**IN THE HIGH COURT OF TANZANIA**

**DAR- ES -SALAAM DISTRICT REGISTRY**

**AT DAR ES SALAAM**

**LAND CASE NO 27 OF 2014**

**VICTOR SUNGURA TOKE..... PLAINTIFF**

**VERSUS**

**REGINA CHAULA.....1st DEFENDANT**

**THE COMMISSIONER FOR LANDS.....2nd DEFENDANT**

**THE ATTORNEY GENERAL.....3rd DEFENDANT**

**JUDGEMENT**

14th December 2020 & 15th February 2021

**A.K Rwizile. J**

The plaintiff sues the defendants for a claim of Plot No. 278 Block B situated at Tegeta Dar-es salaam. Allegedly, the plaintiff acquired it in 1986 and obtained a tittle deed in 1987. When in the process of developing the same, the 1st defendant, who also alleged was the owner of the same plot and had started to develop it. In the process of trying to solve the said dispute, the 2nd defendant revoked his right of ownership for failure to develop the land. It was then passed to the 1st defendant. following that saga, the plaintiff filed this suit claiming the following reliefs;

i. A declaration that the plaintiff is the owner of the right of occupancy over Plot No. 278, Block B, Tegeta area Dar-es salaam registered under Title No. 53473
ii. An order rescinding the revocation of the plaintiff's right of occupancy commanding the 2nd defendant to restore the plaintiff's ownership to the suit land

iii. Permanent injunction restraining the defendant whether by himself, her servants, agents, or otherwise howsoever from entering, or using the suit land, or trespassing upon it in anyway
iv. General damages
v. Costs
vi. Interest on the decretal sum and on costs at the court rate of 12% per annum from date of judgement until full payment
vii. Any other relief as may be deemed by this court fit to grant

Before the case was due for hearing, the plaintiff passed away, leaving one Victor Mukolozi Toke as the heir and administrator of his estate. M/s Benedetha Shayo learned advocate represented the plaintiff, Mr. Msigwa learned advocate represented the 1st defendant while M/s Narindwa Sekimanga learned Stated Attorney represented the 2nd and 3rd defendants. The plaintiff's case was mannered by one witness, Victor Mukolozi Toke (Pw1), while in total, the defence called 5 witnesses, 4 of them were for the 1st defendant namely; Regina Rajab Chaula (Dw1), Mary Charles Levae (Dw2), Meli Aly Kibembegwa(Dw3), Yohana Edward (Dw4) and Adelfrida Camillus Lekule (Dw5). At the closure of the case, written submissions were made and filed accordingly. All that was an attempt to answer three key issues thus;

a. *Who is the actual owner of the suit land?*
b. *Whether revocation of ownership of the disputed land followed proper procedure*
c. *To what reliefs are the parties entitled*.

Having stated as above, I propose to start determining the first issue basing on the evidence and submission of the parties.

*Who is the rightful owner of the suit land?*

As testified by Pw1 and submitted for the plaintiff, it is crystal clear that the plaintiff was first allocated the said plot of land. This, is according to title deed No. 53473 exhibit P1, issued in 1987. It is by logic and practice that the first person to be allocated land has

the better title and should be considered first for the allocation. The plaintiff rightly submitted so, in support of the case of **Mbaraka Paulo vs Mgaya Paulo and 3 Others**, Land Appeal No. 44 of 2018, HC, (unreported). It is true of the fact, it was first registered in the name of the plaintiff as per section 40 of the Land Registration Act.

The first defendant on her party testified that land is hers since she purchased the same from the two natives in 1985. She was allocated the same upon being surveyed in 1987. She too, was issued with letter of offer. It was testified and submitted that land was developed when she lived there and in 1990 when she was married and left for Denmark. According to her evidence and submission, she erected a storey house. It was the submission of the first defendant that the plaintiff uttered forged documents to land officers so as to obtain the title to land. She therefore asked this court to enter judgement in her favour.

On part of the 2nd and 3rd defendants, it was submitted that it is the 1st defendant who is the rightful owner of the suit land. The evidence, according to Dw5, is that, the plaintiff does not own the suit land because his titled deed was revoked for failure to developed it.

My analysis of evidence on the first issue leads to a believe, if may be pardoned for saying so, that land disputes were and are caused by poor land planning in the land registries. To substantiate this, the evidence is not in short supply. The evidence by (Dw5), a land officer in Dar-es salaam is good to that effect. She did not dispute that both the plaintiff and the 1st defendant were at the same time allocated the suit land. She was clear that land management was done by three different institutions and were not, from the look of things coordinated. This confirms also the plaintiff's evidence in exhibit PT5 which shows the plaintiff is the rightful owner of the suit land. The letter was issued and asked the 1st defendant to vacate the premises because she was a trespasser. It is the same office that later revoked the title of the same person on ground that he did not improve the same, when in fact there was a conflict on who was the rightful owner.

The 1st defendant gave a detailed process through which she acquired land at Bahari Beach. Her evidence is that she bought a piece of un surveyed land from two people namely David and Mashono Chagula, by paying in instalments the sum of 51,000/=. It was in 1985 as per exhibit D4. The land had huts built by original owners. According to the 1st defendant's evidence, the two pieces of land were later surveyed in 1987, and separated by the road, where she was allocated Plot No. 273, which is the place bought from David and plot No. 278 which was a land bought from Mashono.

Letters of offer of the same plots of land are D1 and D2. In the suit land, she erected a building. She said and it was submitted that she is in the process of getting land title from the Ministry after having paid all necessary revenues. To support her evidence, she tendered Dw2, a neighbour. She testified that she knows the 1st defendant as her neighbour and was assisted by her to purchase a piece of land. It was according to her, that it happened in 1988. Meli Aly Kibembegwa (Dw3) was on her support. He testified that he lived around the suit land. He said, it was before operation Vijiji in 1972. He testified that he knows that the 1st defendant purchased land from David and Mashono.

