

**THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

LAND CASE No. 101 OF 2017

BEATUS ALPHONCE MTUI.....1st PLAINTIFF

SHAABAN S.H. MFINANGA.....2nd PLAINTIFF

Versus

DIRECTOR OF MAPPING AND SURVEY.....1st DEFFENDANT

THE COMISSIONER FOR LANDS AND

HUMAN SETTLEMENT DEVELOPMENT.....2nd DEFFENDANT

THE HON. ATTORNEY GENERAL.....3rd DEFFENDANT

JUDGMENT

24.12.2019 -21/2/2020

J. A. DE-MELLO J;

The Court is jointly moved by the Plaintiffs to declare that the Defendants act of threatening to cancel the Plain

tiffs Tittle over the piece of Land registered as **Plot No. 2167 Block "E" and Plot No. 2168 Block "E"** respectively, located at **Salasala** area in **Kunduchi Ward Kinondoni District Dar Es Salaam** is unlawful, disregarding the truth that the Plaintiffs were lawfully allocated the said Plots. In the alternative, the Plaintiffs be compensated the sum of **TShs 350,000,000/=** each for massive improvements made therein and General Damages to be assessed by Court. Satisfied that the Defendants,

and duly notified on the 14/2/2018. Have absented themselves two times without notice, that is on 7/3/2018 and, 8/5/2018. On the 4/7/2018 **Ellen Runjage Senior State Attorney** appeared for Defendants and prayed for **Extension of Time to file Written Statement of Defense** which was rejected under **Order VIII Rule 1 of CPC**. This lead Upon Counsel for Plaintiffs to pray for the matter to proceed Ex Parte.

The brief facts as appreciated from the Plaint, has it that, the suit land in dispute was bought by the Plaintiffs from different sellers namely; **Selemani Malengai** for the **1st Plaintiff** and **Said Mohamed Said** for the **2nd Plaintiff**. After execution of Sale Agreement, the Plaintiffs took over possession of their land and commenced improvements by leveling, building concrete wall fence, building living house, planted trees and connecting utilities like water and, electricity. This was concurrently ongoing with survey procedures and payed all the required fees for surveying. After been satisfied with the procedures the 2nd Defendant issued a demand letter to the Plaintiffs calling for land rent fee for the year **2010/2011**. Following compliance, Certificate of Tittle with reference as **C.T No. 89169 for Plot No. 2167 Block E** was issued as the 2nd Plaintiff's is withheld to date for unknown reasons. As the 1st Plaintiff mortgaged the land using his Title as security to Commercial Bank, strangely, the 2nd Defendant wrote a letter to 1st Plaintiff demanding surrender of the Certificate of Title for cancelation. Six issues were framed in which this suit will base its findings as follows;

- i. Whether the Plaintiffs were the lawful owners of the disputed Plots No 2167 Block "E" and Plot No. 2168 Block "E"**

respectively located at Salasala area in Kunduchi Ward Kinondoni District Dar es Salaam.

ii. Whether intended cancelation of Title of said plots is legally justifiable.

iii. To what reliefs are the parties entitled.

The 1st and, 2nd testified to have bought un-surveyed pieces of land on different dates, which lead them to undertake all the procedures in accomplishing lawful ownership. Search as well as survey was blessed by the **Kinondoni Municipal Authority** who confirmed non-existence of any encumbrances. The Vendors who appeared as **PW3** and **PW4** testified to be original local owners of the suit land and willingly sold the same measuring **45 x 45 meters** to the 1st Plaintiff, as exhibited by Sale Agreement tendered and admitted marked **exhibit P1**. **PW2** testified to have bought a piece of land from one **Saidi Mohamed Said**, similarly tendering his Sale Agreement which was admitted as **exhibit P19**. From the facts above, it is clear that, the disputed suit land was not registered with neither claim for adverse possession nor complaints on the validity of sale of contract. This then signifies the existence of consent between Sellers and buyers, the Plaintiffs that leads to a valid contract by virtue of **section 10** of the **Law of Contract Cap. 345**, translating into another fact that the Plaintiffs are the lawful owners of disputed **Plots No. 2167 Block "E" and Plot No. 2168 Block "E"** respectively located at **Salasala** area in **Kunduchi Ward, Kinondoni District Dar Es Salaam**. This then answers the first issue in the affirmative. In answering the second issue, the Plaintiffs submitted that, via a latter written on **4th May**,

2011 the first Plaintiff was asked to surrender the Certificate of Title for cancellation, reason being that the alleged survey conducted was in contravention with the law, the latter which covered the whole of **Block 'E'**. It is with no doubt that prior and several legal steps were taken by the Plaintiffs before committing themselves to the acquisition, which lead the 1st Plaintiff to obtain his **Title exhibit P12** while the 2nd Plaintiff Title has been withheld since then and for undisclosed reasons. It is worth considering that, on the **4th of July 2018** by **Hon. Mwandambo J**; which his predecessor **Luvanda J**; confirmed on the 16th of October 2018. The involvement and engagement of neighbours, **Mjumbe wa Nyumba Kumi Bakari Ntombele, Mwenyekiti wa Serikali ya Mtaa wa Salasala Bakari Abdallah** accompanied by his assistant one **Monica Timba**, another **Abdallah Mpondela** which lead to signing of the Sale Agreement. There are powers and by law bestowed upon the office of Registrar of Titles powers cancel registration of Titles. The **Land Registration Act Chapter 334** provide so in **section 37(1)** which reads;

