

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA
LAND CASE NO. 24 OF 2015**

**MRS RAZIA S.K. JANMOHAMED (Suing as Executor of
Sandrudin Kassam Janmohamed) PLAINTIFF**

VERSUS

MR. RAMZANALI KASSAM JANMOHAMED 1ST DEFENDANT

MR. FATEHALI KASSAM JANMOHAMED 2ND DEFENDANT

JUDGMENT

ROBERT, J:-

The plaintiff, Mrs. Razia S.K. Janmohamed, suing as Executrix of Sandrudin Kassam Janmohamed, her late husband, filed an action against the two Defendants herein jointly and severally claiming to be entitled to 1/3 shares of the property located at Plot no. 8, Block "K", Area "F" with Title No. 10094 L.R.M within the city and region of Arusha as tenant in common with equal shares. The plaintiff further prayed for an order prohibiting the Defendants from evicting her from the suit property and or proceeding with the construction on the suit premises.

Briefly, the Plaintiff's case is to the effect that, her husband Sandrudin Kassam Janmohamed, who is a brother to the two Defendants herein, died on 31st July, 1989 in Arusha region leaving a will in which he appointed the Plaintiff as a lawful executrix of his will and bequeathed all of his personal and real estate to his sons SAMEER, NADEEM, his daughter RENISA and the Plaintiff. Pursuant to that will, the Plaintiff obtained letters of probate in the High court of Tanzania at Arusha in Probate and Administration Cause No. 5 of 1990.

The Plaintiff alleged that in view of the death of her husband, the title deed for the landed property described as Plot no. 8, Block "K", Area "F" with Title No. 10094 L.R.M within the city and region of Arusha which was co-owned by her husband and his two brothers, the Defendants herein, was consequently registered in the name of the Plaintiff and the two Defendants as tenants in common with equal shares.

The Plaintiff alleged that, from late 2009 the Defendants jointly and severally have been using threats to evict her and other beneficiaries from the suit premises and attempting to convince the Registrar of Titles to alter the certificate of occupancy to show that the plaintiff and other beneficiaries do not have shares in the disputed property.

Consequently, the Plaintiff filed this suit claiming to be entitled to 1/3 shares in the disputed property as the trustee of the deceased's children and on her behalf as beneficiaries of 1/3 of the disputed Plot which is owned in common tenancy and prayed for Judgment and decree as follows:

- (a) A declaration order that the plaintiff is entitled to the one third (1/3) of whole value the house located at Plot Number 8, Block "K" area "F" with Title Number 10094 L.R.M within the region and city of Arusha.*
- (b) A permanent injunction against the Defendants, their servants, employers and whoever is acting under their instructions from entering and or interfering with Plaintiffs and his family smooth occupation and enjoyments on located plot number 8, block K, Area F with title number 10094 L.R.M within Arusha City and region of Arusha.*
- (c) An order for payment of general damages to be assessed by this honourable court.*
- (d) Costs of the case*

(e) Any other relief(s) as the court may deem fit to grant in the circumstances.

On the other hand, the Defendants in their joint Written Statement of Defence and Counterclaim denied the claims made by the Plaintiff and contended that the Title to Plot No. 8 Block "K" area "F" in Arusha city was originally issued to one SANTOK SINGH for a term of 33 years. On 26/10/1963 the said title was transferred to Kassam Janmohamed and his three sons namely, Fatehali Kassam Janmohamed, Sadrudin Kassam Janmohamed and Ramzanal Kassam Janmohamed holding the same as joint tenants which does not allow the right of survivorship. In 1971 Kassam Janmohamed died and according to the law the property remained in the ownership of his three children as the surviving owners. On 31st July, 1989 Sadrudin Kassam Janmohamed died and therefore the property is now owned by the two Defendants herein.

The Defendants further averred that the deceased Sadrudin Kassam Janmohamed could not have bequeathed the disputed property to his wife and children because under joint tenancy when a joint tenant dies he cannot have rights to be passed on to nominated beneficiaries in his will because the entire property survives to the remaining joint tenants.

