IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT ARUSHA

LAND CASE NO. 12 OF 2008

GODFREY M. NZOWA .....PLAINTIFF/DEFENDANT

VEERUS

SULEMANI KOVA .....1ST DEFENDANT/PLAINTIFF

PERMANENT SECRETARY MINISTRY OF WORKS.....2ND DEFENDANT

THE ATTORNEY GENERAL .....3RD DEFENDANT

JUDGMENT

22/12/2022 & 17/03/2023

GWAE, J

This suit is the source of the Government decision to sell its residential houses /quarters throughout the country occupied to her Civil Servants. A residential house No. 203 or House No. 140 on Plot No. 40 Block '3' Sekei area Arusha Municipality ("suit premises") being among the government houses targeted for the sale exercise.

In the year 2001 the plaintiff, Geofrey Nzowa and 1st defendant, Selemani Kova were simultaneously transferred to Arusha and Kigoma Region respectively. Both plaintiff and 1st defendant were by then serving in

the Police Force at the rank of Regional Crime Officers (RCOs). The plaintiff and 1st defendant handed over their respective former duty stations on 8th January 2002, the suit house was inclusively handed over to the plaintiff who from that period to date is the occupant of the same. However, in the process of disposing of Government houses, the suit premises was sold to the 1st defendant instigating the plaintiff's institution of this civil suit which was initially heard and determined by my learned sister (**Massengi, J** now a retired judge).

According to the plaintiff, the disposition exercise of the government houses was after proclamation by his Excellency, the late Benjamin Mkapa on 1st May 2022 when he was already in the occupancy of the suit premises. This Court (Massengi, J) entered the verdict in favour of the 1st defendant. Dissatisfied with the judgment and decree of the trial predecessor, the plaintiff filed an appeal to the Court of Appeal of Tanzania through Civil Appeal No. 183 of 2019.

Thus, this judgment being the result of the decision of the Court of Appeal of Tanzania dated 15th November 2021 remitting the matter to this

court for trial denovo after joinder of necessary parties namely; Permanent Secretary Ministry of Works and Attorney General now the 2nd and 3rd defendant respectively. The plaintiff, subsequent to the judgment of the Court of Appeal filed his amended plaint on 18th July 2022 praying for judgment and decree against the 1st, 2nd and 3rd defendant jointly and severally as follows;

(a) A declaratory order that the plaintiff was the legitimate and rightful employee in civil Service entitled to purchase the suit land

(b) A declaratory order that the sale agreement executed between the 1st defendant and 2nd defendant in respect of the suit house is illegal, null and void ab-initio

(c) An order nullifying the Certificate of Occupancy No. 30906 (Land Registry-Moshi) in the name of the 1st defendant

(d) An Order by way of permanent injunction to perpetually restrain the defendants, their agents, servants, and or assigns from interfering with the plaintiff's peaceful and

continuous occupation of the suit house

(e) General damages as may be assessed by this court

(f) Costs of this suit

Upon service of the plaintiff's amended plaint, the 1st defendant filed his amended written statement of defence refuting the plaintiff's claims and requiring him to strict proof thereof. The 1st defendant further contends that the plaintiff has been unlawfully occupying the suit premise since he is the one who accepted the 2nd defendant's offer and paid the purchase price and now the suit property is registered in his own name.

He thus set a counter claim, a cross suit against the plaintiff seeking the following reliefs and orders; **first,** an order of eviction of the plaintiff/defendant (hereinafter to be referred to the plaintiff). **Second**, an order against the plaintiff to pay the arrears of rent at the rate of US$ 400 per month from 2002 until the plaintiff vacates the suit premises. **Third**, an order against the plaintiff to pay the costs for restoration of the premises in habitable condition at the sum Tshs.100, 000, 000/=. **Fourth**, the plaintiff be condemned to pay costs of this suit and **Firth**, any other reliefs this court

deems fit to grant.

Through their joint amended written statement of defence, the 2nd and 3rd defendant sought for an order of the court dismissing the plaintiff's suit on the ground that, the Government process of selling her houses commenced since October 2021 by identifying the houses for sale and their occupants therein. That means before the 1st defendant being transferred to Kigoma Region. They further stated that the sale agreement between the 2nd and 1st defendant was lawful and in accordance with the procedure stipulated by the Government of the United of Tanzania.

In his reply to the defendants' amended written statement of defence and as well as to the 1st defendant's counter claim, the plaintiff stated that, the sale by TBA prior to 17th May 2022 was illegal and ineffectual. He also averred that, the letter dated 4th October 2004 is an afterthought and same did not nullify the letter dated 19th June 2002.

