieved by the decision, the plaintiff made a reply thereto *vide* the letter dated

6/9/2012 with reference No. LD/263756/22, (Annexure PSM11), explaining as to how he was not satisfied with the decision made by the Commissioner for Lands. He concluded his letter by stating that he was determined to pursue his right by way of the suit in court.

From the foregoing facts, I am at one with Mr. Mwiga that, the plaintiff is here in this court challenging the decision of the Commissioner for Lands (2<sup>nd</sup> defendant) rejecting his application for grant of right of occupancy. It is unequivocally clear that, if the Commissioner for Lands had granted him the right of occupancy as requested, the plaintiff would not have instituted this suit. The instant suit is thus a protest against the decision of the Commissioner rejecting the application for the grant of the right of occupancy. The question is whether the plaintiff acted properly to challenge the decision of the Commissioner for Lands to reject the application for grant of right of occupancy by filing the instantaneous suit.

I am aware that the power and responsibility of the Commissioner for Lands in applications for grant of right of occupancy are as provided under section 26(1) of the Land Act (supra). According to the said provision, the Commissioner has the power to grant or reject the application. What is the remedy available to persons aggrieved by the

acts of the Commissioner for Lands when determining applications for grant of the right of occupancy?

The Land Act (supra) provides for such remedy under section 26(5) of the Land Act. It is provided thus: -

*"26(5) Any person aggrieved by a decision made under this section shall appeal to the Minister."*

From the provision cited herein above, the person aggrieved by the decision of the Commissioner for Lands in determination of application for grant of right of occupancy has to appeal to the Minister responsible for land matters and not to lodge a suit like the one at hand.

In the circumstances, I uphold the preliminary objection and find that the suit at hand is in a wrong forum contrary to section 26(5) of the Land Act, [Cap 11 R.E 2019]. I thus proceed to strike out the entire suit with costs. Order accordingly.

**DATED at DAR ES SALAAM** this 15<sup>th</sup> September, 2023.



  
L. HEMED  
JUDGE