Registrar may require production of Certificates of title

(1) The Registrar may at any time give notice in writing to any person whom he believes to be in possession of a certificate of title requiring such person to produce the same for endorsement of or cancellation within the period named in such notice, not being less than fourteen days from the date thereof, and any such notice shall state the reason why the production of such certificate of title is required

Clearly elaborated and in that same vein is the case of **Nizar Shell L'adawy Muhanna vs. Registrar of Tittles and another (1995) TLR 217**. From this angle we all agree that in the circumstances above the Registrar is allowed and by law justified under **section 37(1) Cap.334** and, compliance to notice can be acted upon under **section 37(2) of Cap. 334**. This being the legal position, answers the second issue as to legality if so of the intended cancellation. As evidence it is still in the 1st Plaintiff's possession which made it possible for tendering in Court during hearing. In answering the third issue and, in absence of witnesses to prove is answered in the negative. It has not been cancelled presumably. In responding to the 4th issue, it is obvious that the Plaintiffs initial survey had later been re surveyed by the same Authority marking **Plot No. 2168 Block E** that the Office of **Kinondoni Municipal at Mwananyamala** assigned a surveyor to undertake the exercise, and the new one of **Plot No. 130 of Block E at Salasala Kunduchi in Dar Es Salaam**. While this is the case, the Plaintiffs received letters from the **Ministry of Lands** and notwithstanding the existence of a Title Deed a letter registering procedural irregularity in the earlier survey. The letter dated the **4th of May 2011** was tendered and admitted, **exhibit marked P13** requiring surrendering of the Title Deed. This then answers the 4th issue in the affirmative. On the last issue with regard to compensation, of which neither the Plaintiff nor the Plaintiffs have managed to prove both specific and general, loss as evidenced has been suffered, to comprise, purchase price, survey as well annual statutory land fees. To what extent and nature is what remains in limbo. In the Reliefs sought by the Plaintiffs item number

3 for a TShs. 350,000,000/= and, 4 for General Damages, subscribes to the above. The law on damages can not be understated. As for specific like the one above and in absence of specific pleading and proof leaves much to be desired. Whenever a claim of damages is included in an action, the Plaintiff or claimant is required under the law to provide evidence and give facts in support thereof upon which the Court can assess. Simply stated, before an assessment of damages can be made, the Plaintiff or claimant must fairly furnish evidence to warrant the award of damages. He should be in a clear position of facts that would form basis of assessment of the damages he would be entitled to. His failure to do so would be fatal to his claim for damages. This is so because from the definition, "**Damage**" as used in law is nothing but a sum of money claimed as compensation or awarded by Court as compensation to the Plaintiff/claimant for harm, loss or injury suffered as a result of tortious act or breach of contract committed by the defendant. There are two categories of damages namely; General and Special. The difference is that General are drawn from defendant's Tort or breach that the law presumes to be the result. They are damages at large and either nominal or substantial depending on circumstance of each case. Special Damages are such a loss as will not be presumed by law they are special expenses incurred or monies lost. However and unlike General Damages they attract specific pleading, particularize and proved. **Lord Macnaghten** observed General Damages as such as the law will presume to be direct natural or probable consequence of the action complained of while Special Damages are such as the law will not infer from the nature of the act, They do not follow in

ordinary cause, being exceptional in character and therefore they must be claimed specially and strictly proved. The celebrated case of **Zuberi Augustino vs. Mugabe ... from our local findings drew its genesis from the cases of Storms Bruks Aktie Bolag vs. Hutchnson [1905] AC 515, Chahin & Sons vs. Epoe Printing Press [1963] 1 GLR 163 and Boham vs. Evonna [1992] 1 GLR 287**

The law provides for the relief under **section 99(1)** for the aggrieved party to apply for the High court for an order of Rectification or an order of Registrar to rectify land register not due to negligence, fraud or misrepresentation of which the Plaintiffs never thought of. Further, they could be at liberty to opt this relief provided that the cancellation was the apply for indemnity for the suffered loss due to the act not perpetrated by them.

Section 100(1) of Cap. 334 provides;

Any person suffering loss by reason of any rectification of the land register under this Act shall, subject to the provisions of this Act, be entitled to be indemnified by the Government.

In light of the above, and failure or neglect to resort to Reliefs available, damages not proved in accordance with the law as enumerated above, the Plaintiff's claims partly succeed to the extent of the two first Reliefs those of;

- 1. Declaration that the acts of the Defendants to cancel/invalidate=ing the Plaintiffs Titles of Plots No. 2167**

Block E and Plot No. 2168 Block E located at Salasala in Kundichi ward, Kinondoni District Dar Es Salaam is unlawful.

2. Declaration that the Plaintiffs were lawfully acquired and allocated the suits plots.

As for item 3, and as observed, no damage is justifiable for non compliance with the principles guiding award. However, costs of the suit is granted as prayed.

It is so ordered.

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J.A. DE-MELLO

JUDGE

21/02/2020