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LEGAL NEWS

15 December 2023



Court of Appeal Rules on the Legality of Revocation of the Right of Occupancy by the President

On 7 December 2023, the Court of Appeal of Tanzania (the Court) issued its judgment in the case of Tanzania Milling Company Limited. vs. the Attorney General and the Commissioner for Lands, Civil Appeal No. 98 of 2020. In its decision, the Court fortifies the procedures to be observed in the revocation of the right of occupancy by the President.

1. Background of the Case

The appellant, Tanzania Milling Company Limited, had instituted Land Case No. 227 of 2012 (the suit) against the respondents, the Attorney General and the Commissioner for Lands (the Commissioner), the first and second defendants, respectively. The suit arose as a result of revocation by the President, of the appellant's right of occupancy over Plot No. 46/1 A/C/ situated at Pugu Industrial area within the City of Dar es Salaam held under certificate of Title No. 186075/24 (henceforth "the suit land"). The revocation was made by the President on 20 December 2012 at the instance of the second respondent.

The process of revocation started with an advertisement in the Majira Newspaper of 17 November 2011. The Ministry of Lands, Housing and Human Settlement Development (the Ministry) issued a notice reminding the holders of rights of occupancy who were in breach of the conditions contained in their certificates of occupancy. The notice communicated the Commissioner's intention to forward to the President for revocation under the provisions of sections 45(3) and 48(3) of the Land Act (hereinafter "the Act") the rights of occupancy over the specified plots of land on account of the occupiers' failure to comply with the terms and conditions of their rights of occupancy. The holders of the targeted rights of occupancy were given 14 days to show cause why that intention should not be carried out. The appellant's plot of land was among those which their occupiers' rights of occupancy were to be revoked.

The appellant responded to the advertisement by writing a letter to the Commissioner. In that letter, the appellant denied having received any previous notice as referred to in the advertisement. It also disputed the allegations of breach of the terms and conditions of its right of occupancy. However, it pressed its request that if there were any

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info@ecraattorneys.co.tz

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ECRA Attorneys Address

10th Floor-Left Wing, Mwanga Tower,
Komanya Street, Kijitonyama,
Dar es Salaam, Tanzania
T: +255 743 024 396 | +255 714 949 604
E: info@ecraattorneys.co.tz
W: www.ecraattorneys.co.tz

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breaches, remedial measures stipulated under section 47 of the Act should be resorted to instead of adoption, by the Commissioner, of a harsh and serious measure of revoking the appellant's title deed. The Commissioner did not reply to the appellant's letter and as stated above, its right of occupancy was revoked. It was reallocated to the Tanzania Investment Centre (TIC) which sold it to the company known as Tanzania Fish Process Limited at TZS 5,100,000,000.

2. Arguments Raised

The appellant was dissatisfied with the revocation of its right of occupancy, hence filed a suit before the High Court Land Division at Dar es Salaam (the High Court). In that suit, among others, the appellant argued to the effect that prior to the advertisement, the appellant had not been served with any notice of intention to revoke the appellant's right of occupancy. It learnt of that intention through the advertisement in the newspaper. The appellant averred that despite failure by the Commissioner to reply to the letter written to him seeking clarification regarding the nature of the violations of the applicable provisions of the law so that the appellant could remedy them, the Commissioner proceeded to advertise the suit land for sale. The appellant further argued that, it had complied with all terms and conditions of the right of occupancy, including payment of all land rent due, and that the Commissioner's allegations on the appellant's non-payment of land rent, hence accumulating a total liability of TZS16,000,000,000 was unfounded and baseless. The appellant sought the compensation to the tune of TZS 5,100,000,000 for unlawful revocation of its right of occupancy.

The High Court found that the appellant's right of occupancy was revoked for good cause, for the appellant had breached the conditions of the right of occupancy of the suit land. The High Court held further that the appellant had failed to develop the land and payment of rent which, until the time of the revocation, had accumulated to TZS 16,000,000.00. It held further that the notice of the intention to revoke the appellant's right of occupancy made in the newspaper was a proper notice.

3. Determination of Issues and Decision of the Court

Dissatisfied with the decision of the High Court, the appellant lodged an appeal to the Court. Before the Court, two issues were framed, to wit: first, whether or not the appellant's right of occupancy was lawfully revoked and secondly, if the first issue is answered in the negative, to what remedy is the appellant entitled.

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With regard to the first issue, the Court was of the view that, where a condition of a right of occupancy is breached, the Commissioner has discretion to issue a notice to the occupier and it is that notice, issued in the prescribed form, that initiates the revocation process and that, the requirement of issuing a notice is mandatory. The Court added that, in this case, the notice which is issuable under section 46(1) of the Act ought to have been served on the appellant before the process of revocation of its right of occupancy was resorted to. Regarding the purported notice published in the Majira Newspaper (exhibit PI), the Court was of the view that, it was not a sufficient notice because, first, the same was not issued in accordance with the requirements of section 46(1) of the Act and secondly, it did not convey the proper purpose for which the right of occupancy was intended to be revoked. The cause for the intended revocation was the alleged breaches by the appellant, of the terms and conditions of ownership of the suit land. However, in the publication, it was shown that the revocation was intended to be made on public interest. The Court concluded that, the High Court erred in law in holding that revocation of the appellant's right of occupancy was lawfully made.

On the second issue on remedies available to the parties, the Court held that, the prayer by the appellant to be paid TZS 5,100,000,000 as compensation by the second respondent is not, under the circumstances of the case, tenable because, the suit land was not sold by the respondents, rather it was sold by the TIC which was not impleaded in the suit. The sought order could not thus be made against that entity without having been afforded the right to be heard. Secondly, the amount in question was realized from auction, not upon the valuation of the suit land.

In the circumstances, the Court upheld the appeal and ordered respondents to compensate the appellant another plot of land which is of the same size as that of the suit land and the same has to be located in an industrial area. The order is to be complied with within a period of twelve (12) months from the date of the judgment, that is, 7 December 2023.

Copy of this Legal News can be accessed by [clicking here](#)

Copy of the Legal Sector Laws (Miscellaneous Amendments) Act, No. 11 of 2023 can be accessed by [clicking here](#)

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