

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND CASE NO. 10 OF 2016**

**MICHAEL KILION BULEMO .....PLAINTIFF**

**VERSUS**

**ALFRED FADHILI SEKIETE.....1<sup>ST</sup> DEFENDANT**

**DOMINION WORKS LIMITED .....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**03/7/2020& 18/08/2020**

**GWAE, J**

This is a land dispute where the central and serious contention issue is a double sale of a landed property on a surveyed Plot No. 164 Block "C" LO No. 313201 located at Njiro in Arusha City (suit plot) by one **Alfred Fadhili Sekiete** (1<sup>st</sup> defendant) to the plaintiff, **Michael Kilion Bulemo** (Plaintiff) and an entity known as "**Diminion Works Limited**" (2<sup>nd</sup> defendant).

The plaintiff and 2<sup>nd</sup> defendant are found alleging to have purchased the suit land from the 1<sup>st</sup> defendant for the sum of Tshs. 70,000,000/= and Tshs. 85,000,000/=respectively. Both the plaintiff and 2<sup>nd</sup> defendant have been furnished with certificates of titles bearing the name of the 1<sup>st</sup> defendant as owner of the suit land immediately after completeness of payment of the said consideration sums however both purchasers bought

the suit plot at different times. The plaintiff purchased it on 02/09/2014 whilst the 2<sup>nd</sup> defendant purchased the same on the 3<sup>rd</sup> October 2014 shortly after he managed to effect transfer of the ownership on 27<sup>th</sup> November 2014.

Immediately after sale agreement had been completed between the plaintiff and 1<sup>st</sup> defendant, the plaintiff came to be aware that there were certain developments on the suit plot particularly erection of a wire fence. Hence he made an inquiry and eventually came to know that, the 1<sup>st</sup> defendant resold the plot to another person (2<sup>nd</sup> defendant).

Having noted such double sale of the same plot by the 1<sup>st</sup> defendant, the plaintiff on the 13<sup>th</sup> 2016 instituted this suit through legal services of **Mr. Gwakisa Sambo**, the learned advocate practicing as Patriotic Legal **Consultants & Advocates** praying for the following reliefs against both defendants;

- (a) A declaration that, the plaintiff is lawful and absolute owner of the disputed plot as ascribed herein
- (b) A declaration that, the defendants are jointly and severally trespassers to the suit land
- (c) A declaration that, the purported sale of the suit land conducted on the 5<sup>th</sup> October 2014 between the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant and its subsequent transfer are null and void ab-initial
- (d) A permanent injunctive order to retrain the defendants, their agents workmen or any other person acting on their instructions from doing any activities and of disturbing

the plaintiff so that he be able to peacefully enjoy the suit land

ALTERNATIVELY

- (e) The 1<sup>st</sup> defendant be ordered to refund back to the plaintiff the purchase price ie Tshs. 70,000,000/= together with interest thereon
- (f) Payment of the general damages suffered by the plaintiff to be assessed by the court
- (g) Interest at the current bank rate at 21 % per annum on prayer (e) above from 2<sup>nd</sup> September 2014 to date of judgment
- (h) Interest on the on the decretal sum at a commercial court rate of 12 % per annum from the date of judgment to the date of satisfaction of the decree in full
- (i) That, the defendant to be condemned to pay costs of the suit
- (j) Costs off the suit be provided for

Upon service of copies of the plaintiff's plaint, the defendants filed their respective written statement of defence on the 2<sup>nd</sup> May 2016. The 1<sup>st</sup> defendant via his WSD seemingly to have admitted to have sold the suit plot to the 2<sup>nd</sup> defendant and absolutely denied to have taken participation in the sale of the suit land to the plaintiff. While on the other hand, the 2<sup>nd</sup> defendant through his written statement of defence strongly stated to be a lawful purchaser and the one in possession of the suit land from 2014 to date.



Despite the fact that the 1<sup>st</sup> defendant promptly and duly filed his written statement of defence and subsequently appeared in court however he intentionally defaulted appearances during various court's sessions as a result the trial of the case was conducted in his absence.

During trial of the matter the plaintiff was, throughout the court's sessions, represented by two advocates namely; **Mr. Gwakisa Sambo** assisted by **Mr. Yusuph Mlekwa**, both from Patriotic Legal Consultants & Advocates whereas **Mr. Jeremiah S. Mjema** practicing as Voice Attorneys represented the 2<sup>nd</sup> defendant.

