

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

CIVIL APPEAL NO. 202 OF 2003
(Appeal from the District Court of Kinondoni
in Civil Case No. 8 of 1996)

VUMILIA MMARI APPELLANT

VERSUS

TRANSAFRICA INDUSTRIAL
CONSULTANTS LIMITED RESPONDENT

JUDGMENT

SHANGWA, J.

This is a long time land dispute in which the parties have been wrangling between themselves for more than twenty four years ago over Plot No. 135 Block A at Mikocheni Low Density area in the city of Dar es Salaam.

The facts of this case show that each party to this dispute was offered a Plot by the District Land Development Officer at Kinondoni bearing the same number but in different density areas at Mikocheni in Dar es Salaam city.

The letter of offer which was addressed to the respondent Company is with reference No. D/KN/A/13517/1/TMM. It is dated 12/9/1978. It indicates that the respondent was offered Plots 132-136 Block A Mikocheni Low Density.

The letter of offer which was addressed to the appellant Vumilia Mmari is with reference No. D/KN/4/13834/1. It is dated 28/6/1979. It indicates that the appellant was offered Plot No. 135 Block A Mikocheni Medium Density.

Despite the fact that the appellant was offered Plot No. 135 Block A at Mikocheni Medium Density area, the plot in dispute is No. 135 Block A at Mikocheni Low Density area which was offered to the respondent company together with other plots.

The background of this case is as follows: On 20/4/1979, the District Land Development Officer at Kinondoni wrote a letter to the respondent company with reference No. D/KN/A/13518/2/TMM saying that it had not paid the necessary fees and costs within thirty days from the date when Plots No.132-136 Block A at Mikocheni Low Density area were offered to it as required in paragraph 5 of the letter of offer of those plots and that he would be obliged to offer them to other persons whom he will consider fit without notice.

It appears to me that after writing the said letter to the respondent, the District Land Development officer went with the appellant and showed her Plot No.135 Block A at Mikocheni Low Density area and told her that he will offer it to her in due course. After sometimes, the said officer issued her with a letter of offer in respect of Plot No.135 Block A at Mikocheni Medium Density area which is a plot other than the one he had shown her. I hasten to state that this was trickery.

On 1/7/1979, the appellant was issued a Certificate of Occupancy which shows that it is in respect of Plot No.135 Mikocheni Dar es Salaam. It was duly signed on 9/6/1980. It bears Title No.24323 which was registered by the Senior Assistant Registrar of Titles on 30/6/1980 at 1.00 p.m.

On perusing this certificate, I have noticed something peculiar with it. Apart from showing the plot number, it does not show the type of area to which this plot number relates be it at Mikocheni Low Density or Mikocheni Medium Density. It is therefore vague and dubious.

Now, after being issued with the said Certificate of Occupancy, the appellant took sand and stones for building purposes on Plot No.135 Block A at Mikocheni Low Density area which she was shown and which she had not been offered in writing. The respondent's principal officer Mr. Bhoke Munanka vehemently resisted the appellant's action. He erected a wall around it and built a small house thereon. This marked the beginning of the dispute between the parties over this plot.

The appellant complained to the Dar es Salaam City Commission Zonal Office at Kinondoni who ordered the respondent to stop building on this plot. The respondent's principal officer Mr. Bhoke Munanka vigorously resisted their order and continued to build thereon.

The appellant reported the matter to the Minister for Home Affairs and Deputy Prime Minister Hon. Augustine Mrema as he then was. The said Minister arranged a hearing of both parties together with the Zonal Land Development Officer on 2/10/1991. On that day, it was resolved that the respondent should surrender this plot to the appellant who has a title deed but that the appellant should compensate the respondent for the wall fence which he erected around it and the house he built thereon. It was also resolved that the Zonal Land Development Officer should look for another plot at Mikocheni Low Density area and offer it to the respondent. The parties

agreed to these resolutions. However, the appellant never made any compensation to the respondent and the Zonal Land Development Officer never offered any other plot to the respondent. As such, the respondent never surrendered this plot to the appellant.

About three years later, the appellant complained to the Commissioner for Lands who wrote a letter with reference No. LD/90925/13/DW dated 14th September, 1994 and addressed it to the respondent requiring its principal officer to surrender it to the appellant. The said officer resisted to surrender it to her.

