

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL CASE NO. 80 OF 2015**

JAMES MAKUNDI..... PLAINTIFF

VERSUS

PERMANENT SECRETARY

MINISTRY FOR LANDS AND HUMAN

SETTLEMENTS DEVELOPMENT.....1st DEFENDANT

ATTORNEY GENERAL.....2nd DEFENDANT

DUSTAN NOVAT RUTAGERUKA.....3rd DEFENDANT

JUDGMENT

Date of Last Order:30/04/2020

Date of Ruling: 22/09/2020

S.M. KULITA, J.

The Plaintiff herein claims for the following reliefs against the above mentioned Defendants;

1. Declaratory order that the act of the 1st defendant purported to have carried on valuation report over the Plaintiff's properties situated on Plots No. 204, 205 and 206 Block "K" Kurasini, Dar es Salaam without involving the Plaintiff is unlawful.

2. Declaratory order that the Plaintiff's properties mentioned herein are not within the area acquired by the Government for the purpose of Port extension.
3. Declaratory order that the 3rd Defendant's Certificate of title No. 20053 which is illegally purported to consolidate the three Plaintiff's Certificate of title and make it one is illegal, and therefore be nullified.
4. Declaratory order that the 3rd Defendant's Survey Plan No. 61723 illegally and maliciously consolidated all the plaintiff's three Plots No. 204, 205 and 206 Block "K" Kurasini to make it one plot registered as Plot No. 2003 Block "1" is illegal, hence be nullified.
5. An Order that the Plaintiff lawfully acquired the land plots since a long time; Plot No. 205 with title No. 36949 since October, 1989; Plot No. 206 with title No. 36461 since May, 1990; Plot No. 204 with title No. 39671 since April, 1992. Hence be reversed to the Plaintiff, as it was before.
6. Perpetual Injunctive Order permanently restraining the Defendants from acquiring, interfering or committing any act calculated to interfere with the Plaintiff's quite and joyous possession of the suit properties.
7. Payment of General Damages at the tune of Tsh. 500,000,000/=, interest and costs incidental thereto.
8. Costs of the suit to be borne by the Defendants.

During trial the Plaintiff's side called one witness namely James Makundi, the Plaintiff who testified sole. The Defence side had a total number of three witnesses. The Plaintiff is represented by the Learned Advocate Catherine

Lyasenga while the 1st and 2nd Defendants are represented by the Learned Counsels Stanley Kalokola and Asante Hosea, State Attorneys. The Learned Erasmus Buberwa, Advocate appeared for the 3rd Defendant.

In his testimony the Plaintiff, Mr. JAMES MAKUNDI (PW1) stated that he was the holder for five houses located on plots no. 204, 205 and 206 Block "K" Kurasini, Temeke in Dar es Salaam region. He said that the said plots has the title deeds with his name. PW1 clarified that Plot No. 204 has a title No. 39671 issued on 02/04/1992 while Plot No. 205 has a title No. 36949 issued on 24/07/1990. The last plot, that is No. 206 has a title No. 36461 issued on 08/05/1990. PW1 tendered the said three title deeds to court. They were received and admitted as Exhibit P1 collectively. He said that he has been living over there since 1989 and he had tenants for the said houses.

PW1 testified that on 04/07/2003 when he arrived at home he did notice the mark "x" on the walls of his houses and was told that somebody John Mhando from the headquarters for the Ministry of Lands is the one who did put the said marks.

PW1 further said that on the 27/06/2015 somebody Eddie Mkwaya arrived at his resident convincing him to sell his premises to his boss who is the 3rd Defendant. He is the one who had sent him there. The said person further told him that his boss already has a title deed for the plots he (PW1) possesses. PW1 told him that the said premises are subject to a case since 2013 hence he could have not sold to them. On the same date the Street Chairman for Mivinjeni called him and told him that somebody intends to purchase his premises, he should not deny the offer. PW1 said that he denied

the offer for the same reasons. However, on the 27/11/2013 at about 0700 hours a group of people about 45 in number dropped from four Pick-up motor vehicles invaded his premisses and started to demolish his structures erected over those three plots. PW1 said that after the said demolition he did take photos for the premise. He tendered to court the said photos. They were received and admitted as Exhibit P2.