Immediately before commencement of trial of the case, the following issues were framed after consultation with the parties' advocates;

1. Whether the suit property on plot No 164 Block "C" L.O No. 313201 located at Njiro area-Arusha was formerly owned by the 1<sup>st</sup> defendant
2. Whether the plaintiff purchased the suit plot from the 1<sup>st</sup> defendant prior to the 2<sup>nd</sup> defendant
3. Whether the 2<sup>nd</sup> defendant trespassed the suit property or who between the plaintiff and defendant acquired a better title
4. To what extent of reliefs are the Parties entitled

In proving his case, the plaintiff appeared in court for testimonial purposes and appeared as **PW1** more so he was able to support his evidence by bringing two witnesses, these were his wife known by names of Linas Paul Kinyongo (PW2) and Miss Edna Mndeme (PW3). The evidence of the plaintiff is to the effect that he purchased the suit plot from the 1<sup>st</sup>

defendant whose names appeared in the certificate of title (PE2) issued to him after he had paid the purchase price (Tshs. 70,000,000/=) and that the sale agreement was reduced into writing (PE1). There is also evidence that the PE1 was witnessed by one person called Isack, PW2, Linas and Paul Kinyando as well as PW3.

The plaintiff's evidence is further to the effect that immediately after sale agreement had been complete, the plaintiff sent two trips of sand into the suit plot worth Tshs. **1, 250, 000/=** and after lapse of some days since he purchased the plot in question, on 15/10/2014 the PW1 visited the plot to where he observed that, there was developments such as erection of fence foundation. He eventually came to know that the trespasser of his plot was the 2<sup>nd</sup> defendant by being told by other persons particularly neighbors to the suit plot and through his official search (PE3) in land office at Moshi. The plaintiff testified that the sale agreement entered between the 1<sup>st</sup> and 2<sup>nd</sup> defendant is illegal. The plaintiff finally alleged to have economically and socially suffered from mental torturing, High blood pressure, he thus prayed this court to award him reliefs prayed in his plaint.

When cross examined as if he made transfer of the ownership of the suit plot was done, the plaintiff and PW3 testified that the transfer was in process.

On the other hand, the 2<sup>nd</sup> defendant was able to have two witnesses summoned and entered their appearance in court for testimonial purposes, these were; Amit Paul Singh, the 2<sup>nd</sup> defendant Managing Director and

Gudluck Peter Lonjo (DW2), an advocate who witnessed the sale agreement (DE2) in respect of the suit plot made by the 1<sup>st</sup> defendant and 2<sup>nd</sup> defendant's director (DW1). The DWI made an official search at Arusha land office and at Moshi (DE2) where he was told that the plot was free from any encumbrances. The 2<sup>nd</sup> defendant via DW1 testified that, after having been satisfied that the plot had no encumbrances whatsoever, he paid the agreed purchase price (Tshs. 85,000,000/=) through Exim Bank and sale agreement (**DE3**) to that effect was signed by the parties and witnessed by the DW2.

The 2<sup>nd</sup> defendant in support of his defence also produced a certificate of title (**DE4**) issued on 01.3.2013 in relation to the suit plot bearing the name of the 1<sup>st</sup> defendant and that the exercise of transfer of ownership was finally completed on 27.11.2014 and eventually he was issued with a building permit (**DE5**) by Arusha City Authority and started erecting a fence.

Finally, the 2<sup>nd</sup> defendant through DW1 prayed this case be dismissed and he be declared a lawful owner, issuance of permanent injunction, costs of the case to be borne by the Plaintiff and any other reliefs as deemed right by the court to grant.

Having visited the locus in quo, the parties' advocates and the court formed the view that there should be a witness from the land office where the certificate of titles (duplicates) are safely kept so that the certificates of title produced by the plaintiff (PE2) and the one produced by the 2<sup>nd</sup> defendant (DE4) be differentiated by an expert (land officer from the office

of Assistant Registrar be it Moshi or Arusha). Ultimately, one Paul Mayombo, assistant Registrar of Titles at Arusha appeared as court's witness (CW1) with experience of five years.

The CW1 testified to the effect that he is able to distinguish between a genuine and forged CT one adding that, ordinarily one who prepares a CT has to complete filling necessary gaps, there must be deed plan signature of Registrar of Titles, seal colour, and ink of the pen used and related features. The CW1 when given two CTs was able to differentiate the same. He told the court that the CT (**DE4**) tendered by the DW1 was genuine as opposed to the one tendered by the plaintiff (**PE2**) comparing them by the one which he came with. The CW1 went on testifying that no deposition or transfer of the right of occupancy that could be effected by using (PE2).