In regard to the counter claim, the plaintiff stated that he is in unlawfully occupying the suit property since January 2002, He finally argued that the 1st defendant's claim of US$ 400 is unfounded and unjustifiable. He

further defended that, the suit premises is habitable.

Throughout the preliminary hearing and hearing of the case, **Ms. Neema Mtayangulwa**, the learned advocate duly represented the plaintiff whereas the 1st defendant was represented by Pascal Kamala (advocate). **Mr. Peter Musetti** assisted by **Mkama Musalama**, both the learned state attorneys were for the 2nd and 3rd defendant. Having involved the parties' counsel, the following are the issues that were framed immediately before beginning of the trial;

1. Who between the plaintiff and 1st defendant was entitled to purchase the House No. 203 and or House No. 140 as of now Plot No. 40 Block "3" situate at Sekei Street-Arusha Region (suit property)
2. Whether the sale agreement between the 1st defendant and 2nd defendant regarding the suit property was null and void
3. Whether the offer to sale the house No. 17 "A" Heri Avenue in Kigoma Region by the 2nd defendant's to the plaintiff was communicated
4. Whether the process of disposing Government houses to her civil servants commenced before 1st May 2002

5. Whether transfer and Registration of the suit property in the name of the 1st defendant was lawful
6. Whether the 1st defendant is entitled to specific damage of Tshs US$ 400 per month being rental fees from 2002 to the date the plaintiff vacates from the suit property
7. What reliefs are the parties entitled to?

In proving his claims against the defendant via his amended plaint, the plaintiff was able to summon his two witnesses that is, himself (PW1) and another person known by name of **Qunidert Kandidus Nduguru** (PW2) (retired police officers). Through his sworn testimony, PW1, a retired police officer who retired at the rank of the Senior Assistant Commissioner of Police (SACP), therefore a civil servant who was entitled to purchase the suit property like others since he was in possession and occupancy of the suit property since January 2002.

He went on testifying that, while on duty on 1st May 2002 at Sheikh Ameir Abed Stadium to attend May Day, his Excellency, the President of The united Republic of Tanzania, Hon. Benjamin Mkapa, the Guest of Honour on the material date, proclaimed the sale of the Government houses to the

public servants residing therein. Thereafter the proclamation, he went to Ministry of Works at Arusha and asked as to procedures of buying the said Government houses. He initiated the process of purchasing the suit premises but surprisingly he came to learn that, his colleagues whose transfers were of the dates like him were permitted to purchase police tied houses in which they were living unlike him.

After his follow ups to his superior officer, IGP in particularly, he came to learn that, the suit house was sold to the 1st defendant and eventually he received a letter dated 19th June 2002 (PE1) written by the Chief Secretary and copied to him informing him that, he would continue living in the suit property peacefully and quietly. Subsequently, his receipt of PE1, he received a copy of the letter 28th February 2008 (PE2) from the Ministry of Works addressed to the Permanent Secretary, Ministry of Home Affairs informing him that the suit house was sold to the 1st defendant.

The plaintiff's evidence is further to the effect that, he did not refuse to accept the residential house situate at Kigoma Region, house No. 17A and that the 1st defendant fraudulently wrote wrong information that, he was

dwelling in the suit property while in actual sense he was living in the house No. 17A Heri Avenue area in Kigoma Region. That, the 1st defendant formally vacated the suit house on 8th day of January 2002. The plaintiff also testified that he issued a demand notice (PE3) to the 2nd and 3rd defendant as required by the law. The plaintiff went on testifying that on 15th May 2002 the TBA or its Principal would not sale or offer the house to the 1st defendant prior to 17th May 2002 which is the date of TBA's establishment, date before the date of the President's proclamation.

The plaintiff also testified that the 1st defendant did not adhere to the stipulated procedure in obtaining the certificate of occupancy as there was existence of the dispute between them. Making his defence to the counter claim, the plaintiff contended that, the same is futile since the issue of ownership has not been resolved and that he is living in the suit property. He further contended that the 1st defendant's assertion that, the disputed house is not habitable, is unfounded since the 1st defendant never entered the house since 8th January 2002.

When probed by the 1st defendant's counsel as to the one who was in

control of the government buildings prior to the establishment of TBA he stated that, they were under Ministry of Works. The plaintiff also stated that, he did not produce the President's announcement made on 1st May 2002 and that he orally applied to be offered the suit house. When cross-examined by Mr. Mkama on the commencement of the sale of the Government houses, he said that, he did not know when the disposition of the Government houses commenced,

When re-examined by Ms. Neema Mtayangulwa relating to the date on which Government started disposing her houses to the civil servants, the plaintiff stated that, the process of selling the Government buildings came in operation immediately after establishment of Tanzania Building Agency, TBA on 17th day of May 2002.

