

Original

IN THE HIGH COURT OF TANZANIA

(MWANZA REGISTRY)

AT MWANZA

LAND CASE NO. 58 OF 2015

AMOS NJILE LILITHE PLAINTIFF

VERSUS

MWANZA CITY COUNCIL1ST DEFENDANT

NYANZA COOPERATIVE UNION

(1984) LTD2ND DEFENDANT

COMMISSIONER FOR LAND3RD DEFENDANT

REGISTRAR OF TITLE4TH DEFENDANT

HON. ATTORNEY GENERAL5TH DEFENDANT

JUDGMENT

BEFORE:MAIGE, J

In this suit, the plaintiff claims against the defendants and each of them for two substantive reliefs. **First**, for declaration that the purported



revocation, and/ or cancellation and rectification of the title number 45296 from the plaintiff to his Excellency the President is unlawful: **Two**, an order to the third defendant for rectification of the land register to read that the plaintiff is the registered owner of the properties comprised in the certificate of title No. 45296 issued and registered on 9th July 2013.

In the conduct of this matter, Mr. Tuguta learned advocate represented the plaintiff. The first and second defendants were represented by Messers. Masunga and Matiku, respectively. Mr. Karumuna SA, represented the third, fourth and fifth defendants. The factual contention in this suit, I observed, was very narrow and it could be resolved by merely inspecting the *locus in quo* which I did upon closure of the defense case. The dispute seems to revolve around interpretation of the court order in exhibit **P-2**.

The prosecution case was based on the sole testimony of the plaintiff who testified as **PW-1**. As it is for all the three defense witnesses, the evidence of **PW-1** was essentially documentary. About 11 documents were exhibited by **PW-1** and most of them constituted correspondences

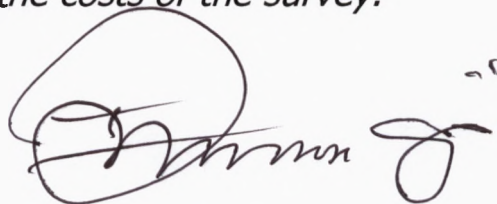
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between the parties herein. On their parts, the defendants produced 8 exhibits. As it shall be clear as I go along, most of the exhibits tendered by the defense witnesses turned out to be irrelevant.

The dispute at hand traces its genesis from the purchase, by the plaintiff, of a Godown of the second defendant by way of public auction way back in 2006. The sale was in execution of the decree in Civil Case No. 45 of 2003. Parties are not in dispute about the sale which is evidenced by the proclamation of sale dated 20th December 2006 (exhibit **P-1**)

What constituted the **suit property** appeared to divide the parties right from the beginning. The initial step taken by plaintiff was to ask for court intervention. In reaction, the High Court pronounced a ruling on 23.03.2009 (exhibit **P-2**), in which it made the following orders:-

- 1. The Director Municipal Council Mwanza City Council to survey the land where sold Godown is located after the same is showed by Njile..*
- 2. After the land is surveyed, the Director Municipal Council to prepare the Certificate of Title of the land where the sold Godown is located for the purchaser.*
- 3. The purchaser to bear the costs of the survey.*

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4. *The question of removing the people who are in occupation of the suit premises and putting the purchaser to be dealt with by the executing Court that sold the Godown according.*

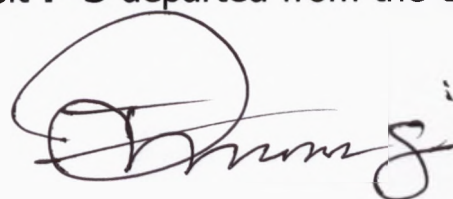
It is common ground that; subsequent upon the order in exhibit **P-2**, the survey on the **suit property** was conducted and thereupon the plaintiff was issued with a certificate of title 45296 (Exhibit **P-3**). The **suit property** was designed as plot number 104/1. The certificate of title in exhibit **P-3**, it is common ground, was revoked by the third defendant in the process of rectification following the complaint by the first and second defendants that the survey of the **suit property** was made in violation of the court order. In particular, it was the position of the third defendant that, the survey has operated as to encroach the property of the second defendant which was not the subject of the sale.

In his second claim, the plaintiff has prayed for an order compelling the third and fourth defendants to rectify the register of the **suit property** to read that the plaintiff is the lawful owner of the property comprised of the certificate of title in **P-3**. In the evidence of **PW-1** it is claimed that, the survey leading to the grant of exhibit **P-3** was in compliance with the court



order in exhibit **P-2**. The question that I have to resolve here is whether the survey leading to the grant of the certificate of title in exhibit **P-2** was in compliance with the court order in exhibit **P-2**.