After close of the parties' case, the advocates who represented the plaintiff and 2<sup>nd</sup> defendant sought and obtained leave to file their closing submissions. However the plaintiff's advocates did not make it nevertheless I am of the view that, the final submission is a mere guide to the court in resolving issues before the court by the parties or their advocates as to the parties' pleadings and evidenced adduced during trial (See **Vidyarthi v. Ram Rakha** [1957] EA 527 and decision of the Supreme Court of Nigeria in **Adtoun Oladeji (NIG) v. Nigeria Breweries PLC** SC 91/2002).

This is what transpired between the plaintiff's case and defence by the 2<sup>nd</sup> defendant, I should now determine the issues framed immediately before commencement of the trial as herein under.

Regarding the **1<sup>st</sup> issue** namely; whether the suit property on plot No 164 Block 'C' L.O No. 313201 located at Njiro area-Arusha was formerly owned by the 1<sup>st</sup> defendant. As exhibited by the Certificate of Title (PE2 & DE4) followed by the testimonies of the PW1, PW2, DW1 and CW1, I am therefore of the increasingly view that the 1<sup>st</sup> defendant was a lawful owner of the suit plot since 07/3/2013 to 2014 when he sold it. The said witnesses (PW1& DW1) certainly said that the made official searches (PE3 & DE2) and the same revealed that the owner of the suit plot was no other person than the 1<sup>st</sup> defendant It therefore goes without saying that the 1<sup>st</sup> defendant was owner of the suit land.

In the **2<sup>nd</sup> issues**, 'whether the plaintiff purchased the suit plot from the 1<sup>st</sup> defendant prior to the 2<sup>nd</sup> defendant'. According to the evidence adduced by the PW1, PW2 and PW3, it is amply established that the plaintiff and 1<sup>st</sup> defendant entered into sale agreement (PE1) on 2/9/2014 for the sale of the suit plot and it is sufficiently established that purchase price was Tshs. **70,000,000/=** whereas the 2<sup>nd</sup> defendant has testified to the effect that he purchased the suit by paying the consideration sum of Tshs. 85,000,000/= on the 3<sup>rd</sup> October 2014 and sale agreement was subsequently signed by the parties and their respective witnesses. Hence it is glaringly clear that the plaintiff purchased the suit land prior to the purchase of the same by the 2<sup>nd</sup> defendant. Nevertheless it is very controversial as to who has better title between the two purchasers of the suit land as going to be demonstrated herein.

As to the **3<sup>rd</sup> issue** styled, whether the 2<sup>nd</sup> defendant trespassed the suit property or who between the plaintiff and 2<sup>nd</sup> defendant acquired a



better title, it has been established during trial that, the plaintiff after having paid consideration sum was on a process of effecting transfer of ownership from the 1<sup>st</sup> defendant to himself but the same was not completed by PW3 due to the fact the plaintiff came to learn that the suit property was subsequently sold to the 2<sup>nd</sup> defendant and his awareness was through official search (PE3) dated 21<sup>st</sup> October 2015 and that the transfer was effected in favour of the 2<sup>nd</sup> defendant. Hence complete disposition of the suit plot to the 2<sup>nd</sup> defendant though it is not in dispute that, both plaintiff and 2<sup>nd</sup> defendant entered into written contracts of sale over the same suit property (object). However as adduced by the CW1 that, the title could not pass in favour of the plaintiff since the PE2 given to him by the 1<sup>st</sup> defendant was nothing but a forged certificate of title. To my considered view in order a contract to be valid and enforceable it must have been made under lawful consideration for lawful object. Section 10 of the law of Contract Act, Cap 345 Revised Edition, 2002 reads and I quote;

“10. All agreements are contracts if they are made by free consent of the parties competent to contract, for lawful consideration and with lawful object and are not hereby expressly declared void”

In our instant dispute, the plaintiff and 1<sup>st</sup> defendant were certainly competent parties to enter into the contract and the object sought to be sold and purchased by the 1<sup>st</sup> defendant and plaintiff respectively, was lawful however free consent as defined in section 13 of the Law of Contract Act (supra) cannot be said to have existed since both plaintiff and 1<sup>st</sup> defendant did not agree upon the same thing and in the same sense due

to reason that, there is an indication of fraud or lack of good faith on the part of the 1<sup>st</sup> defendant by giving the plaintiff a forged certificate of title as alluded by the CW1 who professionally compared the PE2 and DE4 with the duplicate certificate of title withheld by the office of Assistant Registrar of Titles formerly located in Moshi however currently it is in Arusha. In the decision of the Court of Appeal of Tanzania in **Abually Alibhai vs. Bhatia Brothers Ltd** (200) TLR 288-290 the disposition of a right of occupancy was discussed at length that;

