

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA  
AT SHINYANGA**

**LAND APPEAL NO.83 OF 2010 C/F LAND APPEAL NO.96 OF 2016**  
*(Arising from Land Application No.40 of 2015 Shinyanga District Land and Housing Tribunal)*

**1. ALEX MACHA**

**2.KAHAMA DISTRICT COUNCIL.....APPELLANTS**

**VERSUS**

**HOSEA JORAM.....RESPONDENTS**

**JUDGMENT**

*27/2 & 03/4/2020*

**G. J. Mdemu, J.;**

In the District Land and Housing Tribunal of Shinyanga, in land application No.40 of 2015, the Respondent **Hosea Joram** sued the two Appellants praying to be declared a lawful owner of plot No.206 Block “O” located at Nyasubi area within Kahama Town; nullification of letter of offer dated 27<sup>th</sup> of July 2000 issued by the 2<sup>nd</sup> Appellant to the 1<sup>st</sup> Appellant and an order that, the 1<sup>st</sup> Appellant should demolish the structure erected in that plot so as to give vacant possession.

The trial was conducted and got concluded in favour of the Respondent in which, on 18<sup>th</sup> of October 2016, the District Land and Housing Tribunal of Shinyanga declared the Respondent the rightful owner of the suit land.

Brief facts of this land dispute as gathered in the record are such that, on 15<sup>th</sup> of December 1994, Amos Kitula was allocated by the 2<sup>nd</sup> Appellant Plot No.25 Block "O" Nyasubi area. The said Kitula transferred the suit land to the Respondent which later was resurveyed and changed to plot No.206 Block "O". The Respondent got official allocation from the 2<sup>nd</sup> Appellant on 1<sup>st</sup> of July 1999 vide letter of offer with ref. No. LD/KDC/110365/1 dated 27<sup>th</sup> of July 1999. While the Respondent was progressing developing the suit land, the 2<sup>nd</sup> Appellant re allocated the same suit land to the 1<sup>st</sup> Appellant on 1<sup>st</sup> of July 2000, vide letter of offer No. LD/KDC/11648/1/MGMM dated 27<sup>th</sup> of July 2000.

Like the Respondent, the 1<sup>st</sup> Appellant was also issued with a building permit by the 2<sup>nd</sup> Appellant. The latter therefore elected a house in the foundation constructed by the Respondent. Following these facts, the Respondent thought to be encroached hence the instant land dispute. As stated above, the suit was concluded in favor of the Respondent. The two Appellants each was aggrieved by that findings and appealed to this court each seriatim in appeals registered No.83/2016 and 96 /2016 for the 1<sup>st</sup> and 2<sup>nd</sup> Appellants respectively. The grounds of appeal are as follows, starting with appeal No.83 of 2016:

- 1. That basing on the evidence adduced during the trial, the learned chairman erred both in law and fact by declaring that plot No.206 Block "O" Nyasubi area at Kahama, belongs to the Respondent.*

As to land appeal No.96 of 2016, grounds of Appeal raised are:

2. *That the trial Tribunal erred in law and in fact for entering judgment in favor of the Respondent by using shaky evidence adduced before it.*
3. *That the trial Tribunal erred in law and in fact for entering judgment in favor of the Respondent while knowingly that the Respondent failed to call material witnesses to clear doubts over his lame documents.*
4. *That the trial Tribunal erred in law and in fact for declaring the Respondent lawful owner of the suit plot while the Respondent adduced no cogent evidence to prove ownership.*

By and order of this court, the two appeals got consolidated. It was heard on 27<sup>th</sup> of February 2020 in which the 1<sup>st</sup> and 2<sup>nd</sup> Appellants were represented by Mr. Alhaji Majogoro, learned Advocate and Mr. Mussa, learned Solicitor respectively whereas the Respondent enjoyed the service of Mr. Jakob Somi, learned Advocate.

For the 1<sup>st</sup> Appellant, Mr. Majogoro submitted that, there is no evidence as to the existence of plot No.25 block "O" allocated to one Amos Kitula which later, after resurveying, changed to plot No.206 which then got allocated to the Respondent. He added that, neither the letter of offer nor building permit of the said Amos Kitula, got received in evidence. He emphasized that, there was nothing like legal transfer of ownership from the said Amos Kitula to the Respondent. He therefore faulted the learned chairman in his findings at page 6 of the judgment to establish ownership of the suit land basing on exhibits which were not tendered in evidence. He cited the case of **Japan International Corporation vs. Khaki Complex Ltd, civil appeal No.107 of**

**2004 and the case of Mwajuma Mbegu vs Kitwana Aman, Civil Appeal No.12 of 2001 (both unreported).**

In further support to his ground of appeal, Mr. Majogoro stated that, the claim of the Respondent to have been allocated the said plot of land on 1/7/1999 through a letter with reference No. LD/KDC/110365/1 dated 27/7/1999 is unfounded, as the Appellant was rightly issued that plot as per exhibit D2. Equally, he added, no one was called in evidence to establish that the Respondent was allocated that plot of land. He concluded by citing the case of **Registered Trustees of Holly Spirits Sisters of Tanzania vs. January Kamili Shayo and 136 Others, civil Appeal No.193 of 2016** (unreported) that, even on principles of adverse possession, the 1<sup>st</sup> Appellant is, as of right, entitled to own the suit land.