Corroborating the evidence adduced by the plaintiff, PW2 stated that on 1st May 2002 while on patrol duty together with PW1 he unmistakably heard the proclamation by the President of the sale of the government houses. PW2 added that prior to 1st May 2002, he had never heard such intention of the Government to sale her houses.

On the other hand, the defendants entered their defence meanwhile the 1st defendant gave evidence to prove his counter claim. The 1st defendant as a sole witness of his case as DW1 and he was able to tender eleven (11) documents whereas the 2nd and 3rd defendant called one witness (**Togolai Kimweri Makumba**, the former chief executive officer-TBA herein DW2) on their behalf. There were also five exhibits tendered in favour of the 2nd and 3rd defendant.

The evidence against and for the amended plaint and counter claim respectively was adduced by the 1st defendant and it is as follows; that, he worked as RCO in Arusha from 11th June 2000 until 8th January 2002. That, while in Arusha Region as RCO, he was living in the house No. 203 or 140 Sekei area- Arusha. The 1st defendant went on testifying that, one manager called Mr. Sangawe procedurally allocated the disputed house to him for residential purposes via allocation letter dated 23rd June 2000 (DE1) issued by the Ministry of Works.

Similarly, he testified that, he heard the news of the Government mission to sell her houses to her employees living therein while in Arusha on 1st May

2002. Having heard such news, the 1st defendant went to the office of the Ministry of Works where he was duly supplied with application form. He substantiated his testimony by tendering the letter of sale dated 15th May 2002 and Form of Agreement of sale of the Government No. 0688 that were admitted (DE2). He went on adducing that shortly, while in Kigoma Region, he received a letter dated 7thJuly 2002 (DE3) from Chief Secretary, CS relating to the complaints on the suit property exhibiting that there was misinformation.

He went on to testify that he could not take form for the purchase of the house in Kigoma since he had already filled the application form for the house in Arusha and that is why he was paying house rents for Kigoma Residential house. He then supported his evidence that he was paying rental fees by producing receipts (DE4) from February to December 2003 and sale agreement dated 13thJanuary 2004 (DE5) between the 2nd defendant and him.

Moreover, the 1st defendant testified that after he had purchased and completed paying the purchase price of the disputed house through TBA's

letter dated 29th May 2006 (DE10) and being issued with sale agreement, he made endeavors to have vacant possession of the suit house in futile. He wrote follow up letter 20th November 2006 to TBA (DE6) followed by TBA's notice to vacate dated 24th November 2006 (DE7) addressed to the plaintiff as well as to the IGP via letter dated 3rd July 2007 (DE6). The 1st defendant also told the court that the plaintiff did not comply with the directives given to him by higher authorities despite the fact that, he was issued with letters directing him to vacate. In support of his assertion, he tendered two letters that is IGP's letter dated 31st March 2008 (DE8) and 3rd June 2008 (DE9) as well as the Certificate of Title (DE11) issued in 2010

Finally, the 1st defendant substantiated his counter claim against the plaintiff by testifying that, the plaintiff is illegal occupant since he accepted the letter of offer on 17th May 2002 in his favour. That, the plaintiff's acts of remaining and dwelling in the suit premises constitute a denial to collect US$400 as rental fees per month, making a total of more than 200, 000, 000/= He added that, the suit house is currently dilapidated as per his personal investigation.

When cross-examined as to the issuance date for the certificate of title, the 1st defendant admitted that the same was issued while the dispute was pending in court.

The 2nd and 3rd defendant through their sole witness, DW2 made the following defence, that, TBA was established when the Government took decision of reducing its ministries through the Commission known as "**Tume ya Mramba**". However prior to the TBA's establishment there was a GN No. 7 of 2001. Subsequently, there was an establishment of TBA. DW2 tendered letter dated 1st October 2001 (DE12) and the dated 25th September 2002 (DE13) stressing the implementation of the decision of the Ministers' Cabinet Na. 7 of 2001 followed by the President Speech delivered on the 1st May day of 2002 establishing TBA formerly known as department of buildings. DW2 went on testifying that the identification of the houses for sale to the civil servants commenced from July 2001 when the 1st defendant was the a resident of Arusha and occupying the suit house. He substantiated his testimony by producing, the 2nd defendant's letter (DE13) addressed to the Arusha Regional Administrative Secretary (RAS).

DW2 also adduced to the effect that, the 1st defendant was not only the person who was issued with the letter of offer to purchase the suit house

which he was residing by virtue of being an employee of the Government but, also the plaintiff offered a house located in Kigoma through TBA's letter dated 17th June 2002 (DE14).