The Defendants alleged further that the Certificate of Title No. 10094 which shows that the disputed property was occupied by the Plaintiff and Defendants as tenants in common in equal shares was obtained fraudulently by forging the signature of the first defendant who was not in Tanzania on 25th January, 1991 when the purported certificate of title was signed.

In their counterclaim, the Defendants prayed for the Judgment and decree against the Plaintiff as follows:

- (a) A declaratory order that the Defendants are lawful owners of Plot No. 8 Block K Area F in Arusha City with Title No. N.P.291
- (b) An order declaring title No. 10094 which includes the name of the Plaintiff as owner of Plot No. 8 Block K Area F in Arusha City null and void and of no legal effect.
- (c) An order declaring the change of ownership of title No. N.P. 291 from joint tenants to tenants in common null and void.
- (d) A permanent injunction order prohibiting the Plaintiff from interfering with defendant's ownership of the disputed property.

- (e) An order for payment of general damages for disturbances as may be assessed by this Honourable court.
- (f) Costs of the case.
- (g) Any further relief(s) as the Honourable court shall deem fit and just to grant in the circumstances of this matter.

When this matter came up for hearing, the Plaintiff was represented by Mr. Bharat Chadha, learned counsel, who was later assisted by Dr. Mchami, learned counsel, whereas the Defendants were represented by Ms. Frida Magesa, learned counsel.

At the final pretrial conference the following issues were framed and agreed by the parties: **First**, whether the Certificate of Title No. 10094 was issued lawfully. **Second**, who is /are the lawful owner(s) of the disputed property. **Third**, Whether the Defendants' claim over the suit property as joint tenants on the basis of the first Right of Occupancy (Annex D1 of the Counterclaim) is tenable. **Fourth**, whether the Plaintiff is entitled to 1/3 shares of the disputed property. **Fifth**, whether the cause of action in respect of the Defendants' counterclaim is time barred. **Sixth**, to what reliefs are the parties entitled.

The Plaintiff called four witnesses to establish their case namely, Razia S.K. Janmohamed (PW1), Juliana Ngonyani (PW2), John Sikay Umbulla (PW3) and Alex Joseph Shita (PW4) whereas the defendants called two witnesses namely Fatehal Kassam Janmohamed (DW1) and Ramzanali Kassam Janmohamed (DW2). However, DW1 was declared incompetent to testify under section 127(1) of the Evidence Act, Cap. 6 R.E. 2019.

Starting with the first issue, whether the Certificate of Title No. 10094 was issued lawfully. PW1 testified that, after her husband's death a land officer went to her shop to inquire as to why her husband had not gone to the Land Offices to collect a new Certificate of Title to the suit land which was already prepared. When she informed him that her husband had passed on, he asked her to take her husband's will and letter of administration to the land office, which she did. The Land officer showed her the Certificate of Title which was prepared for her husband. The said Certificate of Title and covering letter were received and marked exhibit P2 collectively. She stated further that, since her husband had left a will appointing her as executrix, another Certificate of Title No. 10094 was prepared which replaced her late husband's name with her name as executrix of the deceased.

She stated that she was given the Certificate of Title No. 10094 which she took to a lawyer for signature together with the second Defendant and they both signed it before the lawyer. Since the first Defendant was in Canada, the lawyer and other family members advised her to fill in the details of the first Defendant and sign the Certificate of Title on his behalf. She also communicated with the first Defendant who allowed her to fill the said certificate on his behalf. When the certificate was ready she asked her husband's friend to collect it from the Land registry in Moshi and brought it to her.

