

IN THE HIGH COURT OF TANZANIA
LAND DIVISION
AT DAR ES SALAAM

LAND CASE NO. 82 OF 2008

ANATORY T. MUGENYI.....PLAINTIFF

VERSUS

GORDION SOKO.....DEFENDANT

JUDGMENT

SAMBO, J.

The Plaintiff, Anatory T. Mugenyi instituted the present suit against the Defendant Gordion Soko praying for Judgment and Decree for the following reliefs:-

- a) An order of eviction of the Defendant from Plot No. 145, Block 'c' Boko in Dar es salaam.
- b) An order for demolition of the structures built by the Defendant on the plot.
- c) General damages as may be assessed by the honourable court.

- d) A permanent order of injunction restraining the Defendant from trespassing on the said plot.
- e) Interest on (c) above at court rate from the date of judgment till payment in full.
- f) Costs.
- g) Any other further relief(s) this honourable court may deem fit and just to grant.

A copy of the plaint was fully served upon the Defendant who instantly filed his written statement of defence refuting all the claims of the Plaintiff and praying to this court that the suit be dismissed with costs in this case.

In this case the Plaintiff is represented by the learned counsel of Rutenge and Co. Advocates, while the Defendant enjoys the services of Semgalawe and Co. Advocates.

The issues drawn and agreed by both parties in this case are as follows:-

1. Whether the Plaintiff has a legal right over plot No. 145, Block 'C' Boko in the Municipality of Kinondoni, Dar es salaam (the disputed plot).
2. To what relief(s) are the parties entitled?

In his calculated efforts to prove this case to the standard required in Civil litigations, the Plaintiff summoned only one witness, that's himself, herein referred to as PW1 Anatory Thomas Mugenyi. Led by the learned advocate, Mr. Rutenge, he testified to the effect that the disputed piece of land belongs to him. All the laid down procedures in order to lawfully own a piece of Land in the city were followed leading to him being granted a certificate of occupancy, tendered and admitted as exhibit P2. In the early 19, 90's he and other Co – workers at the Wazo Hill Cement Company asked for Plots from the city council. The council told them to bear the survey and compensation costs including other revenue taxes for the government, which were duly paid. In 1997, they were given the necessary officers, his being tendered and admitted as exhibit P1. The said title deed (exhibit P2) was issued in the

year 1998 and there upon started developments on the Plot. He installed water taps and cleared his plot.

Thereafter, George Shambwe, who had received the first compensation from the city council, emerged and claimed that the said compensation was not satisfactory. Some of the plots issued to them by the city council were now assigned or allocated to him. The receipts for the land rents he paid for his plot were admitted as exhibit P3 collectively.

At one point, the city council stopped them from developing the area, because somebody was demanding more compensation and when he visited his plot, he noted that one person was developing the same at a high speed. This was the Defendant, he met him on the issue but there was no solution, hence this case in court. The decision in Civil case NO. 82 of 1997, in the Resident Magistrate's Court of Dar es salaam at Kisutu, between George Shambwe and the Dar es salaam City Council, did not include his plot in the list of 20 plots given back to previous owners. He

concluded praying that the reliefs sought as per his plaint be granted.

Being cross-examined by the learned advocate, Mr. Semgalawe, he told this court that after the allocation of the plots to them, there arose a dispute between George Shambwe and the City Commission, leading to cases in the courts of law and was informed about the decisions. They also instituted **Civil Case No. 425 of 1998**, at the Dar es salaam Resident Magistrate's Court, Kisutu, against George Shambwe but do not remember its decision. He went further saying that a Presidential Commission was formed over the complaints on the said plot allocations, to which he raised his complaints against the Defendant, but was not informed its decision. The title deed, exhibit P2, was issued in 2004.

In defence, DW1 Gordion Soko, led by his learned counsel, Mr. Gomba, testified to the effect that the disputed plot belongs to him as he purchased the same from George Shambwe. Before buying it, he became satisfied that he legally owned the land in respect of the decision in Resident Magistrate's Civil Case No. 82 of 1997, at Kisutu, Resident

Magistrate's Court of Dar es salaam. That judgment was tendered and admitted as Identification D1. There was also another judgment of the same court in **Civil Case No. 425 of 1998**, which was as well admitted as Identification D2. He bought the plot at Tshs. 1,500,000/= as per the agreement tendered and marked exhibit D1. He pays that this court do confirm him as the lawful owner in respect of the two judgments of the court which are still in fact.

Being cross examined by the learned advocate, Mr. Rutenge, he said that in the named judgments, the plot in dispute is not listed or stated, and was not informed about the temporary injunction in **Civil Case No. 82 of 1997**. He doesn't possess an offer or certificate of occupancy in respect of that plot which is surveyed. He built a house there on without obtaining a building permit from the relevant authorities.