(i) & (ii) not relevant:

(a) that a Right of Occupancy is something in the nature of a lease and a holder of a Right of Occupancy occupies the position of a sort of lessee *vis-a-vis* the superior landlord; therefore a disposition of a right of occupancy is necessarily a tripartite transaction involving not only the holder of the right of occupancy and the purchaser or donee, but also involving the superior landlord;

(b) Not relevant

(iii), (iv), (v) and (vi) Not relevant

(vii) A contract for disposition of land which otherwise is proper but for the lack of required consent, is inoperative, that is unenforceable to the extent that such enforcement is prejudicial to the interest of the paramount landlord;

(viii) Where enforcement of a contract for disposition of land is not prejudicial to the paramount landlord a party who has

performed his or her part of the bargain may be assisted by the court to enforce the contract against the defaulting party;

(ix) Where consent is sought and is refused the contract becomes wholly unenforceable, though valid, and any expenses incurred by the parties may be recovered by legal action, if necessary;

In our present matter, the consent from the Land Commissioner was not yet sought by the plaintiff except the 2<sup>nd</sup> defendant who sought and obtained the same. Even if the plaintiff would seek the consent of transfer yet the same could be obviously refused for an apparent reason that, the authenticity of PE2 would be questionable. It follows therefore, in my decided opinion, the contract between the plaintiff and 1<sup>st</sup> defendant cannot be said to be valid and effectual for reasons that, the 1<sup>st</sup> defendant initially made misrepresentation as to the certificate of title by his act of issuing a forged CT in favour of the plaintiff which constitutes fraud and misrepresentation.

In the book bearing the title "Conveyancing and disposition of Land in Tanzania and Procedure", Law Africa, Dar es salaam, 2017, at page 330

"The registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transactions that confer, affects or terminates that ownership or interest. Once the registration process is completed no search behind the register is needed to establish a chain of a

title to the property for the register itself is conclusive proof of the title”.

(See also **Leopold Mtutembei v. Principa; Assistant Registrar of Titles and AG**, Civil Appeal No.57 of 2017 (unreported-CAT at Mwanza)

In our instant case, the registration of transfer from the 1<sup>st</sup> defendant's ownership to the 2<sup>nd</sup> defendant has been completed. Similarly, the 2<sup>nd</sup> defendant was given the original and quinine certificate of title (DE4). Hence the one with better title is the 2<sup>nd</sup> defendant, Dominion Works.

In the **last issue**, I Have considered the fact that, the plaintiff is bonafide purchaser of the suit land, he should not therefore be blamed except the 1<sup>st</sup> defendant who fraudulently sold the suit property to him. As a bonafide purchaser he should be reimbursed of the money paid a consideration sum (Tshs. 70,000,000/= (See a foreign decision in **Bishopsgate Motor Finance Corporation Ltd. v. Transport Brakes Ltd** ([1949] 1 K.B. at p. 336) which stressed protection for a person who takes in good faith and for value without notice) plus interests by the 1<sup>st</sup> defendant and be paid the costs of his two trips of sand worth Tshs, 1, 250,000/= by the 2<sup>nd</sup> defendant.

Consequently, the plaintiff's claims are partly granted as herein;


1. That, the plaintiff's prayer of ownership of the suit plot is dismissed.
2. That, the plaintiff shall have his money that is Tshs. 70,000,000/= refunded by the 1<sup>st</sup> defendant.

3. Interest on the decretal sum at at rate at 15 % per annum on prayer (e) above from the date of filing to date of judgment delivery.
4. Interest on the on the decretal sum at court rate of 7 % per annum from the date of judgment to the date of satisfaction of the decree in full
5. That, the plaintiff shall be paid Tshs.1,250,000/=by 2<sup>nd</sup> defendant being costs of the two trips of the sand sent into suit plot
6. That, costs of the case shall be borne by the 1<sup>st</sup> defendant


On the other hand, the 2<sup>nd</sup> defendant is entitled to the following reliefs;

1. He is declared a lawful owner of the suit Plot No. 164 Block "C" LO No. 313201 located at Njiro in Arusha City
2. That, the 2<sup>nd</sup> defendant shall have his costs of this case paid by the 1<sup>st</sup> defendant

It is so ordered.

  
**M. R. GWAE**  
**JUDGE**  
**31/08/2020**

Right of appeal fully explained.

  
**M. R. GWAE**  
**JUDGE**  
**31/08/2020**

