

**IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA
LAND CASE No.04 OF 2019**

PAMPHIL SATORI MASASHUA PLAINTIFF

VERSUS

SENGEREMA DISTRICT COUNCIL DEFENDANT

JUDGMENT

Date of the last Order: 13.05.2020

Date of Judgment: 28.05.2020

A.Z. MGEYEKWA, J

This suit was lodged before this court by the Plaintiff herein PAMPHIL SATORI MASASHUA against the Defendant herein SENGEREMA DISTRICT COUNCIL claiming against the defendant for compensation of Tshs.

157,569,200/= (One Hundred Fifty-Seven Million Five Hundred Sixty Nine Thousands Two Hundred only) being the value of the demolished property which include a house and fence the same demolition was done unlawful and illegal by the defendant on the 6th August 2016. The Plaintiff also claims against the defendant for a declaration that the demolition of the house situated in a Plot No. 190 Block J MD Migombani Sengerema Township was illegal and unlawful.

In their Complaint, the Plaintiff prays for Judgment and Decree against the defendant as follows:-

- (a) The Defendant to pay the Plaintiff a compensation of Tshs. 157,569,200/= (Tanzania Shillings One Hundred Fifty Seven Million Five Hundred Sixty Nine Thousands Two Hundred only) being the value of the said demolished property.*
- (b) The declaration that the Plaintiff is a legal owner of the said house.*
- (c) The Defendant act of demolish the said house be declared illegal and ultra-vires*
- (d) The Defendant pays the Plaintiff general damages of Tshs. 200,000,000/=*

- (e) Interest on the claimed amount be assessed at the commercial Bank rate from the date of arose of cause of action until the full satisfaction of the same.*
- (f) The Defendant pays the plaintiff interest on decretal amount at the court's rate from the date of judgment till when the decree has been full satisfied.*
- (g) Costs and incidental to this suit be paid by the defendant*
- (h) Any other relief(s) that this Honourable Court may deem fit to grant.*

On the other hand, the Defendant, in response to the Plaintiff's claims, has filed a Written Statement of Defence.

A brief background of the suit as obtained from the record of the case is that the plaintiff is a legal owner of the house situated in Plot No. 190 Bock J MD Migombani Sengerema Urban Area with letter of offer LD/SENG/190/1/PPR. The Plaintiff paid annual land rent and the defendant received the annual land rent every year and issue exchequer receipt in respect of Plot No. 190 Block J MD Migombani Sengerema Urban Area. The Plaintiff bought the house from the Government of the United Republic of

Tanzania under the Ministry of Work and successfully paid the debt on time. The defendant surveys the area and issued a title deed.

In 2007, the plaintiff renovated the house and builds an extension of two houses within the plot. The plaintiff submitted a construction proposal to the defendant, who approved the plan and the plaintiff constructed the said house without any disturbance and the plaintiff completed the construction in 2008. on 5th August 2016 the defendant issued a 24 hours' notice to the plaintiff and on 6th August 2016 the plaintiff's house and fence situated at Plot No. 190 Block J MD Migombani Sengerema Urban Area was unlawful and illegal demolished by the defendant. The plaintiff has claimed to have suffered economic loss considerable trouble, inconvenience, and mental torture of which the plaintiff claims general damages. On 19th May 2017, the plaintiff sent a demand note and 30 days legal notice to the defendant requesting to pay compensation for demolishing the plaintiff house whereas the defendant neglected to heed with the same. Hence the plaintiff decided to institute the instant suit.

It is imperative at the outset to point out that, this matter has also gone through the hands of my brothers; Hon. Mdemu, J, and Hon. Gwae, J

who conducted the 1st Pre-Trial Conference and Mediation respectively. I thank my predecessors for keeping the records well and on track. I thus heard the testimonies of the witnesses for the parties and now have to evaluate the evidence adduced by the witnesses to determine and decide on the aforementioned issues.

At all the material time, the Plaintiff was represented by Mr. Sifaeli Muguli, learned Advocate, while the Defendant was represented by Mr. Matiku, learned Solicitor.