DW2 Added, that following the complaints relating to the suit house and other houses by police officers and other civil servants, he did conduct investigation, eventually discovered that, the 1st defendant lawfully and procedurally purchased the suit house. Upon investigation and its result, the plaintiff was subsequently issued with two letters. These were; a letter from Ministry of Works dated 4th October 2004 (DE15) and the one dated 9th January 2004 (DE16) notifying the plaintiff that the 1st defendant is the lawful buyer of the suit property and that, he was given an offer to buy the House No. 17A located at Heri Avenue in Kigoma Region.

When cross-examined by the plaintiff's counsel on whether the plaintiff was in Kigoma on 9th January 2004, DW2 replied that he was not aware of the plaintiff's transfer and that, the dead line for valuation of the government houses identified for sale was 30th October 2001.

After close of the parties' case, the counsel for the parties sought and obtained leave of the court to file their closing written submissions. The plaintiff and 1st defendant subsequent to the court leave filed their closing

submissions however, the 2nd and 3rd defendant did not file. Perhaps as of now, I would wish to heartedly thank the parties' counsel for their fruitful efforts towards making of this judgment.

Now to the determination of the issues above. Starting with the **1st issue** which reads;

> *"Who between the plaintiff and 1st defendant was entitled to purchase the House No. 203 and or House No. 140 as of now Plot No. 40 Block "3" situate at Sekei Street-Arusha Region (suit property)."*

It is plainly clear from the evidence adduced by both plaintiff and 1st defendant that, were the Government employees who were servicing in Police Force and that both happened to be occupant of the suit property. It is also undisputed fact that, the plaintiff effectively from 8th January 2002 to date is still dwelling to the suit house. It is further clear that, the letter dated 19th June 2002 from the 2nd defendant's Permanent Secretary addressed to IGP (PE1) was instructive that, the plaintiff was to remain residing in the suit house while the issue of sale of the suit property was being resolved by responsible authorities.

It is the plaintiff's version that, the sale of the government houses commenced on 1st May 2002 or after establishment of TBA on 17th May 2002

whilst the 1st defendant's version is that the disposition of some of the houses commenced even before 1st May 2002. The 1st defendant's version is heavily substantiated by allocation letter issued by Arusha Housing Committee Pool "A" & "B" dated 23rd June 2020 in his favour (DE1), the application. 2nd defendant's letter dated 15th May 2002 and its agreement form Na. 0688 (DE2) as well as the 1st defendant's letter of complaints to the 2nd defendant's minister (DE4). Also, Sale agreement dated 17th January 2004 (DE5). TBA-Arusha letter dated 24th November 2006 (DE7), followed by another TBA-HQ letter dated 29th May 2006 (DE10) and certificate of title (DE11) TBA's letter dated 29th May 2006 (DE10

Equally, I have examined the DE13; the letter dated 25th September 2002 demonstrating that, the Ministers' Cabinet via GN No. 7 of 2001 is the one which initiated the sale exercise of the Government houses. In that letter it is indicative that, the identification exercise of the government houses to be sold was conducted between July 2001 and December 2001 as vividly depicted by DE13, for clarity parts of that letter is reproduced herein;

> *"Nyumba hizi ambazo idadi yake ni 3000 ndizo zinazouzwa kwa watumishi wa Serikali ambao wanaishi humo. Zoezi la kuhakiki Watumishi wanaoishi katika nyumba hizo lilifanyika kati ya Julai 2001 and December 2001."*

According to the quoted parts of the letter, DE13, in my considered view, it is vividly clear that, identification of the government employees residing in the houses planned for sale to the public servants was subject to the 2nd defendant's Permanent Secretary circular whose directive was that the identification was to start from July 2001 and ending on December 2001. Therefore, the submission by the plaintiff's counsel that, no documentary evidence that, was produced establishing that the identification was made prior to the public announcement by the President is not backed by the parties' evidence save that, there was no list of public servants identified living in the houses fit for sale during the said exercise.

I have also scrutinized the TBA letter addressed to the Ministry of Home Affairs PE2, entails that the process to dispose the government houses commenced since 2001. However, the process was yet to be concluded when the plaintiff and 1st defendant were transferred to their respective duty stations, Arusha and Kigoma respectively.