PW2, Juliana Ngonyani, Senior Assistant Registrar of Title in Arusha identified exhibit P1 to be a certified copy of the Certificate of Title No. 10094. She stated that the old title to the disputed land was issued in 1963, upon its expiry a new title was processed and issued. However, she stated that she was not aware how the disputed land evolved from the previous joint tenancy to the alleged tenancy in common. She informed the court that, according to the records in the Land registry, the owners of a piece of land in Plot No. 10094 are Fatehali Kassam Janmohamed, Ramzanali Kassam Janmohamed, and Razia Sadrudin Kassam Janmohamed as executrix of

Sadrudin Kassam Janmohamed the deceased. The three are owning the disputed land as tenants in common in equal shares for the term of 99 years.

PW2 stated further that the Certificate of Title was prepared by the Municipal council, if it happens that the signature of one of the owners was inserted by another person, the person against whom his signature was inserted by the other can apply in the office to have the right signature placed on the document. He also stated that if they discover that there is forgery, they can apply section 99 of the Land Registration Act, Cap. 334 to delete the Title.

PW4, Alex Joseph Shita, Senior Land Officer, identified exhibit P1 as a certificate of right of occupancy. It was issued on 25/2/1991 in respect of the disputed land, prior to it there was another certificate of title which was prepared in 1936 and was supposed to expire in 1969. The owner was Santok Singh who sold it in 1963 to Kassam Janmohamed, Fatahel Kassam Janmohamed, Sadrudin Kassam Janmohamed and Ramzanali Kassam Janmohamed. It was transferred to them as joint tenants. When the tenure of the first certificate came to an end a new offer was issued with different terms and conditions. The new terms changed it to tenancy in common in equal shares.

He testified further that if a person had forged a signature in a document he wouldn't know. It requires forensic expert to know. Legally a person is not allowed to sign on behalf of another person.

On the defence side, DW2, Ramzanali Kassam Janmohamed identified exhibit P1 as the certificate of title of the house where they are currently residing at Jacaranda street in Arusha. He stated that Mrs. Razia's name appear in the certificate of Title No. 10094 because she forged his signature and inserted her name as one of the owners of the house. She also changed the Title deed from joint tenancy to tenancy in common. He stated that, the previous certificate of title was under joint tenancy, it was owned by him, his father Kassam Janmohamed, and his brothers Fatehali and Sadrudin as joint tenants. When their father died, the three brothers remained as the owners of the dispute land. Later, their brother Sadrudin also died leaving the two brothers only. Then the Plaintiff took the title deed to a lawyer and inserted her name into the title deed. The Plaintiff inserted his name in the said certificate of title while he was in Canada and therefore he did not participate in that process. He maintained that, the Plaintiff knew that in joint tenancy if one tenant dies the remaining tenants occupies the property therefore she decided to change ownership from joint tenancy to tenancy in

common. He stated that the Plaintiff has no right in the joint tenancy. He prayed for the court to remove her name from the certificate of title.

In cross-examination he stated that he is a Canadian national since 1979. He visits Tanzania under a tourist visa. When exhibit P1 was issued he was still a Canadian national in Tanzania.

He testified further that, when his father died on 1st May, 1970 his brother Sadrudin was appointed as the administrator of estate. In 1980s the land office approved the application for the right of occupancy in the name of Sadrudin Kassam Janmohamed and Ramzanali Kassam Janmohamed as executors of the will of Kassam Janmohamed, the deceased.

He testified further that, he is not sure when the second certificate of occupancy was applied for and not sure if it was issued which lasted from 1970 to 1990. He was also not sure if there was a third application for certificate of title. He testified further that, his brother was the one dealing with these issues and further that, he reported the plaintiff to police station when he realized that his signature was forged. The police did not take the matter to court. He collected the certificate of title from the Plaintiff in 2003.

He also went to the Land Office to ask for rectification of the signature in order to put his signature.