Upon completion of all preliminaries, the Final – Pre Trial Conference was conducted and the following issues were framed by this Court:-

- 1) *Whether the Plaintiff is a legal owner of the Plot No. 190 Block "J" Migombani Sengerema Urban Area.*
- 2) *Whether the defendant demolished the defendant's house If the answer is affirmative was the demolition lawful.*
- 3) *Whether the extension of two houses followed the procedures recognized by the law.*

4) *Whether the plaintiffs is entitled to specific and general damage as pleaded.*

To prove the above issues the Plaintiff called one (1) witness in the defense of his claims against the defendant, the witness was *Pamphil Satori Masashua* who testified as **PW1**. On the part of the Defendant, he also called one (1) witness; Peter Charles Mkalipia (DW1). The Plaintiff tendered a total of *five (5) documentary Exhibits*, to wit Correspondence letter were admitted and marked as **Exhibit P1** collectively; Offer was admitted and marked as **Exhibit P2**; payments receipts were admitted and marked as **Exhibit P3** collectively; a Sketch Map was admitted and marked as **Exhibit P4** and a Notice of intention to sue was admitted and marked as **Exhibit P5**.

To prove this matter, Pamphili Satori Masashua (PW1) testified that he retired from the public service in 2014 and now he is a businessman before he was working with the Ministry of Fisheries where he worked for 29 years and 8 months. He testified that in 2002 he received a letter of sale of Government houses which was accompanied by a contract. Thereafter he received a letter informing him that they have sold him the

said house and requiring PW1 was required to pay in installment for 10 years and prayed. To substantiate his testimony he tendered a letter which was admitted and marked as Exhibit P1.

PW1 continued to testify that he received an offer with respect to No.109 Block "J" Migombani, Sengerema. He further testified that he managed to pay the installment by 2005 and received an acknowledgment letter that he has accomplishing pay the installments To support his testimony he tendered correspondence letters which were admitted and marked as Exhibit P2 collectively. He went on to testify that after receiving the offer he continued to service or pay Government bills. To substantiate his testimony he tendered a plaint, which was admitted and marled as Exhibit P3. The first defendant further testified that in 2007 he prepared a Sketch map and tabled the same before the District Council, the same was approved thus he continued with his construction from 2008 to 2009 and moved into the house in 2010 peacefully. To support his testimony he tendered a Sketch Map which was admitted as Exhibit P4.

It was PW1 further testified that on 06th August 2016 the District Council approached him and informed him that they will demolish the house by using force. He said that he had to write to the DC a demand notice. To substantiate his testimony he tendered a demand Note which was admitted and marked as Exhibit P5.

In conclusion, PW1 prays for this court to order the following:- Compensation of Tshs. 157,569,200, to be declared the rightful owner of Plot No.190 Block J Migombani, the demolition was contrary to the law the act of demolition be found illegal, to be paid a total claim of Tshs. 200,000,000/= as general Damage and the defendant to refund him the costs of running the case with interest.

Upon cross-examination by the learned counsel for the defendant, PW1 stated that in 1998 he was working with the District Council and in 2003 he was transferred to Busega District Council at Simiyu. PW1 went on to state that he was working with his Advocate in one office but different departments. He testified further that at the time he was transferred to Busega he had already bought the government property No.55. PW1

continued to testify the Sketch Map was approved thus he proceeded to build or extend the house. He said in the plot there were three houses; one big house and two small houses. He added that on 6th August 2016 the District Council demolished one small house that was demolished in front of the Solicitor. PW1 testified further that he obtained a certificate of occupancy, prepared two Sketch Map of two houses and there was no any objection from the plaintiff. He went on to testify that he was not aware that he was required to obtain a building permit. PW1 further testified that the plaintiff did not state the reason for demolishing his house. He concluded by stating that he is claiming for damages in a tune of Tshs. 157,569,200/= his claims are supported by a valuation report and he also claims for Tshs. 200,00,00/= for disturbance and frustration.

Testifying for the defendant's case, Peter Charles Mkalipa (DW1) stated he is working with the Sengerema District Council, he is the Acting Head of Department of Lands and Resources. DW1 testified that in 2000 he was a Land Officer to date he has 20 years of working experience. DW1 went on to testify that the procedure of constructing a build requires a person to own a property and possess a letter of Offer or certificate of right

of occupancy authorized by authorized officers who are empowered by the Commissioner to issue a letter of Offer or certificate of occupancy, which requires him to pay for it that means the person will have entered into a contract with the Government permitting him to continue with construction.