With the above consideration, I am not convinced by the plaintiff's testimony and submission by his learned counsel that, the identification started immediately after the speech by his Excellency, the President of the United Republic of Tanzania. I am saying so simply because; it is the sale,

which commenced subsequent to the speech delivered on 1st May 2001 as evidenced by DE2. How could it be possible to identify 3000 houses across the country within such short period? It follows therefore; the identification must have started before Public announcement of 1st May 2002 as adduced by the defence that is, after the decision of the Cabinet followed by the directives given by the 2nd defendant's Permanent Secretary, through his letter of 1st October 2001 (DE12) requiring completion of identification of the houses to be 30.10.2001. DE12 followed by the letter dated 25th September 2002, (DE13-Mpango wa Serikali wa Kuwauzia Watumishi wake nyumba za Kuishi written by the 2nd defendant's Permanent Secretary (The late Hon. Kijazi) and addressed to RAS-Arusha).

The words used "sale of the government residential houses to her employees who are living therein" ("Watumishi wa Serikali ambao wanaishi humo" or unayoishi") as revealed in the sale agreement (DE4) and 2nd defendant's letter of 25th September 2002 (DE13), are the source of this dispute. However, it is my considered view that. those words connote the houses in which employees were found living during identification exercise or were found living at the exercise and were still living at implementation of the sale of the government houses.

To interpret otherwise would bring curios since the identification of employees living in the government houses intended for sale to civil servants must have a starting and ending point taking into account that, transfers of the government employees is the regular exercise, therefore identification of those who were in the government houses could not be continuous exercise. Hence, by December 2001 or earlier is when the identification ended. Therefore, by 2001 the plaintiff was not in occupation of the suit premises except the 1st defendant.

Similarly, I am of the firm opinion that, the plaintiff has failed to prove if the 2nd defendant had given him an offer to purchase the suit house and if he accepted such offer, if any, or if he actually applied for being allocated. I am of that view for an obvious reason that, Governments move on papers (on records) and not mere assertions. Thus, the plaintiff ought to have produced documentary evidence such as application form, letters of complaints in relation to his entitlement to purchase the suit property to the responsible authorities. In **Siraj Din v Ali Mohamed Khan** [1957] 1 EA 25,

> *"The quantum of proof ordinarily required in civil litigation is not such as resolves all doubt whatsoever but such as establishes a preponderance of probability in favour of one party or the other."*

According to both oral and documentary evidence adduced by the 1st defendant and considering the letter (PE1) which, in my opinion, it essentially notified the plaintiff to continue living in the suit house while the issue, on who was entitled to purchase the suit house between the two was being worked on. However, PE1 was preceded by other letters from the responsible authorities informing him that, the suit house was lawfully sold to the 1st defendant. It follows that, the 1st defendant has proved to the required standard that, he was entitled for the purchase of the suit premises by virtue of being in occupation when the identification exercise of the civil servants occupying the government houses was conducted that is in the year 2001.

*Coming **2nd issue** on whether the sale agreement between the 1st defendant and 2nd defendant regarding the suit property was null and void*

At the outset, I am of the increasingly view that, the sale agreement entered between the 1st defendant and 2nd defendant constitutes a contract. It is the evidence by the plaintiff that he was grossly prejudiced since he was the one entitled to purchase the suit house. Hence, the 1st defendant

unlawfully purchased the suit premises through DE2. On the other hand, it is the stance of the 1st and 2nd defendant through their evidence that, the sale agreement was lawful and with free consent by both parties. The 2nd defendant offered to sell the suit house and the 1st defendant reciprocally accepted to buy it. As held in the first issue the process of the sale of the Government buildings commenced since 2001, therefore speech by the President was just an implementation of what was decided by the Ministers' cabinet. In **Zanzibar Telecom Ltd vs. Petrofuel Tanzania Ltd,** Civil Appeal No. 69 of 2014 (Unreported) construing the Law of Contract Act had

> *"It is crucial to point out however, that contracts begin by an expression of a proposal/offer, and that in terms of section 7 of the Contract Act; for such a proposal by the offeror to become a binding promise it must be absolutely accepted by the offeree. Under section 8 of the said Act, performance is amongst the modes of acceptance."*

In our present civil suit, the 2nd defendant as the legal entity is the one which offered the sale of the suit house to the 1st defendant (offeree) who accepted the offer by signing the sale agreement No.0688 (DE5). Both 1st and 2nd defendant were therefore competent persons to enter into a valid contract.

It is therefore my considered opinion, that, the works done or initiated

by the department of buildings (predecessor department) in the Ministry of Works would be smoothly carried out by its successor (TBA). Therefore, the establishment of TBA on the 17th day of May 2002 did not mean to a total abstinence of whatever was done by her predecessor but continuation of strengthening and enhancement of the former works executed by the defunct department of government buildings.