From the evidence adduced by both parties, it is not disputed that the Title to plot No. 8 Block "K" Area "F" in Arusha city was originally issued in 1936 to one SANTOK SINGH for a term of 33 years which was supposed to expire in 1969. In 1963 ownership of the said plot was transferred to Kassam Janmohamed, Fatehali Kassam Janmohamed, Sadrudin Janmohamed and Ramzanal Kassam Janmohamed as joint tenants. In 1971 Kassam Janmohamed died and ownership remained to the three surviving owners. In March, 1989 a new letter of offer (exhibit P3) was issued to the three surviving owners after the expiry of the previous certificate of Title. A few months later, in July, 1989 one of the remaining owners Mr. Sadrudin Kassam Janmohamed also died.

Given that the suit property was occupied in joint tenancy, it would be assumed that after the death of Mr. Sadrudin the suit property was left in the occupation of the two Defendants as surviving joint tenants because of the right of survivorship. This means the deceased could not have provided for his rights to be passed on to nominated beneficiaries in his will because his rights would be entirely extinguished upon death. However, PW4

informed this court that, when the tenure of the first certificate came to an end a new offer (exhibit P3) was issued in March, 1989 with different terms and conditions. The new terms changed the Right of Occupancy from joint tenancy to tenancy in common in equal shares. Assuming PW4 is correct, it means when Mr. Sadrudin passed on in July, 1989 the occupiers of the suit land were entitled to a Right of Occupancy as tenants in common in equal shares and not joint tenants.

Exhibit P3 was addressed to Fatehali Kassam Janmohamed, Sadrudin Kassam Janmohamed and Ramzanali Kassam Janmohamed approving their application for a long term right of occupancy. It surrendered the right of occupancy prepared under the previous certificate of occupancy L.O. No. 44304 and required them to accept the new offer within thirty (30) days from the date of the letter of offer, after which the land would be disposed of. It also informed them that upon payment of fees and provision of requested information a new certificate of title containing new conditions would be sent for them to sign.

DW2, Ramzanali Kassam Janmohamed informed this court that he cannot read and he did not make an application for a long term right of occupancy while his brother Fatehali has been totally incompetent since 1950s, he

cannot read or understand. His brother Sadrudin, the deceased, was the one handling these issues. This implies that after expiration of the previous Right of Occupancy, the application for a long term right of occupancy was done by Sadrudin Kassam Janmohamed, the deceased. It also supports the testimony of PW1 that after the death of her husband the Land officer went to inquire about her husband and later showed her the certificate of occupancy and covering letter (exhibit P2 collectively) which were already prepared for her husband.

It seems therefore that exhibit P2 was prepared after fulfillment of requirements in exhibit P3. I have looked at exhibit P2 and noted that it entitled the named individuals, including the Plaintiff's husband Mr. Sadrudin Kassam Janmohamed, to a Right of Occupancy as tenants in common in equal shares for a term of 99 years from 1/7/1988.

However, PW1 recounted that, having showed the Land Officer her late husband's will and letters of probate, a new Certificate of Title No. 10094 (exhibit P1) was prepared substituting her husband's name with her name as the executrix of the estate of Sadrudin Kassam Janmohamed (deceased).

The question for determination is whether it was lawful for the Land Authorities to prepare another certificate of occupancy, exhibit P1, instead of the one already prepared, exhibit P2, after learning about the death of Mr. Sadrudin Kassam Janmohamed and replace his name with that of his wife. One of the conditions in the letter of offer as provided for under item 3(i) of Exhibit P3 is that, a request to have a certificate of occupancy issued in the name of a person other than the offerees cannot be entertained. The offerees in mentioned in exhibit P3 are the Plaintiff's husband, the late Mr. Sadrudin Kassam Janmohamed and the two Defendants. I am of a firm view that, the previous right of occupancy having changed into tenancy in common after the expiry of the first certificate of occupancy, nothing could prohibit the shares of Mr. Sadrudin from passing on to whomever is named in his will as executrix. Since the Land Authorities became aware of the death of Mr. Sadrudin before exhibit P2 was officially executed, it was not unlawful to issue exhibit P1 which had the effect of replacing the name of the deceased with that of the executrix.