In accordance with item 1 and 2 of exhibit **P-2**, it was ordered that the land onto which the Godown is located be surveyed with a view to issuing a certificate of title in the name of the plaintiff. This Court had an opportunity to visit the *locus in quo* after closure of the defense case. At the *locus in quo* we found two equal Godowns opposite to each other. The one which is at issue is adjacent to Mwanza Shinyanga Road. There is a front space of hardly ten meters facing the main road. This is irrefutably part of the Godown sold to the plaintiff. In between the two Godowns, there is a railways line which seems to separate the two Godowns. Besides the two Godowns, I observed, there is weight bridge immediate after the entry gate. There is a distance of hardly 20 meters from the weight bridge to the two Godowns. The survey plan accompanied with the certificate of title in exhibit **P-3** suggests that the entry gate and the weight bridge would also form part of the Godown sold to the plaintiff. Come what may, the survey leading to the grant of exhibit **P-3** departed from the court order in exhibit

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P-2. The wording of the order appears to be clear and unambiguous in my reading. What was to be surveyed was the land comprising the Godown sold to the plaintiff. In my view, this would reasonably mean the Godown and the front space facing the road, the back space up to the railway line and at least four meters space on the right side of the Godown. The survey leading to the grant of the Certificate of Title in **P-3** was therefore invalid for violation of the court order.

In the second place, the plaintiff prays for a declaratory order to the effect that the rectification of the register of the suit property by the third defendant is illegal. On 26.05.2017, it is on the record, I did draw the attention of the parties and particularly the counsel for the plaintiff on the provision of section 99 of the Land Registration Act. I addressed them that, the issue of the validity of the rectification was subject to appeal to the High Court in terms of section 99 of the Land Registration Act. Nevertheless, since the main issue between the parties was on the interpretation of the court order in exhibit **P-2**, I found it convenient to conduct the trial and the issue of rectification would be dealt with in my final judgment. After the end of the trial, I asked the counsel from both sides if there be a need to make

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final submissions. By consensus, they found it unnecessary as in their humble opinions, there was no pertinent legal issues in the suit that would call for submissions.

It is manifestly apparent, according to paragraphs 14 and 15 of the plaint that, the plaintiff was fully aware, while he was filing his suit that, the third defendant had made rectification on the **suit property**. In terms of section 99(1) of the Land Registration Act, Cap. 334 R.E. 2002, rectification of the land register by the Registrar of Title is subject to an appeal to the High Court. In this matter, the plaintiff has sought to challenge the rectification of the register by way of a suit. His action is totally in violation of the express provision of section 99 (1) of the Land Registration Act. As I understand the law, the power of the Registrar of Title to rectify errors in the register is not merely administrative. It is a judicial power which cannot be faulted by way of a suit unless there is an allegation of fraudulent collusion on the part of the offices of the Registrar of Title, which is not the case. For those reasons therefore, it is my opinion that; this Court has, in the circumstance, no jurisdiction to entertain the claim for the rectification

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of the register by the third defendant by way of a suit. As a result, the second claim is dismissed.

In the final result, the suit is hereby dismissed with costs. For avoidance of opening a room for further unnecessary litigation between the parties, I will, as hereby do, make a declaratory order, in terms of section 7(2) of the Civil Procedure Code Act, Cap. 33 R.E. 2002 that; the property sold to the plaintiff pursuant to exhibits **P-1** and **P-2** comprises of the **Godown facing the Mwanza Shinyanga Main Road, its back space separated by a railway line and four meters space on the right side of the Godown.** I will further declare under the said provision that, the third and fourth defendants are entitled to proceed with the resurvey of the suit property in accordance with the first declaration herein.

It is so ordered.


I. MAIGE
JUDGE

AT MWANZA



Date: 30.11.2017

Coram: Hon. E.G. Rujwahuka – DR2

Plaintiff: present in person

Defendants: 1. – Mr. Kilia Turoke Advocate for the 1st Defendant

2. – Mr Serapian Matiku

3. }
4. } Absent
5. }

B/c: M. Said

Order:

Judgment delivered today in the presence of the plaintiff in person and the 1st Defendant represented by Mr. Kilia Turoke Advocate and Mr. Serapian Matiku represented the 2nd Defendant and the 3rd, 4th and 5th Defendant absent.



E.G. Rujwahuka
DR2
30.11.2017