Now, as to whether the contract between the 1st and 2nd defendant was void. In order to be safer in determining this issue, I should apply and consider the applicable provision (s) of the law, section 10 of the Law of Contract, Cap 345, Revised Edition, 2019 Reads;

> *"10. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void:*
>
> *Provided that, nothing herein contained shall affect any law in force, and not hereby expressly repealed or disapplied, by which any contract is required to be made in writing or in electronic form or in the presence of witnesses, or any law relating to the registration of documents".*

Being guided by the above quoted provision of the law, in order for a contract to be null and void it must have been fraudulently made, or made

by incompetent person like unsound or minor person or it must be illegal or immoral (See section 24 of the law of the Contract Act (supra)). The counsel for the plaintiff endeavored to persuade the court in her submission that there is fraud in that the one who wrote PE2 and DE2 (DW2), pretended to be an employee of 2nd defendant whereas he was from TBA. I am of the view that TBA was and is still under the Ministry; of Works /infrastructures hence the addresses appearing on the headed papers do not constitute any fraud or misrepresentation. Further to that, DW2 was the Chief Executive Officer.

The truth that, the plaintiff was in occupation of the suit property as reflected by the 2nd defendant's letter dated 19th June 2022 and as opposed to the offer signed on 15th May 2002 and 27th May 2002 (DE2) as well as the 2nd defendant's letter dated 17th June 2002- DE14, in law would amount to fraud or misrepresentation. I am of that view merely because it is certainly clear that, the 1st defendant was not in occupation of the suit property since 8th day of January 2002. However, the documentary pieces of evidence (2nd defendant's letter dated 1st October 2001 (DE12), the 2nd defendant's letter –-kuanzisha Wakala wa Majengo of 1st October 2001-DE13) tendered by the defence has sufficiently given reasons as to why the 1st defendant was

considered to be in occupation of the suit premises. Basing on the above reasons, the 2nd issue is answered not in affirmative. Consequently, the sale agreement between the 1st and 2nd defendant is valid.

> *As to the **3rd issue**, whether there was an offer to sale the house No. 17 "A" Heri Avenue in Kigoma Region by the 2nd defendant's to the plaintiff was communicated*

According to the evidence adduced by the plaintiff, the 2nd defendant or her agency (TBA) did not offer him the government house No. 17A situate at Heri Avenue in Kigoma Region. The defence evidence is on the other hand to the effect that, the plaintiff was given an offer to the said house in Kigoma where he was residing prior to his transfer to Arusha Region. Substantiating the defence stance, the 2nd defendant through her sole witness, DW2 produced the letter dated 17th June 2002 indicating that the plaintiff was offered the dwelling house in Kigoma Region. The plaintiff seriously challenged this piece of evidence and when DW2 probed as to whether by 17th June 2002 (DE14), the plaintiff was a resident in House No. 17A and on whether his address was Kigoma by then, his reply was to the negative by stating that he was not aware of the plaintiff's transfer.

It is quite wrong, in my view, to assume that the letter, DE14 was re-

sent to the plaintiff in Arusha since the same might have not reached him for one or other reason. However, as per DE14, it is clear that, the offer to sell the House No. 17A in Kigoma Region was given in his favour by the 2nd defendant. More so, in the year 2004 the plaintiff was notified through the 2nd defendant's letter dated 9th January 2004 of the offer via his letter dated 17th June 2002. Therefore, had the plaintiff made communications with other responsible authorities, 2nd defendant in writing in particular, he would have produced a reply letter to the letter dated 9th January 2004 or his opponent would have done so for dispensation of justice if her letter was replied. In the case of **Brogden vs. Metropolitan Railway Co.** (1877) 2 App. Cas. 666 (HL) Lord Blackburn observed as under;

> *"I have always believed the law to be this, that when an offer is made to another party and in that offer there is a request express or implied that he must signify his acceptance by doing some particular thing, then as soon as he does the thing, he is bound".*

In our instant civil suit, the 2nd defendant vividly through DE14 (2nd defendant's offer of 17th June 2002) vividly made an offer to the plaintiff though not very clear if such offer was communicated or received and accepted by him. Nevertheless, through DE7-Notice to vacate followed by

DE8-notice to vacate, 2nd defendant's letter of offer dated 17th June 2002 and the letter dated 9th January 2004, the plaintiff ought to reply thereof or made follow ups relating to the house offered to him as earlier possible. As far as the 3rd issue is concerned, I find that, there was offer to sell the house at Kigoma Region in favour of the plaintiff but there is no tangible evidence that the same was communicated at the earliest as possible. This issue is therefore partly answered in affirmative and partly not.