PW1 said that he reported the matter at Kilwa Road Police Station. The Head of Police for Temeke District (OCD) visited the scene but he had come with the copy of a title deed with No. 120053 issued on 16/12/2011. The said title deed has the name of Dustan Novat Rutageruka as the holder for the said premises. He said that the title deed shows that it is for the Plot No. 2003, Block "1" Kurasini. PW1 further stated that he took the copy for the said title deed, he discovered that the same is fake as it was not issued according to the lawful procedures. It also has no national emblem and not made in the headed paper. He further testified that on the 04/11/2015 he did conduct the official search at the Ministry of Lands for the status of his plots and noticed that they were still owned by him. He tendered the said official search results to court. They were received and admitted as Exhibit P3.

After noting that he is the source of demolition of his houses PW1 decided to join Dustan Novat Rutageruka (3rd Defendant) as the Defendant.

PW1 concluded by praying the following reliefs against the Defendants; Tsh. 2,180,000,000/= as a compensation for the unlawful demolition of his houses by the 3rd Defendant. He further prayed for the acts of the 1st and 3rd Defendants be regarded unlawful, the 3rd defendant's purported title deed

be disregarded and those made in his name be confirmed. He also prayed for costs of the suit.

In the cross examination by the State Attorney, Asante Hosea and Mr. Buberwa Advocate PW1 stated that he attended the meeting convened by the Minister for Lands, Prof. Anna Tibaijuka on the 16/8/2013. He said that the meeting was about a re-valuation. He also said while replying questions from the State Attorney that no valuation had been done for his plots on 14/7/2013. He denied the statement that his plots had been surveyed and evaluated. He said that as they were surveyed plots they could have not been re-surveyed. He said that only the un-surveyed areas were evaluated for acquisition by the Government. The witness denied the allegation that he was escaping the Land Officers who were planning to meet with him for the valuation purpose. PW1 stated that he doesn't know if there are Tsh. 277,036,800/= offered to him by the Government as compensation.

That was the end of the Plaintiff's case which comprises the testimony of the Plaintiff in sole.

The 1st witness for defence one MELKIZEDECK SANGALALI LUTEMA who is an Advocate in Dar es Salaam who testified as DW1 stated that Mr. Dustan Novat Rutageruka (3rd Defendant) loaned money from one Joseph Obeto who is his client. The transaction was conducted at his office. He said that Mr. Dustan Novat Rutageruka submitted his title deed to him as a security for the said loan. He said that the said title deed is in his possession as a lien. He will bring it back to the owner after the loan being settled. DW1 submitted that the said title deed is for Plot No. 2003 Block "1" Kurasini. It

has a Certificate of Title No. 120053 with Land Office Tenure No. 456063. The said title deed was received and admitted as Exhibit D1.

The 2nd witness for Defence who is also the 3rd Defendant one DUSTAN NOVAT RUTAGERUKA (DW2) testified that Plot No. 2003 Block "1" sized 13,000 meters square is owned by him since December, 2013 when the Commissioner for Lands had allocated it to him. He said that he has the title deed for it. The witness said that he is among the persons who were allocated the plots by the Government located over Kurasini area for the port business purposes. He said that the Government had the intention of making expansion of the port premise and that the said plots had been acquired from the citizens who were holding lands thereat. He said that valuation had been carried out and the site was re-surveyed by the Ministry of Lands. He further stated that the plots provided to them are big in size aiming to serve the activities which have connections with the port's business, like construction of yards for storage of containers and tanks for bulk oil storage. The said plots are supposed to be big in size, over 10,000 meters square. He said that the area that was acquired from Makundi (Plaintiff) was only 2,000 square meter in size and he used it for the residential purposes. The said land was acquired by the President for that purpose of expansion of the Dar es Salaam port.

DW2 testified that his Advocate requested the Official Searches for the Plots No. 204, 205 and 206 Block "K" Kurasini (Exhibit D2 collectively) from the office of Registrar of Titles. The same were issued and transpired that the said pieces of land had been acquired by the president of the United Republic of Tanzania as follows; Plot No. 204, since 08/09/2016; Plot No. 205, since

06/07/2017; and Plot No. 206, since 13/01/2017. Therefore, the Plaintiff is no longer the owner for the said pieces of land.

As for the issue of demolition of the structures erected over those pieces of land DW2 denied to be responsible for that. He said that he is not the one who had sent the people to execute it. He also said that his title deed is not fake but genuine, hence cannot be cancelled.

