

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC. CIVIL CASE NO. 31 OF 2018

MKOMBOZI FISHING & TRANSPORT LTD.....PLAINTIFF

VERSUS

TANZANIA NATIONAL ROAD AGENCY1st DEFENDANT

ILEMELA MUNICIPAL COUNCIL.....2nd DEFENDANT

MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION....3rd DEFENDANT

THE ATTORNEY GENERAL.....4th DEFENDANT

JUDGMENT

18th Dec. 2020 & 26th Jan.2021

RUMANYIKA, J.:

On 30/10/2018, Mkombozi Fishing and Marine Transport limited (the plaintiff) instituted the case against Tanzania National Roads Agency, Ilemela Municipality Council, Ministry of Works Transport and Communication and the Attorney General (the 1st, 2nd, 3rd and 4th defendants) respectively. With respect to his three storey building on Plot No. 141 Block "A" Kirumba area, Mwanza (the suit house) on the basis of it being on road reserve demolished by the 3rd defendant. Hence a claim of

shs. 700.0M being special damages, shs. 5,000,000,000/= being general damages, then interest and costs of the case.

Messrs Jamhuri Johnson learned counsel appeared for the plaintiff. Ms. Subira Mwandambo and Mr. Sadi Rashid learned state attorneys appeared for the 1st, 3rd and 4th defendants. Mr. Ludovick Ringia learned counsel appeared for the 2nd defendant.

The issues mutually agreed by them and, according to records adopted by the court on 4/11/2020, they are:-

- a) Whether the plaintiff lawfully acquired Plot No. 141 Block "A" Kirumba Mwanza city.
- b) Whether the plaintiff's suit land was built within the road reserve.
- c) Whether demolition of the suit house by the 1st defendant was unlawful.
- d) Reliefs the parties are entitled to.

Pw1 Kitanu Chacha Mnanka (60) a marine transporter who traded in the name of "the plaintiff" he also stated that he was the Managing director thereof who, by way of purchase from one Madaraka Ngoye with effect from 12/4/2013 he owned the suit house then he had the title

transport duly/ transferred to him (copy of the certificate of Title-Exhibit "P1") that he never defaulted property tax or land rent (five material exchequer receipts-Exhibit "P2") collectively that nevertheless the 1st defendant demolished the house on 22/9/2017 following 30 days notice dated 6/7/2017.

Cross examined by Ms. Subira Mwandambo and Mr. Sadi Rashid learned state attorneys, Pw1 stated that it was the very demolition that triggered shock and death of Madaraka the vendor and all had been good until when the road reserve was enlarged and therefore the house invaded. That is all.

Dw1 Engineer William Benedict Sanga (37) w.e.f 1/12/2014 the 1st defendant's project Engineer he also stated that it had transpired to them, contrary to provisions of The High Ways (width of Highways) Rules, 1955 First Schedule that the suit house actually had been built on Mwanza Bwiru schools road reserve (given the width limit of 22.5 meters) either side from the middle, from time to time subject to the Minister's direction. Following the notice they demolished the house in the year 2017 and, if anything the plaintiff's claims for compensation were unfounded the certificate of title notwithstanding much as the 1st defendant had not

changed use of the road and the plaintiff was duty bound to have done a diligent search if really the purported vendor had been dully allocated the plot.

Dw2 Francis Francis Mwangwa (39) Assistant Town Planning Officer of the 2nd defendant he stated that with regard to the matter there existed a "district - road" whose reserve invaded by the suit house that the plaintiff's certificate of title may, or may have not be a genuine one but on that one only the Commissioner for Lands may talk about it. The plaintiff wasn't ever issued a building permit much as the house was built on the road reserve and they hadn't served him a notice (Sections 29 – 34 of The Urban and Town Planning Act No. 8 of 2007 refers. That is all.

Whereas there may have been no dispute that by way of purchase or something, w.e.f 12/4/2013 the plaintiff came next to the said Madaraka Ngoye previously owner of the suit house, the central issue now could be whether the latter was lawfully allocated the plot, if anything, on that one the plaintiff only had a copy of the Certificate of Title. No copy of the application letter or something. The alleged deceased 1st occupier may, or may have no documents with him yes, but also chances of the latter having had been "fixed" by the respective land surveyors / officers it would

not be ruled out much as in his evidence the plaintiff did not sufficiently show that the suit house wasn't actually on road reserve. It is very unfortunate that on that one, none of the respective land officers and surveyors were, in their personal capacities not sued leave alone specifically impleaded.

I once said it, and I would wish to repeat myself here that unless the plaintiff had proved it to the contrary, the government or by operation of the law as opposed to individual personnel the land allocating authorities had nothing to do with double allocation of land or as it is the case here allocation to individuals of an open space or road reserve for that matter. Whether or not the plaintiff had never defaulted the respective land rent or property tax it is immaterial because being a road reserve, it remained factual that possibly from its inception the plaintiff knew it for sure that the suit land was road reserve but he risked the demolition and all the consequences whether or not the authorities had acquiesced, it is equally immaterial because by itself any consistent and continued violation of the laws make no law.

Now that by way of evidence the plaintiff did not establish it, leave alone proof that at no point in time was the alleged road reserve actually

not one, his case therefore it wasn't proved on the required balance of probabilities. The above stated three issues therefore are, the first one answered in the negative, and yes with respect to the last two. The demolition was justified.

In the upshot, the suit lacks merits. It is dismissed in its entirety with costs. The certificate of Title (Exhibit "P1") it be restored to Pw1. Right of appeal explained.


S. M. RUMANYIKA

JUDGE

21/01/2021

The judgment is delivered under my hand and seal of the court in chambers this 26/01/2021 only in the presence of Ms. Sabina Yongo learned state attorney for the 1st, 3rd and 4th defendant.




S. M. RUMANYIKA

JUDGE

26/01/2021