DW1 recognized the short term right of occupancy (Exhibit P2), he added that the first paragraph shows the costs which include land tax. He went on to submit that the time to pay the Government levies started to run from 1st July 2005 to 30th June 2006 and the Offer was issued on 2nd August 2006 including preparation of a contract and PW1 was required to effect the payment within 30 days and tender a receipt to obtain a certificate. DW1 further testified that in accordance to the receipt No.26382306, the plaintiff paid Tshs. 22,080 on 19th March 2007. He went on to submit that PW1 paid one year later while he was required to pay within 30 days. DW1 added that as per Offer the plaintiff was required to give reasons for his delay and if admitted another letter of Offer could have been issued. DW1 testified that after obtaining an Offer, PW1 was required to obtain a building permit and to prepare drawing structure of the building and submit four copies to the authority.

It was DW1's further testimony that it is important to prove if there were no any pending taxes. He testified that if there are no pending taxes the land officer will confirm that there is no fault. DW1 went on to testify that the structural drawings are scrutinized by experts such as Land Officer, land Planning Officer, Environmental Engineer, Health Officer or Architecture, and Building Engineer. He went on to testify that thereafter a report is tabled to the Director of District Council and the Director after approval will issue a building permit to the client subsequently a notice will be affected by the legal department.

DW1 continued to testify that the Plot in question is above a water pipe, which was installed before the authority planned the usage of the said land. To substantiate his testimony he referred this court to a Sale Agreement between the Ministry of Works signed by the Permanent Secretary and PW1 (Exhibit P1). He went to submit that in accordance to the contract, it is upon the buyer to survey the plot to transfer certificate of ownership according to the first and third conditions.

It was DW1 further testimony that in order for the District Council to order demolition the following must be observed: - One, the client is the rightful owner. Two, the client is served with notice of demolition. He added that if the client is not the rightful owner then the demolition will be done by the client's expenses. Third, a third notice alerts the client if she/he will not adhere to the conditions then the District Council will proceed with demolishing the building. The defendant's witness further testified that if there is no any exhibit then the District Council will serve or notify the client to demolish the building on his own costs and if all exhibits are in place then it will be regarded that the District Council demolished the building.

In conclusion, DW1 testified that there is no any point that the District Council is responsible to compensate the plaintiff unless he will show all the required exhibits and still the District Council was right to proceed with demolition after having the exhibits in place.

When DW1 was cross-examined by the learned counsel for the plaintiff he testified that in order to complete ownership one has to pay Government levies and land taxes. He went on to testify that Government

taxes are supposed to be paid every year and tenant levies. He testified that if one default to pay then he will be notified in case he will not pay action will be taken. DW1 testified that a Notice is a crucial document. He went on to testify that Exhibit P1 was issued on 2nd August, 20106 and he read the document which stated that failure to effect payment by 2nd March 2006 then the ownership will be canceled, the intention to cancel is issued 30 days from the date when the letter of Offer was issued. DW1 testified that the payment was concerning Plot No. 190. DW1 testified that a building permit was supposed to be in place before starting building the foundation otherwise the client will be answerable. He further testified that before issuing an Offer the Plaintiff must satisfy himself that the plot was planned and surveyed in accordance to the law and procedure and the town planner heeds to observe the environment things seen above the ground and another institution was required to note if there was an underground water pipe and the plaintiff was notified not to continue with developing the plot.

By the consent of the parties, on 13th May 2020, both learned counsels were supposed to file their Final Written Submissions whereas

both counsels complied with the court order. I am grateful to the learned counsel for the energy and industrious research involved in canvassing the issues herein.

Having heard the testimonies of both parties and considering the final submission of all learned counsels, I should state at the outset that, in the course of determining this case I will be guided by the principle outlined in civil litigation and which will guide this Court in the course of determining this suit. The said principles include the following; the same is stipulated under section 110 of the Evidence Act Cap.33 [R.E 2019] which places the burden of proof on the party making the assertion which that party desires a Court to believe him and pronounce judgment in his favor. Section 110 (1) of the Act provides as follows:-

" 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."