> *In the **4th issue** on whether the process of disposing Government houses to her civil servants commenced before 1st May 2002"*

The main controversy between the parties is when exactly the process of selling the Government houses to her servants for residential purposes started, was it before 1st May 2002 or immediately after the speech delivered by his Excellency, the President of the United of Tanzania? This issue has been discussed at length when determining the 1st issue as correctly submitted by the parties' counsel in their respective written submissions. I do not see any plaintiff's evidence which justifies the court to discredit the weight of the documentary evidence in this regard. The 2nd defendant's letter dated 25th September 2002 (DE13) is self-explanatory that, the identification

process of the government houses was conducted between July 2001 to December 2001.

Basing cogent evidence adduced by the defence including DE12 justifies this court to answer the 4th issue in affirmative (See **Income Tax v Kotecha Estates Ltd** (1971) 1 EA 63). Therefore, the process of selling the identified government houses to her servants commenced prior to 1st May 2002.

*In the **5th issue**, whether transfer and Registration of the suit property in the name of the 1st defendant was lawful*

According to the evidence adduced by both parties, it is evidently clear that, the 1st defendant did register the suit premises in his name and subsequently obtained the title deed (R/0) issued on 13th December 2010 while the matter was pending in court. Now, therefore this court is to determine whether the registration and obtaining of certificate of title with CT 30906 (DE11) are effectual or lawful. Since the sale agreement between the 2nd defendant and 1st defendant was found lawful as per the court's determination in the 2nd issue.

I am in agreement with the argument by the plaintiff's counsel that, powers given by the Parliament to the Public authorities are given to them upon trust and not for personal benefits of the ministers or official concerned however there must be proof with effect that there was an abuse of such powers. The plaintiff ought to have established fraud or forgery made by either the 1st defendant or 2nd defendant or both. The assertion that, there was illegality when the Department of buildings issued the offer (DE2) to purchase the suit house while the same was signed by DW2 (TBA's CEO by then) is not sustainable since TBA's CEO who signed the offer (DE2) on 15th May 2002 prior to its formal establishment since he was under the Ministry.

Correspondingly, formal establishment of an agency or institution does not mean that, prior to the date of its establishment there was no administration structure in place. Thus, before establishment of TBA there was Department of Government Buildings. In **Amina Maulid Ambali and 812 others v. Ramadhani Juma**, Civil Appeal No. 35 of 2019 (unreported), the Court of Appeal of Tanzania had these to say;

> *"In our considered view, when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be a lawful owner unless it is*

provided that the ***certificate was not lawfully obtained*** *(emphasis mine)."*

Likewise, this court **(Gwae, J)** sitting at Dar es salaam in **Joshua Joyboy Mungereza and another vs. Sophia Mohamed Farahani**, Land Case No. 249 of 2021 (unreported) faced the similar situation relating to registration of the suit land on unsurveyed land. The parties' dispute was referred to ward tribunal, on appeal by the plaintiff, the District Land and Housing Tribunal quashed ward decision and any business conducted by it for want of pecuniary jurisdiction. While the matter was still unresolved, the plaintiffs processed registration and issuance of certificate of title. This court found an existence of fraud due to, the following reasons; **firstly,** that, there is a serious controversy on ownership. **Secondly**, that, the defendant lodged complaint to the land formalization committee ("kamati ya urasimishaji"). **Thirdly,** the plaintiffs jointly did the registration and obtained CT while the defendant was in actual possession and **fourthly,** the land office at Kinondoni did not verify the plaintiffs' ownership over the suit as the CT was directly applied and obtained to the office of the Land Commissioner as well as the local government was skipped.

In this case, I am not convinced if there was fraud on the part of the 1st and 2nd defendant. Moreover, mere existence of a land dispute between the parties does not automatic operate as a bar to the registration and obtaining of a certificate of title. There ought to be, in my considered opinion, a lawful order restraining the 1st defendant from transferring ownership from the government to his own name.

Alternatively, he ought to have duly filed caveat with the Registrar of Titles pursuant to sections 79 and 78 of the Land Registration Act, Cap 344 Revised Edition, 2019 which is not the case in this matter. Similarly, the 1st defendant had all the necessary documents including the offer (DE2), sale agreement (DE5), letters dispossessing the and directing the plaintiff to vacate from the suit property and other documents establishing the 1st defendant's ownership. Hence, the former case is distinguishable from the present case. The registration of the 1st defendant's name to the suit premises was therefore lawful.

*Coming to the **6th issue,** whether the 1st defendant is entitled to specific damage of Tshs US$ 400 per month being rental fees from 2002 to the date the plaintiff vacates from the suit property*

It is the evidently clear that, the plaintiff has continuously denied to vacate from the suit house, hence, the 1st defendant's denial of the right of his personal occupation or collection of money through leasing it. DW1 testified that, he is otherwise entitled to US$ 400 per month from 2002 to when the plaintiff vacates from the suit property. The plaintiff on the other hand is found seriously contending that the 1st defendant is not entitled to the claimed rental fees since he was not entitled to purchase the house and that the claimed amount is unrealistic and unjustifiable. He further stated that the amount claimed for renovation is not justified by the 1st defendant's evidence.