In his Counter Claim the 3rd Defendant (DW2) said that it is the Commissioner for Lands who had issued the title deed for him but strangely the Plaintiff has not sued her. In his prayers DW2 claims for Tsh. 260,000,000/= against the Plaintiff as the compensation for the loss of income for over seven years that was caused by the Plaintiff's prayer on interim injunction to court which was actually granted. He also claims for the compensation against the Plaintiff for the land rents of Tsh. 25,000,000/= that he had paid to Temeke Municipal Council, out of the assessed sum of Tsh 39,000,000/= without any production over the site (suit premise) that was granted to him by the 1st Defendant. The said Land Rent Assessment and the Exchequer Receipt (ERV) No. 16105064 were collectively admitted as Exhibit D3.

As for the issue of revocation of the right of occupancy DW2 stated that the President for the United Republic of Tanzania has those powers. He concluded by praying the court to declare him the rightful owner of the suit premise, as well to grant him any other reliefs that it may deem fit and just to grant.

The 3rd and last witness for defence one KAJESA MINGA (DW3), Land Officer from the Ministry of Land testified that in 2008 the Government had decided to expand the Dar es Salaam Port by acquiring a piece of land at Kurasini area which had been used for habitual purposes. Information and education to the local leaders and habitants living over there were provided before they were evicted. They were informed that properties like houses and plants would be compensated. DW3 said that the Minister publicised the matter in the Government Gazette dated 16/09/2011 (Exhibit D4).

DW3 testified that they faced some objections in the said task, some people complained that their properties were undervalued, others refused to vacate. For some people including the Plaintiff, apart from that they filed cases before the court. In 2013 the court ordered re-evaluated for some premises including that acquired from the Plaintiff. The witness said that after re-evaluation the Commissioner for Lands prepared the Evaluation Report (Exhibit D5). He said that it was for the four persons including the Plaintiff one James Makundi who had challenged the first evaluation.

He further testified that before making valuation the person whose land was going to be acquired used to be notified and given reasons for the issue including the properties which were subject to compensation by the Government. It is the testimony of DW3 that the records in their office show that the Plaintiff's properties were actually re-evaluated and he was supposed to be paid Tsh. 277,036,800/= as the compensation but he had not gone thereto to collect them inspite of being called to do so.

DW1 stated that Dustan (3rd Defendant) is among the persons who were allocated plots in Block "1" Kurasini, the area which was re-surveyed by the Government after the acquisition of the land from the ordinary citizens who were living over there, for the purpose of expansion of the Dar es Salaam Port. He was allocated Plot No. 2003 Block "1". He said that it was a substitute for his Plot No. 12 Block "65" Kariakoo which had been acquired by the Government.

DW3 further stated that among the purposes for the extension of the Dar es Salaam Port was providing premises for the construction of Filling Stations, Dry Ports, Fuel Reserve Tanks, Bulk Oil Storage, etc. As for the 3rd Defendant DW3 stated that the premise allocated to him was for the storage of Bulk Oil. He said that generally the allocation of those plots based on the usage of activities which have connections to the port's business. He said that the Government knows the places which are required for acquisition and it can do it at any time necessary for that purpose even if the holder is not interested.

In the cross examination by Mr. Buberwa, Advocate DW3 stated that the title deed for the Plot No. 2003 Block "1" is genuine, it was made according to the procedures required for issuance of the said document. He said that the prior title deeds for that area were revoked. He also said that the 1st evaluation was done in 2008 and the re-evaluation was done in 2013.

In the cross examination by Ms. Catherine Lyasenga, Advocate DW3 stated that the first valuation which was done in 2008 had no publication but the re-valuation in 2013 was conducted after the 2011 notice publication in the

Government Gazette. DW3 also stated that the notice in the Government Gazette mentions only Plot No. 206 but he insisted that demolition was valid as the other two plots had been acquired as well.

From the pleadings and evidence that have been adduced the following issues are to be determined;

1. Whether the Government unlawfully acquired **Plot No. 204** (with title No. 39671), **Plot No. 205** (with title No. 36949), and **Plot No. 206** (with title No. 36461), **Block "K", Kurasini** area in Temeke District.
2. Whether the 3rd Defendant's Certificate of title No. 120053 for Plot No. 2003 Block "1" Kurasini has been illegally created from the Plaintiff's plots No. 204, 205 and 206 Block "K".
3. Whether the 3rd Defendant's Survey Plan No. 61723 has been illegally and maliciously consolidated all three plots to make it one, ie. Plot No. 2003 Block "1".
4. To what relief(s) are the parties entitled.

The above four issues are collectively analysed as hereunder;

According to DW2 who is the 3rd defendant the disputable piece of land was allocated to him by the Commissioner for Lands after the said area being re-surveyed by the Government and granted to some persons including him for business purposes which are in connection with the port activities. The Land Officer (DW3) who works with the Commissioner for Lands also testified to that effect that after re-survey the new plots were created including Plot No. 2003 Block "1" which was allocated to the 3rd Defendant.