I should also touch on a concern by DW2 that the Plaintiff forged the certificate of title by inserting his name in the certificate of Title No. 10094 when he was in Canada. As expounded hereinabove, DW2 is one of the joint

tenants who bought the suit land from the original owner. After the expiry of the previous certificate, he was mentioned as one of the offerees in the new letter of offer (exhibit P3) issued in March, 1989. The letter of offer required the new certificate of occupancy to be issued in the name of offerees and required the offerees to accept the new offer within thirty (30) days after which the offer would lapse and the land would be disposed of. Since DW2 was one of the offerees in the suit land, it is obvious that inclusion of his name in the Certificate of Title No. 10094 (exhibit P1) was done on that basis otherwise he would lose his right of occupancy over the suit land.

The certificate of Title No. 10094 (exhibit P1) indicates that during the signing of the said certificate of title, the Plaintiff is the one who identified DW2, Ramzanali Kassam Janmohamed to the Advocate. However, both the Plaintiff (PW1) and DW2 informed this court in their respective testimonies that during the signing of the certificate of occupancy DW2 was in Canada and therefore he did not sign the said certificate. This may mean that DW2 as an offeree under exhibit P3 did not sign the Certificate of Title No. 10094 in order to be entitled to the Right of Occupancy under the said Certificate of Occupancy.

PW1 informed this court that she was authorized by DW2 who was in Canada during the signing of the certificate of title No. 10094 to sign on his behalf. Based on the testimony of DW2 that he had left issues of ownership of the suit land to be dealt with by his brother Sadrudin, the fact that he collected certificate of Title No. 10094 from the Plaintiff in 2003 but there is no evidence that he complained about the alleged forgery and the fact that in exhibit D4 both the Plaintiff and Defendant had agreed to apportion the suit land on the basis of the certificate of Title No. 10094, this court has a reason to believe that DW2 had agreed and permitted the Plaintiff to sign the certificate of occupancy No. 10094 on his behalf. This court finds no evidence to establish that the Plaintiff forged the certificate of title. Either party may apply to the Registrar of Titles to rectify any error or omission caused by mistake or otherwise which do not affect the title to the suit land. For reasons stated herein, I find the Certificate of Title No. 10094 (exhibit P1) to have been lawfully issued.

The second issue seeks to determine who is /are the lawful owner(s) of the disputed property. Considering the provisions of section 40 of the Land Registration Act, Cap. 334 which regards a certificate of title as evidence of the several matters contained therein and the findings in the first issue above

that the Certificate of Title No. 10094 (exhibit P1) was lawfully issued in respect of the disputed property, this court finds the individuals mentioned in the said certificate of title to be the lawful owners of the disputed property. PW2, Juliana Ngonyani, Senior Assistant Registrar of Titles, informed this court that, according to the records in the Land registry, the owners of a piece of land in Certificate of Title No. 10094 are Fatehali Kassam Janmohamed, Ramzanali Kassam Janmohamed, and Razia Sadrudin Kassam Janmohamed as executrix of Sadrudin Kassam Janmohamed the deceased. The three are entitled to the Right of Occupancy as tenants in common in equal shares for the term of 99 years.

On the third issue, whether the Defendants' claim over the suit property as joint tenants on the basis of the first Right of Occupancy (Annex D1 of the Counterclaim) is tenable. The only witness who testified for Defendants was DW2. His testimony was not backed by any proof on the existence and tenure of the first certificate of title and it lacked details on how the first certificate of title is a basis for the Defendants' claim. He also seemed to be unfamiliar on how the process of ownership over the suit land had evolved in the course of time. During cross-examination, he stated that when his father died in May, 1970 his brother Sadrudin was appointed as the

