

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA
AT BABATI**

LAND APPEAL NO. 236 OF 2024

*(Originating from Kiteto District Land and Housing Tribunal Land Application No. 05
of 2023)*

JAMES MADEHA APPELLANT

VERSUS

JUMA RAJABU..... RESPONDENT

JUDGMENT

6th March and 25th April, 2024

MIRINDO, J:

James Madeha brought an action against Juma Rajabu before Kiteto District Land and Housing Tribunal in relation to three acres of land situation at Kijungu Village in Kiteto District. He pleaded and testified his acquisition of the disputed land from Kijungu Land Council through a certificate of derivative right. This certificate dated 5/8/2008 and entitled in Kiswahili as “Cheti cha Kibali cha Haki Miliki Isiyoy Asili” was duly admitted in evidence. His testimony was supported by the evidence of two members of the Village Council at the time.

Juma Rajabu opposed the application through his written statement of defence, appeared at the hearing on 20/4/2024 and James Madeha testified on that day. But when Juma Rajabu did not appear on 25/7/2023, the hearing was adjourned to 26/7/2023. On 26/7/2024, the Tribunal ordered that the hearing

will proceed *ex parte*, two witnesses testified for James Madeha and James Madeha closed his case. In the *ex parte* judgment, the Chairman, differed with the opinion of the two assessors and held that in the absence of the minutes of the Kijungu Village Council and its Village Assembly allocating James Madeha the disputed land, there was no evidence that he was lawfully allocated the disputed land. He dismissed the application.

James Madeha has appealed to this Court on four grounds of appeal and the appeal was argued by way of written submission. He submitted that he was lawfully granted the disputed land by Kijungu Village Council and he has been in an interrupted occupation of the disputed land for fifteen years now. In his reply, Juma Rajabu argued that there was no evidence that the legal procedure for acquiring village land was complied with by James Madeha and so he did not prove his case.

The main question for consideration before me is: does the grantee's proof of allocation of a village land depends only on minutes from a village council and village assembly? As stated above, this was the view of the Chairman of Kiteto District Land and Housing Tribunal. In dismissing the appellant's case, the Chairman relied on the decision of the Court of Appeal in *Udagwenga Bayay and 16 Others v Halmashauri ya Kijiji cha Vilima Vitatu and Another*, Civil Appeal 77 of 2012, (2013). The respondents claimed ownership of a disputed village land through village resolutions of 11/12/1999 and 14/12/1999 but the records of the meetings forming the basis of the resolutions were not tendered in evidence. For this reason, the Court of Appeal concluded that:

... in the absence of any record of the meetings of 11/12/1999 and 14/12/1999 it will be fair to say that there is no material upon which we could safely say that the allocation of the land in question was made in compliance with the dictates of the law as stipulated above. In other words, there is nothing to show that the **Village Council** and the **Village Assembly** were involved in allocating the land in issue. It was imperative that it be established **first** in evidence that the 1st respondent allocated the land to the 2nd respondent in line with the procedures set out by the law **before** a suit against the appellants could be sustained successfully. Apparently no such evidence was forthcoming in the case. [Emphasis original]

It is clear that the tribunal misapplied the holding in *Udagwenga Bayay*. This case is not an authority that in every case of allocation of village land, minutes of the village council and village assembly are the only evidence. In the leading case of *Idundun v Okumagba* (1976) LPELR-1431 (SC), the Nigerian Supreme Court outlined five ways of proof of ownership to land, namely:

- (1) proof by traditional evidence in the form of traditional history (especially proof about founder of the land, the one who discovered or settled on the virgin land, how the land was founded or discovered, names of persons who owned the land from the original owner to the current owner or title holder);
- (2) production of documents of titles which have been duly authenticated;
- (3) proof of acts of possession and ownership (for example, selling, leasing or farming) provided that such acts extended over a sufficient length of time, are

numerous and positive enough to justify inference of exclusive ownership by the plaintiff;

(4) adverse possession; and

(5) proof of possession of connected or adjacent land in circumstances rendering it probable that as the owner of the adjacent or connected land, the plaintiff is the owner of the disputed land.

It is clear that in *Udagwenga Bayay* the only evidence available to the respondents was that of the minutes of the village council and village assembly. In the present appeal, even though, James Madeha, pleaded in Paragraph 6(a) (v) that he was allocated the disputed land by “Kijungu Village Council through a well constituted Village Assembly”, he listed and attached a copy of his certificate of derivative right issued under section 31 (9) of the Village Land Act [Cap 114 RE 2019]. As mentioned earlier, the certificate of derivative right was admitted in evidence.

Under section 40 of the Land Registration Act [Cap 334 RE 2019], a certificate of title is a proof of matters contained in it. The effect of this provision is that a certificate of title is prima facie evidence of title by its holder as was restated in *Amina Maulid Ambali and Others vs Ramadhani Juma* (Civil Appeal 35 of 2019) [2020] TZCA 19 (25 February 2020) it was held that:

...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 proved that the certificate was not lawfully obtained....

Apart from issuing a certificate of customary right of occupancy, a village council may under section 31 of the Village Land Act issue a certificate of approval to a derivative right. Just like a certificate of customary right of occupancy, the certificate of approval to a derivative right is prima facie evidence of a derivative right created out of a customary right of occupancy.

Under section 31 (9) (b) of the Village Land Act, the certificate of approval to a derivative right must be signed by the chairman and secretary of a village council. In the present appeal, the certificate was duly signed. Unless there was evidence of fraud, the certificate was sufficient evidence that it was duly obtained. This presumption was recapitulated in *Leopold Mutembei vs Principle Assistant Registrar of Titles, Ministry of Lands Housing and Urban Development and Another* (Civil Appeal 57 of 2017) [2018] TZCA 213 (11 October 2018) where the Court of Appeal held that a certificate of title is not only proof of ownership over the disputed property “but also evidence confirming the underlying transactions that conferred or terminated the respective titles to the persons named” in it.

Under these conditions, it was not open to the trial tribunal to simply question the authenticity of the “Cheti cha Kibali cha Haki Miliki Isiyo Asili”.

For these reasons, I set aside the decision of Kiteto District Land and Housing Tribunal and declare that James Madeha is the lawful owner of the three acres of land in the derivative right. An order of permanent injunction is hereby issued against Juma Rajabu and his agents from entering the disputed land or in any way using the disputed land. The appellant shall have his costs in this appeal and the trial tribunal. The appeal is allowed.

It is so ordered.

DATED at BABATI this 23rd day of April, 2024



F.M. MIRINDO

JUDGE

Court: Judgment delivered this 25th day of April, 2024 in the presence of both parties. B/C: William Makori (RMA) present.



F.M. MIRINDO

JUDGE

25/4/2024