

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

AT DAR ES SALAAM

CONSOLIDATED AMENDED CIVIL CASE NO 410 OF 2000

(Originating from Civil Case No. 410 of 2000 and Land Case No. 80 of 2011)

EDWARD TERI *(As administrator of the estate of the late*

WILLCHARLES TERI).....**1ST PLAINTIFF**

DAVID KOMBE.....**2ND PLAINTIFF**

VERSUS

THE COMMISSIONER FOR LANDS

AND HUMAN SETTLEMENTS.....**1ST DEFENDANT**

THE ATTORNEY GENERAL.....**2ND DEFENDANT**

CLAUDE ROMAN SHIKONYI.....**3RD DEFENDANT**

JUDGEMENT

Date of last Order: *12/08/2020*

Date of Judgement: *26/10/2020*

MLYAMBINA, J.

The instant matter is an apparent conflict between the one holding Customary Right of Occupancy with the other holding Granted Right of Occupancy. In order to address the main dispute, the Court framed two legal issues, namely:

1. Who is the lawful owner of the suit land described as Plot No. 58 Block "E" Tegeta, Dar es Salaam as between the Plaintiff and the 3rd Defendant?
2. To what relief (s) are the parties entitled.

The claim by the Plaintiff is that he bought a farm from Alois Samia at the tune of TZs 190,000/= on 16th August, 1985. But on or about 1989, the 1st Defendant decided to survey the area and named it as Tegeta Block "E" making it a planned area without considering that the area was by then still under Village Authority and was supposed to be surveyed as farms. When the survey was made, it went together with valuation of permanent crops for the purpose of immediate payment of compensation to owners who would be affected by the survey exercise, and the 1st Plaintiff complained as it was done without his knowledge and the land was undervalued.

The Plaintiff together with one Estomy Baraka filed *Civil Case No. 410 of 2000* before this Court against the 1st and 2nd Defendants herein. The suit was settled in favour of the Plaintiff. The settlement of which was nullified by the Court of Appeal through revision proceedings preferred by the 3rd Defendant herein.

Basing on the afore claims, the Plaintiff in this suit prayed for Judgement and Decree as follows:

- i. A declaration that the survey and allocation of Plots from the Plaintiff farm was illegal, null and void *ab initio*.
In the alternative;
- ii. The deed of settlement be adopted as a Consent Judgement and a Decree thereby be issued against the 1st and 2nd Defendants.
- iii. A declaration that allocation of the land, that is Plot No 58 Block "E" to the 3rd Defendant is null and void and the same be revoked.
- iv. A declaration that the disputed land which the 2nd Plaintiff is occupying and has constructed structures as well as living therein belongs to him and has nothing to do with the 3rd Defendant.
- v. An order to the 1st and 2nd Defendant to issue to the 2nd Plaintiff Title Deed to Plot No. 60 Block "E".
- vi. Costs of the suit.
- vii. Any other relief (s).

At mediation stage, however, upon site visit, it was discovered that the claim against the 2nd Plaintiff in *Land Case No. 80 of 2010* was unfounded for reason that the Plot of land occupied by the 2nd Plaintiff is Plot No. 690 and not 58. Wherefore Judgement was

entered against the 3rd Defendant. On that account, the 2nd Plaintiff withdrew the suit.

Throughout the record, the following facts are indisputable valid: **First**, the Plaintiff is the Customary owner of the land since 1985. **Second**, the land of the Plaintiff was acquired by the Government on or about 1989. **Third**, the Plaintiff's land was surveyed resulting into 12 Plots one of which is the disputed Plot. **Fourth**, the Plaintiff disputed the survey for lack of involvement in the process of surveying the Plot instead of surveying as farm and under valuation of the land. **Fifth**, upon dispute the 1st and 2nd Defendants agreed to allocate all the 12 Plots to the Plaintiff. **Sixth**, the 1st and 2nd Defendant's revoked Title Deeds of the 11 Plots allocatee. **Seventh**, the 3rd Defendant herein refused to surrender his Title Deed.

The question follows; whether the 3rd Defendant was legally allocated the suit Plot. It is in evidence by Edward Joseph Teri (PW1) Estomy Alois Baraka (PW2) and Hellen Philip Njau (DW1) the latter being the Land Officer at the Ministry of Land; that the Plaintiff's land resulted into 12 Plots but he was not given a single Plot and he did not take compensation. Further, the Government settled with the Plaintiff to allocate all the 12 Plots to him.

DW1 testified further that the Ministry informed Claud Shikonyi by way of a letter with Reference No. LD/12 9259 dated 19th January, 2010 to surrender his Title Deed in respect of Plot No. 58 Block "E" Tegeta Dar es Salaam but he refused to honour it. The alleged letter was admitted as (exhibit D1).

DW1 was of testimony that the Ministry issued a revocation notice of the 3rd Defendant's title in 2015. By then the 3rd Defendant had not developed the Plot. PW1 and PW2 testified that the Plaintiff was not involved in the survey of his Plot and no compensation was paid to him.

On his part, DW2 (3rd Defendant) was of testimony that the suit Plot was lawfully allocated to him by the relevant authority. He tendered a letter from CRDB Bank dated 10th April, 2015 acknowledging Receipt of Title No. 45477, Certified Title Deed, Land Rent Receipts as (exhibit D2) collectively and Building Permit No. 36550 issued by the Kinondoni Municipal Council in 2002.

