

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

CIVIL CASE NO. 12 OF 2019

EPAFRA TEETE.....PLAINTIFF

VERSUS

TWIGA BUILDERS LTD.....DEFENDANT

EX-PARTE JUDGMENT

05/05/2020 & 18/06/2020

GWAE, J

The Plaintiff named above, a retired journalist, instituted a suit land against the defendant, Twiga Builders Limited. Through his plaint, the plaintiff claims that, the defendant breached the agreement which he entered into with him of construction of a hotel building at Moshi area, despite the fact that, he paid him the mutually agreed constructions costs as per their contract.

The plaintiff also claims that, following the breach of the contract, the defendant finally and voluntarily opted to give the plaintiff a landed property on the Plot No. 413 Block "CC" Sombetini area in Arusha Region worth Tshs. 652,000,000/=(hereinafter to be referred to as "suit land") in lieu of reimbursement of the constructions costs.

The plaintiff further alleges that, he was given vacant possession by the defendant and has been in full occupation for long period nevertheless to date he has not registered the property in his own name, the act which, according to him, can operate on his jeopardy or which may place him into high risk.

In view of the above, the plaintiff is now before this court praying for judgment and decree be entered in his favour for the following reliefs;

- (i) A declaration that, the plaintiff be registered a lawful owner of the suit plot
- (ii) An order that, the defendant hand over the certificate of title of the suit plot
- (iii) General damages to be assessed by the court
- (iv) Costs of the suit
- (v) Any other or further reliefs as may be deemed by the court fit to grant

The defendant has been able to appear before this court despite the plaintiff's proof of service by way of substituted summons that is by way of publication through "Mwananchi Newspapers" dated 17th day of July 2019. This matter then proceeded ex-parte.

The plaintiff had representation from Wings Attorneys-Arusha City particularly two advocates namely, Mr. **Fridolin Bwemelo** and **Miss Bethy Sanare**. And the plaintiff under the lead of his advocates' aforementioned managed to appear as PW2 and gave his evidence and one witness, Mkindi Lyimo who also appeared as PW1 in support of his

claim. The plaintiff also produced a certified copy of the certificate of title (CT-PE1) as well as valuation report of March 2019 accompanied with a certified true copy of the original certificate of title (PE2) in respect of the suit property.

In essence, the plaintiff (PW2) that, this court be pleased to enter judgment in his favour since the defendant failed to neither construct a hotel as agreed nor was able to reimburse him the sum of money which paid him as construction costs. He added that he made efforts to trace if there any encumbrances over the suit property but none was found and subsequently he filed a caveat on 28.3.1996 in order to temporarily restrain any disposition in the property.

The plaintiff also testified that he had been in peaceful occupation of the Plot and that currently the suit property is under tenancy agreement between one Mkindi Lyimo (PW1) and him. The plaintiff also testified that the agreements between the parties were both in writing and verbal. The PW2 finally sought an order declaring him lawful owner of the suit property and all prayers contained in his plaint be granted.

The plaintiff's evidence as to his ownership over the suit plot was sufficiently supported by the PW1 who became a tenant to the plaintiff since 1997 to date. He added that he had been paying the rent to the plaintiff since then.

It is now the legal duty of the court to ascertain or evaluate the evidence of the plaintiff, if it meets the required standard of proof to justify

this court to hold that, the is the rightful owner of the suit plot and be in position to grant what is sought in the plaintiff's plaint .

According to section 110 of Tanzania Evidence Act, Cap 6 R. E, 2002 provides for an obligation on a party who alleges existence of certain facts to prove, for the sake of clarity the same is hereby quoted:

“110 (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Standard of proof in Civil cases has been consistently held to be On the balance of probabilities as was judicially stressed in the case of **Manager, NBC, Tarime v. Enock m. Chacha** (1993) TLR 228, it was judicially demonstrated that;

“It is a cardinal principal of law that in civil cases there must be proof on the balance of the probabilities. In this case, it cannot be said that the scanty evidence adduced in this Court proves in any way what is alleged in the plaint. There must be proof of the case on the standard by law which is on the balance of the probabilities even when a case proceeds ex-parte like in this case. . . .

In our instant suit, it is my considered view that, the plaintiff has increasingly and evidently established through both oral and documentary evidence and the same has been supported by his witness (**PW1**) that, the plaintiff has undisputedly been given the suit land in the year 1990s by the defendant after he had breached the contract to build a hotel at Moshi. I have taken into account of the length of the period in which the plaintiff has been in use and occupation and the asserted fact that no interference

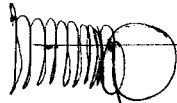
whatsoever by the defendant or his principal officers since 1997 to his tenant (PW1).

I have also considered the fact that, since the plaintiff had presented the caveat to the Assistant Registrar of Titles regarding the suit plot in 1996 as appearing in the certified copy of the certificate of title (**PE1**) to date the defendant or his agents have not taken any action against the plaintiff's caveat. To my established opinion, this is a prima facie evidence that, the defendant had relinquished his rights over the suit property since 1996 or earlier than 1996.

In the light of the evidence on record and in view of absence to the contrary from the defendants or any person, I am satisfied that the plaintiff's suit is legally grantable. I therefore enter judgment and decree in favour of the Plaintiff by making the following orders'

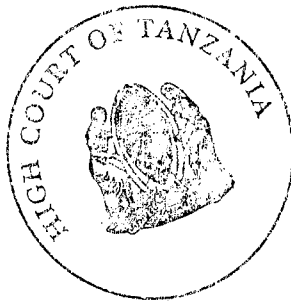
1. That, the plaintiff is hereby declared a lawful owner of the suit Property located on Plot No. 413 Block "CC" Sombetini-Arusha Municipal Council with Land Office Number 150766 Land Title 10869-Land Registry Moshi
2. As the defendant is seen nowhere and or his whereabouts are untraceable, the Assistant Registrar of Titles- Moshi or any person acting on his behalf is hereby directed to procedurally register the suit plot whose details are as per item (1) above in the name of the plaintiff, Epafra Teete
3. That, the plaintiff shall have his costs of this suit borne by the defendant

It is so ordered



M. R. GWAE
JUDGE
18/06/2020

Court: Remedy for any aggrieved party is available including, an appeal, right to set aside this ex-parte judgment or any other available remedy



M. R. GWAE
JUDGE
18/06/2020