Similarly, in the case of **Hemedi Said v Mohamedi Mbilu** (1984) TLR 113 it was held that "he who alleged must prove the allegations".

As I pointed out at the beginning of this judgment, three issues were framed for trial.

- 1) *Whether the extension of two houses followed the procedures recognized by the law.*
- 2) *Whether the plaintiffs entitled to specific and general damages as pleaded.*

To start with the first issue as to *whether the Plaintiff is a legal owner of the Plot No. 190 Block "J" Migombani Sengerema Urban Area*. I wish to refer to paragraphs 5 where the Plaintiff has indicated this fact, that the Plaintiff is a legal owner of the house situated on Plot No. 190 Block "J" MD Migombani Sengerema Urban area and to substantiate his claims the plaintiff tendered a letter of Offer (Exhibit P2) in court which reveals that the District Council, Land Department issued a letter of Offer in respect to Plot No. 190 Block "J" Migombani Sengerema Urban Area dated 2nd August 2006. It was PW1 testimony that he paid Government levies to prove the same, he tendered receipts and invoices which were admitted in court as Exhibit P3 collectively. On the other hand, DW1 did not dispute that the defendant issued a Letter of Offer to the plaintiff. Moreover, the plaintiff

was not cross-examined on the question of revocation. Thus, the same remains to be an afterthought. It should be noted that a right of occupancy over a plot is granted by a letter of offer and accepted by the offeree, and the plaintiff paid the requisite fees thus the same constituted acceptance on the defendant party. Once this procedure is done a right of occupancy under is issued.

DW1 testified that PW1 did not affect the payment timely, in my view, this is an afterthought because the defendant was in the position to issue a reminder to the plaintiff and as rightly pointed out by the learned counsel for the plaintiff that the defendant received and acknowledged to receive the payment made by the plaintiff. Nevertheless, the defendant was in a position to issue a revocation letter of offer to the plaintiff but it was not reflected in the defense case and worse enough, the same was not pleaded in the defendant's Written Statement of Defence.

For the aforesaid findings, I find that the plaintiff has proved his ownership over the Plot No. 190 Block "J" Migombani Sengerema Urban Area, his testimony is exhibited by the documents which are before this

court, he is in possession of a Letter of Offer and he paid annual rents. Therefore the certificate of occupancy was issued to the plaintiff in accordance to section 33 (1) of the Land Act, Cap.113 [R.E 2019]. Section 33 (1) of the Act provides that:-

" 33.-(1) The holder of a right of occupancy shall, subject to the provisions of this section pay an annual rent for that right of occupancy in the manner provided for under the provisions of the Public Finance Act."

I have noted that the Defendant's Solicitor in his final submission has explained in length that he has no dispute with the house which the plaintiff has bought; however, he disputed the extended houses. In my view, the House in question is the one which was sold to the plaintiff by the Government excluding the other two houses. Therefore the first issue is answered in affirmative.

Answering the second issue on *whether the defendant demolished the defendant's house if the answer is affirmative was the demolition lawful.*

Paragraph 9 of the plaint appears to be the gist of the basis of plaintiffs claim in the matter for it seeks among other things the declaration that the defendant demolished the plaintiff house unlawful located at Plot No. 190 Block "J" MD Migombani SENGHERMA URBAN AREA and the plaintiff under paragraph 9 alleged that the defendant unlawful and illegal demolished PW1 Plot No. 190 Block "J" MD Migombani Sengerema Urban Area.

Additionally, PW1 testified in Court that the defendant is the one who demolished his house. When PW1 was cross-examined by the defendant's Solicitor the plaintiff repeated the same that the District Council demolished his house and added that they demolished the said house by using a grader.

On the other side the DW1 refuted that the defendant did not demolish the plaintiff's house and he went on to testify that the defendant was not involved in demolishing the house. In his final submission, the learned Solicitor submitted that the plaintiff failed to prove if the defendant carried on the demolition. He went on to state that even if the defendant was the one carried out the demolition exercise the plaintiff would have been served with a notice as stated under Regulation 139 (1) (d), (2) and

(3) of the Local Government (Urban Authorities) (Development Control) G.N 242 of 2008. In my view, the plaintiff was required to prove his allegations towards the defendant taking to account that during his testimony the issue of water pipe construction came up that the house was demolished because the authority wanted to construct a water pipe and DW1 testified that the defendant is not responsible in dealing with water pipe construction.

