

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

AT DAR ES SALAAM

LAND CASE NO. 138 OF 2023

CHARLES RIWA MAREALLE (As administrator of the Estate of the late Robert Moshi Marealle).....PLAINTIFF

VERSUS

LADY ANNA LISSO MAGANDA (As Administratrix of the Estate of the late Obadia Lukona)DEFENDANT

RULING

12th October, 2023 & 28th November, 2023

L. HEMED, J.

It was on 12th October 2023, this matter, Land Case No. 138 of 2023, was called for commencement of the Plaintiff's case. On the particular date, **Dr. Alex Nguluma**, advocate who appeared to represent the Defendant, recorded two points of law for determination.

The points were such that: -

"1. Whether the Plaintiff has shown any cause of action.

2. Whether the suit has been filed within the time limit permitted by the law."

The said points were to be addressed by way of written submissions. According to the directed schedule, submissions in chief



were to be filed by 19th October 2023; Reply submissions by 26th October 2023; and Rejoinder if any, was to be filed on or before 2nd November 2023. I have noted that parties who were actively served by **Ms. Bumi Mwaisaka**, advocate and **Dr. Alex Nguluma**, advocate promptly complied with the order of the court.

The 1st limb of objection was on whether the Plaintiff has raised any cause of action against the defendant. According to the Oxford Dictionary of Law, 5th edition; cause of action has been defined as;

"The facts that entitle a person to sue. The cause of action may be a wrongful act, such as trespass; or the harm resulting from a wrongful act,..."

The cause of action is the legal basis for one to institute a suit in court. Without existence of a valid cause of action, a suit cannot stand. In ascertaining whether cause of action has been raised or otherwise, one has to look at the plaint and annexures thereof. This point was well articulated by the late Hon. Kisanga, JA in **John M. Byombalirwa vs Agency Maritime International (T) Ltd** [1983] TLR 1 that: -

"... in considering whether or not the plaint discloses a cause of action only the plaint should be looked at;..."

Arguing in support of the point objection, Dr. Nguluma asserted



that it is apparent on the face of the Plaintiff that it does not contain any cause of action against the Defendant. He cemented his arguments by the decision of the court in **John Mwombeki Byombalirwa vs Agency Maritime International (T) Ltd** (supra). According to the learned counsel for the defendant, even the supporting annexures do not demonstrate a valid cause of action against the Defendant. He eventually prayed for the suit to be struck out with costs.

In reply thereto, the learned counsel for the plaintiff contended that the plaintiff has disclosed cause of action through paragraph 10 of the plaint and paragraph 11 of the Reply to the written statement of Defence which is the refusal by the Defendant to sign transfer documents and intention to resale the disputed Land.

In his rejoinder submissions, the learned counsel for the defendant reiterated his submissions in chief. He stated further that, if the plaintiff was aggrieved by the decision of the Commissioner for Lands not to approve the transfer, the only recourse would be to initiate a judicial Review seeking for mandamus order against him

Having gone through the rival submissions, it is apt to determine

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whether the 1st limb of objection is meritorious. In his written submissions the counsel for the Plaintiff asserted that the cause of action has been disclosed in paragraphs 10 of the Plaint and 11 of the Reply to the written statement of defence. I have revisited the said paragraphs which I have decided to reproduce them hereunder. Paragraph 10 of the Plaint reads: -

"10. That, the Plaintiff drafted transfer documents and asked the Defendant to sign them but the Defendant refused. The Plaintiff through his advocate prepared a Demand Notice requiring the Defendant to sign the transfer documents and contacted her through Plaintiff's advocate and Court process server but she refused to receive the same."

Paragraph 11 of the reply to written statement of defence reads: -

"That, on 7th April 2022, Advocate Albert Msangi, the Estate Agent and the Defendant once again visited the suit property and the Defendant introduced herself to the caretaker as the owner of the suit property and that she wants to sell it. Once again the caretaker informed the Plaintiff who went to meet them at the suit property. After failure in understanding each other, they all agreed to meet the day after at commissioner for lands, office for clarifications."

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From the two (2) paragraphs reproduced herein above, no cause of action has been disclosed capable of being determined by this court.

In paragraph 10 of the Complaint, it has been stated that the Defendant refused to sign the transfer documents. In my firm view, refusal to sign transfer documents alone does not constitute a cause of action on land dispute. The Plaintiff has not stated the status of the defendant as regard the suit landed property. The Plaintiff has not stated as to why he demanded the defendant to sign the transfer documents. Was the defendant a vendor? Stating the capacity or status of the defendant was important in establishing the wrongful act committed by the Defendant to constitute the cause of action.

I have also noted from the Complaint that, the plaintiff has levelled blames against the Commissioner for Lands for having refused to effect transfer of ownership of the disputed land to the plaintiff and for misplacement of the transfer documents. The way the Complaint has been drafted, it appears that the Plaintiff has claims and grievances against the Commissioner for Lands than the Defendants herein.

In the final analysis, it is my considered view that the

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defendant's acts of visiting the suit property, introducing herself as caretaker and refusing to sign transfer documents of the property which he never participated in its sale, does not constitute a good cause of action triable by this court.

In the upshot, the 1st limb suffices to dispose the entire suit. Being the case, I find no reason canvassing the other limb of objection. I do hereby strike out the entire suit with costs for want of cause of action. It is so ordered.

DATED at **DAR ES SALAAM** this 28th November, 2023.




L. HEMED
JUDGE