The Plaintiff (PW1) had a doubt on the transfer of ownership for those pieces of land to the 3rd Defendant the thing which led him to conduct the official search in the system sometimes in 2005 and noticed that he (PW1) was still the owner. He tendered the printed Official Search results (Exhibit P3) to court for proof. But according to DW2 (3rd Defendant) he also applied for the Official Searches. Three different searches were conducted by the Office of the Commissioner for Lands for the years 2017, 2018 and 2019 (exhibit D2 collectively) and noticed that the area had been acquired by the Government and the owner was read the President of the United Republic of Tanzania. This implies that the said piece of land had been real acquired by the Government, that's why the area was re-surveyed and re-allocated to the businessmen for the activities which have relevant connection to the port business. For him (DW2) the plot which was then registered as Plot No. 2003 Block "1" after re-survey was for the commercial use of Bulk Oil Storage. That being the purpose for the Government to acquire the said pieces of land from the Plaintiff it can't be proper to say that the 3rd Defendant has trespassed the premise. The issue of none change of data in the system by 2015 as it had been noticed by PW1 (Plaintiff) does not invalidate the said acquisition, it can just be a delay to update the system by the responsible officials in the office of the 1st Defendant which is not fatal. Furthermore, the evidence shows that the Plaintiff was aware of the issue since 16/08/2013 whereby the evidence shows that he attended the public meeting held by the Minister for Lands by then Prof. Anna Tibaijuka who spoke about that issue. Generally, I don't see any miscarriage of justice for the delay in updating the system on transfer of ownership for the suit premise from PW1

to the President of the United Republic of Tanzania and then to DW2 (3rd Defendant). The fact that the witness from the office of Commissioner for Lands (DW3) admits that his office is the one which had issued the title deed to the 3rd Defendant the same cannot be regarded fake as alleged by PW1.

The Plaintiff also alleged that the acquisition was not done for public interest as the property has been allocated to another individual after being acquired from him. It is a misconception to say so just because ownership has been granted to another individual. Public interest has a wide meaning but the most crucial thing to be considered is that the act of acquisition should be of more necessity to the public than the individual. **Section 4(1) of the Land Acquisition Act [Cap 118 RE 2019]** provides the meaning of public purpose (Public Interests) as follows;

"4. Definition of public purpose

(1) Land shall be deemed to be required for a public purpose where it is—

*(a) for exclusive Government use, for general public use, for any Government scheme, for the development of agricultural land or **for the provision of sites for industrial, agricultural or commercial development**, social services or housing;*

(b) for or in connection with sanitary improvement of any kind, including reclamations;

(c) for or in connection with the laying out of any new city, municipality, township or minor settlement or the extension or

improvement of any existing city, municipality, township or minor settlement;

(d) for or in connection with the development of any airfield, port or harbour;

(e) for or in connection with mining for minerals or oil;

(f) for use by any person or group of persons who, in the opinion of the President, should be granted such land for agricultural development.” (emphasis is mine)

As it has been stipulated in the above cited provision the Court of Appeal also stated in a case of **THE ATTORNEY GENERAL V. SISI ENTERPRISES LTD, Civil Appeal No. 30 of 2004 CAT at DSM (unreported)** that acquisition should be carried on only where there is a public purpose/interest. In the said case it was held;

“The validity of any acquisition under the Act depends on whether the land is required for a public purpose”

The subject matter in question is the land premise of which the government preferred it to be used for the commercial use of Bulk Oil Storage. The said business has a direct connection with the port activities whose premises were intended to be expanded to the nearby areas. The evidence shows that the Plaintiff is aware of that and does not dispute on the presence of port extension project over the said nearby area. It is the DW3’s testimony that after re-survey the initial terms of the acquired land was changed from residential to commercial use. Therefore, it was right for the disputable land to be allocated to the 3rd Defendant for the fulfilment of the said purpose.

According to DW3 the procedures for land acquisition were complied with by the Government but there were some few objections from some inhabitants including the Plaintiff on the amount of compensation. PW3 tendered the Government Notice (Exhibit D4) which shows that the notice was issued to the public. It was challenged by Catherine Lyasenga, Advocate for the Plaintiff that the said Notice mentions only one plot, that is No. 206 out of the three plots that were acquired. In my view that does not nullify the revocation of their title deeds done by the President as per the testimony of DW3 that re-evaluation was actually conducted for all three plots as it can be read in the Exhibit D5 and payments were affected to those who had gone to collect their compensation sum. As it had appeared in the updates of status in the Official Searches for the acquired pieces of lands (Exhibit P3) there might be some errors in the publication. Furthermore, as rightly submitted by DW2 and DW3 that the said two plots no. 204 and 205 being small in size, that is 1,230 (630 + 600) Square Meters in total and used for the residential purposes could have not be left as they were.