Mr. Mussa, for the 2<sup>nd</sup> Appellant submitted that, in the judgment of the tribunal at page 3, PW2 who testified as a member of the family of the original owner did not tender any document and that, the said plot was owned by Amos Kitula as plot No.25, Block "O" has not been proved by way of evidence. To him, Amos Kitula was allocated plot No.70 Block "O" Kahama town and not Nyasubi" The Respondent did not tender any document. He added that the 1<sup>st</sup> Appellant is the lawful owner and has been paying property tax for over 14 years. He could therefore not observe any merit to the Respondent evidence.

In reply, Mr. Jacob Somi, Learned Advocate who represented the Respondent submitted that, the appeal is devoid of any merit because the District Land and Housing tribunal properly guided itself in its findings

especially basing on the evidence of Hosea Joram. This evidence, according to the learned Counsel, was corroborated by the evidence of PW2 and PW3. He added that, on balance of probabilities, it was established that Amos Kitula who was the owner of plot No. 25 Block "O" transferred that plot to the Respondent. He stated further that, the evidence of DW1 and DW2 at the trial tribunal was contradictory in the sense that whereas DW1 stated that, the 1<sup>st</sup> Appellant was allocated land in 2000, DW2 stated categorically that the said plot was allocated to the 1<sup>st</sup> Appellant in 1994 as seen at pages 4 and 5 respectively of the judgment.

In his further observation, Mr. Jacob submitted that, after resurvey, plot No.25 came to be plot No.206 and got allocated to the Respondent and that, the 1<sup>st</sup> Appellant had a plot allocated to him near to the Respondent's plot. He thus noted that, the question is one of double allocation and that, the 2<sup>nd</sup> Appellant has all original documents, the reason why the Respondent have none. With this evidence, Mr. Somi concluded that, the evidence of the Respondent was heavier than that of the Appellants, thus the appeal has no merit and have to be dismissed.

In rejoinder, Mr. Majogolo stated that, the Respondent did not tender the sale agreement to prove that the said Amos Kitula sold the land to him. With regard to contradictions in the evidence of DW1 and DW2, Mr. Majogolo rejoined that, Yusuf was not the witness of Alex Macha but of the 2<sup>nd</sup> Appellant and that, even when there is contradiction, yet the dispute arose in 2015. Mr. Mussa for the 2<sup>nd</sup> Appellant rejoined briefly that, there is no evidence that the

*"As to the first issue, I find that there is evidence proving that the suit plot was first allocated to Amos Kitula as plot No.25 Block "0" (LD) Nyasubi area within Kahama District before the same came into possession of the Applicant herein where the land upon being resurveyed, plot No.25 Block "0" (LD) Nyasubi, changed to plot No.206 Block "0" (LD) Nyasubi area Kahama urban. **This is proved by the letter of offer issued to the Applicant** (emphasis supplied)*

As stated above, this is not borne by the record. What is in evidence at page 7 of the proceedings regarding the letter of offer reads as follows:

*"Upon the plot being issued to me ,the plot for Block where the suit plot was allocated was resurveyed for purposes of directing instructive and I was granted the same plot in which now turned to be plot No.206 Block "0" (LD) Nyasubi Kahama wherefor the 2<sup>nd</sup> Respondent was also granted a nearby plot. My fellow 2<sup>nd</sup> Respondent his house looks at the North while my house looks at the West we are being built on the back of the houses. I was issued with the letter of offer in my own name. I pray to tender letter of offer in my name issued on 10/09/1999.*

***Mr. Muyengi, Advocate,** Your honour, I object as the letter of offer has been cancelled and the same is incomplete.*

***Tribunal:** Objection upheld"*

It is obvious that, as the document was rejected in evidence, there was no justification for the learned chairman to deploy it in evidence. At page 14 of

the judgment, in the case of **Japan International Corporation** (supra) supplied to me by Mr. Majogoro, the court observed the following regarding use of documents not admitted:

*“There is no denying that, except exhibits P1 and P2, the remaining documents which were “baptized” as exhibits were not part of the records of the suit. This court cannot relax the application of Order XIII Rule 7 (1) that a document which is not admitted in evidence cannot be treated as forming part of the record although it is found amongst the papers on record. The document must be either placed on the record or returned to the person producing it.”*