In their considered opinion, the two Wiseman and woman, Mr. Morris and Mrs. Bukuku advised the court to hold that the Plaintiff has proved his case to the required

standard and should be declared the owner of the land in dispute.

The evidence in this case is rich in that the Plaintiff is having a title deed No. 555948, issued on the 17th day of June, 2004, that's exhibit P2. Through the said Title Deed was issued in 2004, all the preparations are payments for the same took place between 1996 and 1998. The Plaintiff obtained this certificate of occupancy as a result of the Dar es salaam city council having acquired, surveyed and divided into plots the farm of one, Mr. George Shambwe. Compensation for the unexhausted improvements were made to the relatives of the said George Shambwe at a time when he was outside the country. The Plaintiff was then allocated one of the plots in the said farm.

On his return home, Mr. George Shambwe was not satisfied with the way the city council grabbed his farm and in particular with the compensation paid. He then instituted Resident Magistrate's Court **Civil Case No. 82 of 1997**, in the Dar es salaam Resident Magistrate's Court at Kisutu, against the city council contesting and or challenging the

acquisition of his land. He won the case, and the court did order that **all the plots carved out of the farm belonging to the Plaintiff (George Shambwe) be restored to him or in the alternative he be paid full, fair, adequate and prompt compensation.** The trial court insisted that the land and its plots be allocated to other parties after the Plaintiff has been paid full, fair, adequate and prompt compensation. This decision did not exclude the plot allocated to the Plaintiff in this case, which was read and or delivered on the 29th day of September, 1997

The Dar es salaam City Council, the judgment debtor in that case did not attempt to contest, challenged or impeach the decision by way of an appeal or otherwise, which means it's still in force. It seems the said city council did not take any action to it that the decree holder is paid the full, fair, adequate and prompt compensation. This indolence on the part of the city council, meant that the whole land and its plots have been completely restored to the said George Shambwe as per decision in question.

Thereafter those who had been allocated plots by the city council, including the Plaintiff in this case, filed **Resident Magistrate's Civil Case No. 425 of 1998** in the same Resident Magistrate's Court, aimed at recovering the plots from the original owner, George Shambwe, who was the Defendant. Though the plot in issue, No. 145 was not listed the fact that the alleged owner with the said Title deed, to whom the plot was allocated by the city council, was among the Plaintiffs.

It goes without saying that the plot was among those being reclaimed from the Defendant. That case was dismissed for being res judicata under **Section 9 of the Civil Procedure Code, Act No. 49 of 1996 (NOW CAP 33 R:E 2002)**. The subject matter in this case was the same to **Resident Magistrate Civil Case No. 82 of 1997** where it was declared property of the Plaintiff (George Shambwe) who is now the Defendant. Under the circumstances, the present case is an attempt to override the forceful decisions of the court of law in **Resident Magistrate's Civil Case NO. 82 OF 1997 and Resident Magistrate's Civil Case No. 425 of 1998**.

Given the facts stated herein above, I am led to believe and hold that George Shambwe rightly sold the plot to Gordion Soko, the Defendant in this case. Previous allocations of the plots including the one claimed by the Plaintiff in this case had been declared unlawful, null and void, until and unless George Shambwe was fully compensated for his un exhausted improvements. Hence forth the title Deed No. 55948, Land Office No. 164694, for land on Plot No. 145 Block 'C' Boko Area, Dar es salaam city, was unlawfully issued and granted to the Plaintiff. In short, I am saying that the same was issued in disobedience to the lawful decisions of the court of law. The issue raised in this case is therefore negatively answered. Had my wise lady and gentleman assessors critically considered the decisions of the lower trial court in the two named Civil cases, they would have come to the same conclusion of the court.

Now, to what relief (s) are the parties entitled. The Defendant in this case, Gordion Soko, is entitled to own the land in dispute, that's plot No. 145, Block 'C' Boko area in Kinondoni Municipality Dar es salaam City. The title Deed

No. 55948 need be transferred to the Defendant by operation of the law. The Plaintiff has all the rights to claim from the city council all the fees and other charges he paid for the plot. The Defendant must compensate the Plaintiff for costs of water taps he installed on the plot.

In the upshot, and based on what I have endeavoured to state herein above, I am satisfied that the Plaintiff failed to prove his case to the standard required in Civil litigations, that is on the balance of probabilities. Consequently, I do dismiss the suit with costs.

K.M.M. SAMBO

JUDGE

29/02/2012

12/3/2012

Coram: B.R. Mutungi, J.

Plaintiff: Lutenge for

Defendant: Semgalawe for

B/C: Mbise

COURT

The parties have been summoned today to appear in order for the Judgment prepared by Sambo, J. who is at Arusha be delivered to them.

COURT

The Judgment is accordingly read and delivered before Mr. Lutenge for Plaintiff and Mr. Semgalawe for Defendant.

B.R. MUTUNGI

JUDGE

SUCCESSOR IN OFFICE

12/3/2012