Administrator of estate. In 1980 the land office approved their application for the Right of Occupancy in the names of Sadrudin Kassam Janmohamed and Ramzanal Kassam Janmohamed as executors of the will of Kassam Janmohamed, the deceased. He stated further that, he was not sure when the second certificate of occupancy which lasted between 1970 and 1990 was applied for or issued because his brother Sadrudin was the one dealing with these issues. The witness produced no evidence to support any of these assertions. On the other hand, PW4, Senior Land Officer of the City council, who came with records from the Land Office informed this court that the first Right of Occupancy in respect of the suit property was issued in 1936 and expired in 1969. The owners were Santok Singh who transferred it in 1963 to Kassam Janmohamed, Fatahel Kassam Janmohamed, Sadrudin Kassam Janmohamed and Ramzanali Kassam Janmohamed as joint tenants. This information is similar to what the Defendants stated in their Joint Written Statement of Defence that the Title to suit land was originally issued for a term of 33 years from 26/10/1963 which means the original certificate of Title expired in 1969. As alluded earlier in the first issue above, PW4 informed this court that when the tenure of the first certificate came to an end, a new offer was issued with different terms and conditions (exhibit P3)

subsequently, a new certificate of title No. 10094 was issued on the suit land. It is therefore basic that, the Defendants cannot claim any right over the suit property as joint tenants on the basis of the first certificate of Occupancy which expired in 1969 since the new certificate replaced for all purposes the expired certificate of title previously issued.

Coming to the fourth issue, whether the Plaintiff is entitled to 1/3 share of the disputed property. Section 45 of the Land Registration Act, Cap. 334 requires that, for a deed drawn in favour of two or more persons to be registered it has to express whether such persons are joint tenants or tenants in common, and, in the case of a tenancy in common, the share of each co-owner needs to be specified. Section 40 of the same Act regards a certificate of title as evidence of the several matter therein contained. The Certificate of Occupancy for Title No. 10094 entitles the three occupiers, including the Plaintiff herein, to a Right of Occupancy in and over the suit land as tenants in common in equal shares. PW4 testified that equal shares for the three occupiers of the suit land means each occupier has 1/3 share to the land. This means the share of each tenant in common, including the Plaintiff, is defined and fixed at 1/3 share of the property. However, considering the unified Right of Occupancy between tenants in a tenancy in

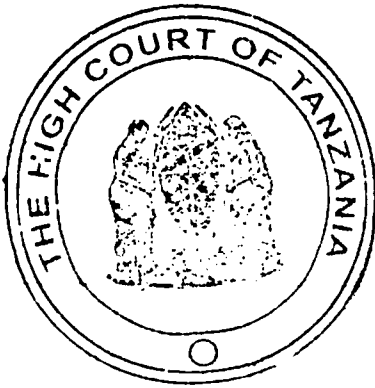
common, having 1/3 share of the disputed property does not mean the tenant in common can erect physical boundaries on any part of the co-owned land for their own use at the exclusion of all other co-owners.


The fifth issue sought to establish whether the cause of action in respect of the Defendants' counterclaim is time barred. According to the pleadings, the Defendants' counterclaim is based on the facts that the Plaintiff fraudulently and unlawfully obtained a new certificate of title for the disputed land on 25/1/1991 while the Defendants' title No. 291 was still subsisting and used the illegally procured certificate to raise unfounded allegations against the Defendants. However, in the course of hearing the Plaintiff did not adduce evidence to establish how the Defendants' counterclaim is time barred. Similarly, the Defendants did not establish how the Plaintiff obtained a new certificate of title for the disputed land fraudulently and unlawfully and whether the Defendants' title No. 291 was still subsisting on 25/1/1991 when the new certificate of Title was issued. This issue was therefore not proved.

Coming to the determination of reliefs sought by parties. From the evidence and findings above, I enter judgment in favour of the plaintiff against both Defendants and dismiss the Defendants' counterclaim. In the

result, I grant the prayers sought by the Plaintiff with an exception on the payment for general damages as the Plaintiff failed to provide any material information to warrant the assessment and award of general damages.

Order accordingly,




K.N. Robert
JUDGE
19/3/2021