That being the case, the issue is whether that is the only evidence used by the tribunal in its findings to declare the Respondent the rightful owner of the plot. According to the record, the tribunal traced the history on how each the 1<sup>st</sup> Appellant and the Respondent got allocated the suit plot. In this, the following have to be taken into account:

**One**, who was the first to be allocated the plot in question? the record shows that, the Respondent was the one. The trial tribunal properly guided itself to this finding. According to the evidence on record, the Respondent managed to establish on how he acquired the said plot. It was first the property of one Amos Kitula as plot No.25 Block “O”. The said Amos disposed of to the Appellant and after resurveying it was changed to plot No.206 Block “O”. PW2 testified that, his family was the original owner, and the 1<sup>st</sup> Appellant was no allocated the said plot. It is further in evidence that, the 2<sup>nd</sup> Appellant was aware of the original owner one Amosi Kitula as it approved architectural

drawings P2 in plot No.25 Block “0”. The 1<sup>st</sup> Appellant on the other hand simply stated to have been allocated the plot in 1994. There is no evidence as to who allocated him that plot in the said year.

**Two**, there is no evidence as to whether the 1<sup>st</sup> Appellant was allocated that plot in 1994, leave alone the fact that, plot No.5 was resurveyed and got changed to plot No.206 Block “0”,the subject of the granting of letter of offer, exhibit D2 .The 2<sup>nd</sup> Appellant did not testify on the resurveying exercise.DW2 alone cannot prove that fact. **Three**, In exhibit D1, it is not on record if plot No.5 Block “LD” was in Block “0” as I do not see any possibility for a plot to be shifted from one Block to another. This is so because in exhibit D1 it is simply written:

**SHERIA YA UJENZI MJINI KIFUNGU CHA NNE**

*Kibali kinatolewa kwa ALEX MACHA kujenga jengo la  
MAKAZI TU katika kiwanja Nambari 5 kwenye kitalu LD  
kulingana na ramani iliyoambatanishwa na kibali hiki na  
kwa mujibu wa sheria iliyotajwa hapo juu.....*

The architectural drawings have not been tendered in evidence as anticipated in exhibit D1. This would have cleared doubts if at all plot No.5 was in block “0”. More so, there is no evidence how the 1<sup>st</sup> Appellant was allocated plot No. 5. The 2<sup>nd</sup> Appellant did not testify on this. As there is no evidence to that effect, there would be no evidence, as I noted that, it is plot No. 5 that changed to plot No. 206. As this is the case, exhibit D2 letter of offer cannot be the basis of declaring the 1<sup>st</sup> Appellant owner of the suit land.

**Four**, who allocated the land to the 1<sup>st</sup> Appellant in 1994? again is not borne by the record. As demonstrated above, the land allocating Authority,



that is the 2<sup>nd</sup> Appellant has remained mute on this. As to the Respondent, it is clear that, plot No.25 block "O" originally in possession of Amos Kitula passed title to the Respondent and became plot No.206 Block "O". **Five** as the evidence that the 1<sup>st</sup> Appellant acquired the plot in 1994 is suspect, allocation of the said plot to the 1<sup>st</sup> Appellant by the 2<sup>nd</sup> Appellant without revocation of such right to the Respondent was illegal.

**Six**, submission of the Appellants' counsel and also observation of the trial tribunal to question availability of the sale agreement in disposition of the said plot from the said Amos Kitula to the Respondent is unfounded because, the Respondent did not testified to have acquired the plot of land via sale. In the evidence regarding the manner through which the Respondent acquired the plot, it is recorded as hereunder:

*".....I am the lawful owner of the suit plot. I got the same from Amos Kitula in 1996.I was granted the suit plot formerly. I have a document to prove the same. I pray to tender the same as an exhibit.*


**Mr. Muyengi, learned Solicitor**, *I object as the same is not the sale agreement.....*

**Mr. Majogoro, Advocate**; *I object as the same was not annexed and the same is not a sale agreement;*

**Tribunal**, *since the copy of the document was not issued to the Respondents, let a copy of it be issued and the same to be admitted as an exhibit on the other date. Currently, it is hereby admitted for identification purposes only."*


As noted in the evidence, there is no mention that PW1 was intended to tender a sale agreement. Under the premises, it was not expected for the learned counsels for the two Appellants to object on the basis that, the document was not a sale agreement.

In that stance, and as observed by Mr. Somi, the evidence of the Respondent at trial was heavier to that of the Appellants. The trial tribunal was therefore justified to declare the Respondent the rightful owner of Plot No.206 Block "O". I have no justification to disturb the findings of the tribunal. Accordingly, the appeal is dismissed with costs. It is so ordered.

  
**Gerson J. Mdemu**  
Judge  
03/04/2020

**DATED at SHINYANGA** this 3<sup>rd</sup> day of April, 2020.



  
**Gerson J. Mdemu**  
Judge  
03/04/2020