The claim of US$ 400 per month falls under specific damage, that being the case the 1st defendant ought to have strictly proved it. I subscribe my finding by the authority in **Masolete General Supplies vs African Inland Church** (1994) TLR 192 where it was observed that;

> *"Once a claim for a specific item is made, that claim must be strictly proved, else there would be no difference between specific claim and a general one; the trial judge rightly dismissed the claim for loss of profit because it was not proved"*

See also the case of **Zuberi Augustino vs. Anicet** (1992) TLR 137

While it is true that, the house in dispute was of grade "A" as depicted in the allocation letter (DE1) yet the court is left in a dilemma as to estimated rental fees for leasing a house of grade "A" situate at Arusha City Council at Sekei area. The 1st defendant, in my view, was to do the needful in proving this specific claim such as lease agreement in relation to the neighboring houses to the suit property or any report from an authorized officer.

Nevertheless, the residential houses in Arusha City Council are bit expensive in terms of rental fees that is obvious. Hence, the 1st defendant must have suffered from losing payments of rent per month and per year from the date of the plaintiff's failure to vacate from the suit house. In the ordinary sense, at least half loss (US$ 200) of the claimed sum, must have been sustained as a pecuniary loss, which would otherwise be collected by the 1st defendant as monthly house rent. This position was judicially stressed in **Bashir Ally (Minor) suing by his next friend Fatuma Zabron vs. Clemensia Falima and two others** (1998) TLR 215 where it was held;

> "Considering the PWI had to travel all the ways from Kigoma to Dar es Salaam and back and the fact that she had incurred unnecessary expenses for transport, food and accommodation. I would allow sum of Tshs. 150,000/= "

Having found as herein above, I have to ascertain as to when payment of US$ 200 as rental monthly rental fees starts. I think that the same should start when the plaintiff was formally notified of the notice to vacate that is 19th January 2006 followed by notice of 24th November 2006. The 1st defendant is therefore entitled to rental fees from 1st January 2006 to the date of vacant possession or eviction from the suit house.

I am also of the view that, the 1st defendant has failed to prove to the required standard if the disputed house is now inhabitable. By testifying, that he observed that the house is currently dilapidated through his personal intelligence does not hold water.

Lastly, the 7th issue on reliefs that the parties are entitled.

Regarding the plaintiff's claims, as per the above deliberations, the reliefs in the amended plaint are baseless save that the plaintiff is declared that he was legitimate and rightful employee in the public service but he was not entitled to purchase the suit premises. The 1st defendant's claim on special damages and costs for renovations are as discussed in the 6th issue.

Concerning the 1st defendant's general damages which is assessed at the tune of Tshs. 50,000,000/=. In the circumstances of the case, the 1st defendant is entitled to general damages as he must have suffered general

damages. Since the 1st defendant's counter claim succeeds as to the above extent, therefore, he must have his cots of the case borne by the plaintiff as day follows night. The 2nd and 3rd defendant shall have no costs on the ground that, they did not closely make follow ups to ascertain if the plaintiff received the offer or not, instead of assuming that, he must have received the same or alternatively to diligently ensure that he received such offer but he refused it on his own peril.

Consequently, the plaintiff's case fails save that, the plaintiff was a civil servant who would be entitled to purchase a house in which he was found dwelling during identification exercise. The 1st defendant's counter claim succeeds to a great extent. I therefore enter judgment and decree for both suit and counter claim in the following terms;

1. That, the plaintiff is declared to have been legitimate and rightful civil servant who would be entitled to purchase a house among 3,000 identified for sale to civil servants **but not** the suit premises
2. That, the plaintiff should give vacant possession within **a month period** from the date of this judgment or be evicted after lapse of one month reckoning from today

3. That, the plaintiff shall pay rental arrears at the tune of US$ 200 per month from January 2007 to time of vacant possession
4. That, the plaintiff shall pay the 1st defendant the sum of Tshs. 50,000,000/= being general damages
5. That, the 1st defendant is **Not** entitled to Tshs. 100,000,000/= being the claimed amount for renovation of the suit land
6. That, the plaintiff shall bear the costs of this suit in favour of the 1st defendant

It is so ordered

DATED at **ARUSHA** this 17th March, 2023

M. R. GWAE
JUDGE

Court: Right of Appeal fully explained.

HIGH COURT OF TANZANIA

M. R. GWAE
JUDGE
17/03/2023