In my findings, I have found that there is no enough evidence on record to prove that it was the defendant who demolished the plaintiff's small house. To prove unlawful demolition, PW1 who was the sole witness was required to direct his allegation towards the defendant and convince this court that he has sued the right party. This court is uncertain because the defendant has refuted that he did not demolish the plaintiff's building. As I have pointed earlier that the principle governing civil cases is stipulated under section 110 of the Evidence Act, Cap.6 [R.E 2019] that who alleges must prove failure to that the same must be dismissed. The same was held in the case of **Barelia Karangirangi v Asteria**

Nyalwambwa Civil Appeal No. 237. Therefore, this issue is answered in negative.

Now in determining the 3^d issue whether the extension of two houses followed the procedures recognized by the law. The plaintiff testified in court that in 2007 he renovated and extended his house whereas he built two small houses. PW1 testified that he followed all the procedures in constructing the two small houses in Plot No. 190 Blok "J" Migombani, he prepared a plan or Sketch Map (Exh.P4) which was approved by the defendant. On the part of DW1, he testified that the Sketch Map was approved by the District Council Officers but the same was not approved by the authorized officer. In the instant case, the plaintiff produced a Sketch Map which he alleged that it was approved by the defendant. However, PW1 failed to produce a building permit that substantiates the extension of a building. The Regulation 124 (1) of the Local Government (Urban Authorities) (Development Control) Regulations, which was cited by the learned Solicitor for the defendant is clear as it provides that:-

" 124 (1) No person shall erect or begin to erect any building until he has –

- (a) *made an application to the authority upon the form prescribed in the Fourth Schedule to be obtained from the Authority*
- (b) *furnish the Authority with the drawings and other documents specified in the following regulations and;*
- (c) ***obtained from the Authority a written permit to be called a 'building permit'.***” [Emphasis added]

Similarly, in the case of **Director Moshi Municipal Council v John Ambrose Mwase** Civil Appeal No. 245 of 2007, delivered on 1st April 2019, the Court of Appeal of Tanzania observed that the demolition was unlawful in disregard of the law under which the appellant legitimacy acted.

Based on the above provision of the law and authority, it is vivid that anybody who wants to erect any building has to obtain a written building permit from the authority. The plaintiff was required to obtain a building permit before starting to build his two small houses. that anybody who has to erect any building to obtain a written building permit from the authority As rightly pointed out by the learned Solicitor the Sketch Map cannot stand for building permit. PW1 in his testimony testified that he was not aware

that he was required to obtain a building permit instead he banked a lot on the Sketch Map and thought that the same suffice to allow him to proceed with constructing the two houses, the same is not an excuse because the plaintiff was required to fulfill the statutory requirement for obtaining a building permit before starting to extend his house. Therefore this issue is answered in negative.

Concerning the 4th issue *whether the plaintiffs is entitled to specific and general damage as pleaded*. Regarding the claim for general damages to the plaintiff, the position of law is that the general damage must be justifiable.

Relating to the above legal position to the instant matter, the plaintiff tendered lists of documents which tend to show that he incurred loss following the alleged act of demolition of his small house. What is of note, however, is the fact that the plaintiff prove had no direct connection that it was the defendant who demolished his small house evidence of loss incurred by the plaintiff which was supported by the evaluation report merely remaining in the realm of exhibits. Additionally, the 24 hours' notice also remaining in the realm of the mentioned document as the document

was never put on record as an exhibit. Both documents fall short of the evidential value because they have no connection with the defendant. In the result, therefore, no general damage can be awarded based on unproven evidence and document.

Noting that the plaintiff has failed to prove his claims against the defendant on the balance of probability as is the standard required in a civil matter, For that reason, I dismiss the suit with no order to costs.

Order accordingly.

DATED at Mwanza this 30th April 2020.



A.Z.MGEYEKWA

JUDGE

30.04.2020

Judgment delivered on 30th April 2020 via audio teleconference, Mr. Sifael Muguli, learned counsel for the Plaintiff and Mr. Matiku, learned Solicitor were remotely present.

A.Z.MGEYEKWA

JUDGE

30.04.2020

Right to appeal fully explained.