On the 19th February, 1996, the appellant filed a Civil Suit in the District Court of Kinondoni and prayed for a declaration that she is the lawful registered owner of this plot and that the respondent is a trespasser. She prayed also among other

things that the respondent should be ordered to vacate this plot and hand over possession of the same to her.

On 16th October, 2003, the trial Magistrate entered judgment in favour of the respondent holding inter-alia that the revocation of his offer by the District Land Development Officer at Kinondoni was invalid as he had no power to revoke the same and that any subsequent offer to another person such as the appellant was of no effect. The appellant was dissatisfied and appealed to this court.

Right from the beginning of this dispute, the respondent's principal officer has all along been saying that the revocation of the respondent's offer by the District Land Development Officer on ground that it had breached the condition of the offer stipulated in paragraph 5 of the letter of offer by not paying the

necessary fees and costs within time was motivated by corruption.

Evidence on record show that the respondent's principal officer did pay the Certificate fees of Shs.1,642 which he paid on 16/10/1978 and given GRR M995097, stamp duty fees of Shs.90 which he paid to the Internal Revenue Office on 17/10/1978 and given GRR861830 and land rent of Shs.2,800 which he paid on 17/10/1978 and given GRR N861831. During trial, he produced the original copies of the above mentioned receipts which were admitted as exhibit D1.

Learned Counsel for the respondent, Mr. Nyanduga submitted inter-alia that the respondent was not given reasonable notice before the revocation was made as required by R.9 of the Land Regulations 1948. He contended that as such notice was not given, the revocation was illegal.

Learned Counsel for the appellant contended that as the offer of the Right of Occupancy had not been accepted by the respondent within the time provided, the offer just lapsed and there was nothing to revoke.

On my part, I find that the respondent's offer of the Right of Occupancy in respect of Plot No.135 Block A at Mikocheni Low Density area was revoked by the District Land Development Officer at Kinondoni vide his letter with reference No.D/KN/A/13518/2/TMM.

Although, the respondent did not pay the necessary fees within thirty days from the date of offer as provided in paragraph 5 of the letter of offer, it was quite unfair for the above mentioned officer to revoke its offer without having issued it with the notice to show cause.

A failure to do so on the part of the District Land Development Officer was contrary to natural justice. The receipts which were given to the respondent on payment of the necessary fees show that those fees were paid three to four days after the expiration of thirty days. As it can be seen, the delay was not inordinate and it could have been caused by sickness, bereavement, pressure of work, public holidays or any other reasonable cause.


The land authorities should never revoke any offer of the right of occupancy without issuing a notice to show cause to the applicant. Doing so without issuing such notice is likely to occasion a failure of justice. In this case, I find that the one who is entitled to a right of occupancy of the plot in dispute is the respondent whose offer was revoked without having been asked to show cause.

As I have already mentioned, the plot which was shown to the appellant by the District Land Development Officer at Kinondoni that is Plot No.135 Block A at Mikocheni Low Density area is not the one which was offered to her in writing. The one which was offered to her in writing is Plot No.135 Block A at Mikocheni Medium Density area which was not shown to her. All this was designed to confuse her and it was due to trickery.


Also, as I have already mentioned, the Certificate of Occupancy which was issued to her shows the plot number and the area of location only. It is silent on where this plot can easily be traced. It is vague. However, as the letter of offer which was issued to the appellant relates to Plot No.135 Block A Mikocheni Medium Density area, it goes without saying that the number of plot which is shown in the schedule to this certificate belongs to that area and not anywhere else.

It is quite obvious therefore that the appellant was conned by the District Land Development Officer at Kinondoni into obtaining a fake offer and Certificate of Occupancy in respect of Plot No.135 Block A Mikocheni Medium Density which does not exist, and if at all it exists the District Land Office at Kinondoni should go with her and show it to her within three days from today. It is so ordered.

For the reasons I have given, this appeal fails and I hereby dismiss it but due to the fact that the appellant is a mere victim of circumstances, I order that each party should bear its own costs:


A. SHANGWA
JUDGE
26/10/2004

Delivered in Court this 26th day of October, 2004 in the presence of Mr. Deogratias Lymo for the Appellant and Mr. Nyanduga for the Respondent.


A. SHANGWA
JUDGE
26/10/2004