As for the issue of demolition of the plaintiff's houses the evidence of PW1 collides with that of DW2 and DW3. While PW1 (Plaintiff) alleges that it is DW2 (3rd Defendant) who had sent the mob of gangsters to carry out the demolition, DW2 and DW3 testified to the effect that demolition was conducted by the Government by using the Local Government Authorities for the area at which the land to be acquired is located.

Regarding the issue of the 3rd Defendant's survey plan No. 61723 being illegally and maliciously consolidated the three plaintiff's plots to make it one that is Plot No. 2003 Block "1" Kurasini, it is imperative to remind the Plaintiff

that the one who alleges must prove as it has been so provided under **Section 110(1) of the Tanzania Evidence Act [Cap 6 RE 2019]**. There is no evidence adduced by the Plaintiff to that effect. Instead DW3 whose office did make those changes did clearly provide the reasons behind the said changes and how the 3rd Defendant came into possession of the said Plot No. 2003 Block "1" Kurasini. From what have been stated I don't see the elements of malice nor taints of illegality in re-surveying the said land over that area which included three plots previously owned by the plaintiff and re-allocating them to others including the 3rd Defendant, the purpose being the expansion of port premise and the commercial purposes including Storage of the Bulk Oil, construction of fuel reserve tanks, Filling Stations, Dry Ports, etc. by the individual businessmen as it was so planed by the Government.

As for the Counter Claim by the 3rd Defendant it has been proved at the balance of probability that he actually suffered for failing to develop the suit premise since he had acquired it in 2015. Among the prayers that the 3rd Defendant seeks for is the payment of Tsh. 260,800,000/= by the Plaintiff being the compensation for the loss that he did suffer for not getting income from the suit premise due to the interim injunction order granted by the court regarding the Plaintiff's prayer through the Misc. Land Application No. 68 of 2017. He also alleged to have paid the land rent at a total sum of Tsh. 25,000,000/= out of Tsh. 39,794,050/= that was assessed by the Municipal (Exhibit D3) on the 22/5/2017. As well he alleged to have continued to pay the Security Guard services for the suit premise without any production. Those claims are special/specific damages. In **PETER JOSEPH KIBILIKA**

& ANOTHER V. PATRIC ALOYCE MLINGI, Civil Appeal No. 37 of 2009, CAT at Tabora (unreported) while citing the case of **ZUBERI AUGUSTINO V. ANICET MUGABE [1992] TLR 137** it was held;

"It is a trite law, and we need not to cite any authority, that special damages must be specifically pleaded and proved"

These claims being special damages require specific proof in order to be awarded by the court. As no proof has been given the same cannot be granted.

As for the issue of land rents that the 3rd Defendant had paid for the premise it was obligatory for him to do so even if the current case couldn't be there, the plaintiff's fault had nothing to affect the said payments.

Therefore, the only reliefs that can be granted in the Counter Claim is the General Damage of which I order the Plaintiff to pay the 3rd Defendant a total sum of Tsh. 20,000,000/= . As well the court declares the 3rd Defendant the lawful owner of the whole suit premise registered as Plot No. 2003 Block "1" Kurasini. Therefore, a permanent injunction is granted restraining the Plaintiff or any other person to interfere it.

As the evidence reveals that valuation was actually conducted according to DW3, and the records in respect of compensation are there in the office of the Ministry for Land, the Plaintiff is asked to go thereto and collect his compensatory money which is Tsh. 277,036,800/= according to Exhibit D5 (Jedwali la Fidia).

In upshot the Plaintiff has failed to prove the illegality in the acquisition of Plots No. 204, 205 and 206 Block "K" Kurasini by the Government and re-

allocate it to the 3rd Defendant. His suit is therefore dismissed with costs. As for the Counter Claim the plaintiff, James Makundi is ordered to pay the 3rd Defendant (DW2) a General Damages at the tune of Tsh. 20,000,000/= (Twenty Million Shillings).



A handwritten signature in black ink, appearing to read "S.M. Kulita".

S.M. KULITA

JUDGE

22/09/2020