In view of the 3rd Defendant, the Plaintiff should have claimed compensation from the 1st and 2nd Defendant. In his final written submission, the 3rd Defendant cited the case of **Ramadhani Abdallah v. Abnelshaka and Another**, Land Appeal No. 88 of 2007 (unreported) at page 4 of the Judgement, the Court said:

The appellant has seriously disputed to have 'been compensated for the acquired land...he argues that as he was not compensated, he is still the rightful owner of the disputed land and the two respondents are trespassers. As correctly stated by the trial Tribunal in its decision, the obligation to pay compensation for the land acquired by the Government lies entirely on the Government itself and the persons who are allocated that land has no duty whatsoever to compensate the previous occupier.

At page 5 of the Judgement, the Court went on to say:

Assuming that the Appellant is not compensated, something which according to the evidence is doubtful, will that act reduce the respondents to the status of trespassers? The evidence in the record is very clear and answer the posed question precisely. Undisputedly, upon the acquisition of the land by the Government, the two Plots crated which are Nos 94 and 95 were lawfully allocated to the two respondents. They hold titles to that land. There is nothing in the record to suggest that tiles were fraudulently acquired. It then goes without saying that they are lawful owners hence not trespassers. As stated previously, the issue of compensation is on the Government and it is not their concern hence if not

paid will not invalidate the titles granted to the respondents and turn their status to that of trespassers. (Emphasis added).

In Mbeya- **Rukwa Autoparts and Transport Ltd v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2000 [2003] TLR 251, the Court of Appeal of Tanzania had the following to say at page 266 regarding who is vested with powers to revoke the right of occupancy:

Under the Land Ordinance (Cap 113) which was in force when this proceeding was decided and under the present law, the powers to grant and revoke rights of occupancy are vested in the president. (Emphasis Added).

According to the available evidence on record, The President of the United Republic of Tanzania did not initiate the purported revocation through the purported Deed of Settlement (exhibit P4) or otherwise. The commissioner for lands and The Attorney General has no powers to revoke a right of occupancy. Powers of revocation are vested on the president pursuant to *Section 45 of the Land Act Cap 113 R.E. 2019*. Even the Court itself has no such powers in view of the decision of the Court of Appeal in **Mbeya Rukwa Autoparts** (*supra*) which binds this Court.

I must first hold that Granted and Deemed or Customary Rights of Occupancy are of equal status. As such, a deemed or Customary Right of Occupancy is not inferior to Granted Right of Occupancy by all purposes and intent. In the Plaintiff's final submission, he cited an Article, of which I share same view. The Article is termed **Cultural Survival Quarterly Magazine, Legitimizing Dispossession Tanzania High Court Decision on the Eviction of Maasai Pastoralists from Nkomazi Game Reserve December, 1998** in which Dr. Tenga W. Ringo had these to say:

As a consequence of this recognition, the Customary Titles to land may not be extinguished without following the provisions of the law that allow the state to acquire landed private property (eg. The Land Acquisition Act, 1967... administrative mechanisms such as declaration of planning area cannot effectively extinguish such titles in law.

In this suit, as much as I may agree with the 3rd Defendant, the 1st and 2nd Defendant have no powers to revoke the Title of the 3rd Defendant. That is the sole mandate of the President or by Operation of Law. However, the Plaintiff have alleged that he was not involved in the survey and no compensation was paid to him.

There is no any evidence from the 1st and 2nd Defendants to disprove such contention.

At large, having noted that the 1st and 2nd Defendants illegally surveyed the Plaintiff's land, they consented to allocate all the 12 Plots to the Plaintiff and went ahead to issue a letter requiring surrender of Title Deed and Notice to revoke the Title Deed of the 3rd Defendant. It is the findings of this Court that allocation of the suit Plot to the 3rd Defendant by the 1st Defendant was wrong and it acted on irregular principle.

The Plaintiff owned the same land for some years. He ought to have been involved in the acquisition process, survey and most important been paid adequate and fair compensation failure to comply with legal condition for acquiring one's land renders the Plot titles thereof null and void *ab initio*. The Customary Title owner holds the same free from all estates and interests whatsoever.

In the case of **Attorney General v. Lohay Akonay and Another** (1995) TLR 80, the Court held that:

When the occupier of the Customary land is deprived of his land, he would be entitled fair compensation.

The Plaintiff's land was acquired but neither of the surveyed Plots nor any compensation was paid to him as there is no any proof to that effect.

In the end, I grant this suit by declaring that the survey and allocation of the Plaintiff farm was illegal, null and void. The Plaintiff is hereby declared the lawful owner of the suit Plot No. 58 block "E" Tegeta Dar es Salaam. Considering the nature of the case, I order each party to bear his or its costs.



Y. J. MLYAMBINA

JUDGE

26/10/2020

Judgement pronounced and dated 26th October, 2020 in the presence of Counsel Khalid Sudi Rwebangira for the Plaintiff and Sylvester Korosso holding brief of Wilson Ogunde for the 2nd Defendant.



Y. J. MLYAMBINA

JUDGE

26/10/2020