According to this man, when the project called *huduma ya makazi* came to the area, as the street leader in 1986, he witnessed land being surveyed and allocated to the 1st defendant. That land, according to him, was purchased by her in 1985. He said, those who had land before it was surveyed were given priority on allocating the surveyed plots. This according to him was done in 1986. He went on saying that in the same year, he became the leader-(*Mjumbe* ) of the local authority in the area. It was his evidence that the 1st defendant bought her land and so did not trespass.

The last witness for the 1st defendant was Yohana Edward (Dw4) who said he lived at Bahari Beach since 1970. He testified that the land sold to 1st defendant was his grandfather's, known by the name of Mashono Sagula. It was his evidence that the same was sold in 1985 to her. According to his evidence, after purchasing that land, they still lived in their grass made house with his grandfather until he built the house where they shifted to.

He said, the 1st defendant was also living around there and bought another land from someone else. He said, the 1st defendant built the brick house in the area in that period.

From this evidence, it should be noted that before surveying the suit land, it was owned by the local people. The evidence of Dw2, Dw3 and Dw4 is good to that effect. The plaintiff did not contradict their evidence. He only stated that there was evidence that he is the first to have been allocated the suit land and so has a better title. It was the view of this court that when there is double allocation as in this case, consideration has to be given to the person who was first allocated the land in dispute unless there is sufficient and cogent evidence to the contrary.

In this case, I wonder whether the plaintiff should be considered first. I am saying so because, land cases being civil matters, should be proved at the balance of probability. The plaintiff as the alleged owned of the land before the 1st defendant, did not, in my view, show how he got that land first. It was the duty of the plaintiff to show systematically and step by step, how he processed to the allocation of the suit land. The Court of Appeal in the case of **Pauline Samson Ndawavya vs Theresia Thomasi Madaha,** Civil Appeal No. 45 of 2017 held that;

> *It is a trite law and elementary that he who alleges has a burden of proof as per section 110 of Evidence Act, [Cap 6 R.E 2002]. It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the court will sustain such evidence which is more credible than the other on a particular fact to be proved.*

The overwhelming evidence as I said before, shows double allocation appeared due to poor land planning among the land officers. This happened after surveying the suit land. It might be, because evidence has not been led to show how, upon surveying, how did the allocation of the suit land was to the plaintiff first, when he was not the owner of the premises before survey. It is not known whether the plaintiff lived there before survey or applied for land after it was surveyed and then allocated to him without considering those

who owned the same before. I have no reason to fault the evidence of Dw3 and Dw4 in particular when supporting Dw1.

Upon examining exhibit D4, which I have no doubt of its authenticity, it shows, Regina R Chaula (1st Defendant purchased land from Mashono Chaula. It was done in the presence of witnesses. It was stamped *by Mjumbe wa shina was CCM zone No. 8* on 20th October 1985. It was in consideration of the sum of 30,000/=. The land is half of the acre. Attached to it is another hati *ya kuuza shamba*. It was bought from Ndugu Daudi Masinga by ndugu Regina Chaula, at a place called Kondo zone 8. It is half an acre. According to the same document, the place has *Nyumba ya Makuti* (hut made of grass) and crops to include cassava and bananas, as well as a mango tree and eucatyptus tree. This also bears the stamp of *Mjumbe was shina was CCM*, dated on 16th November 1985. It is bordered on one side by Regina Chaula. It was bought at the price of 21,000/=. In the document, it shows payment was made in instalments, the first one being 10,000/=.

The 1st defendant brought witnesses showing how he bought land, when was it bought and from whom. The same according to her evidence upon being surveyed by the government, she was allocated plots 273 and 278, which were separated by the road. Most probable, her evidence is supportable. I have therefore to say, in instances of double allocation as it has been evident here, the competing parties must prove how they are entitled to consideration first. It does not matter, depending on the circumstances of each case, who got allocation first. I have therefore to clearly state that basing on evidence, the plaintiff has proved to the required standard that she was the rightful owner of the said plots of land before it was allocated to some other person. This was before government survey. The evidence as shown is explicit and consistent.

I see no traces of forgeries as stated by the plaintiff. I agree with the plaintiff's submission, that the decision of this court in **Mbaraka Paulo**(supra) is evident here. The court held that *whenever there is double allocation of land, consideration has to be given to the person who was first allocated the land in dispute unless there is sufficiently cogent and qualitatively good version of the evidence to the contrary*.

In as much as I agree with this decision, still, I have to hold that whenever there is a conflict of ownership of land after survey and allocation by land officers, the evidence of the person who legally owned land in dispute before it was surveyed has to take precedence, unless there is sufficient evidence to the contrary.

In this case, I see the plaintiff's evidence shows he was allocated land after it was surveyed. To have the better title over the one who owned it before it was surveyed compensation must be done. Otherwise, it was not proper for the land legally owned by the 1st defendant before it was surveyed to simply be allocated to the plaintiff. This answers the first issue. The 1st defendant therefore was and is the rightful owner of the suit land.

The second issue is on whether revocation by the second defendant was married by irregularities. This should not detain me. The plaintiff submitted that he was not notified of the process of revocation. It is true that revocation occurred when the case was already in court on the same matter. I am not sure whether it was proper for revocation to take place exactly at the time it did. According to Dw5, revocation followed the notice issued by the land office. It was due to failure of the plaintiff to develop the land.

The question would be how could the same develop the land which was in dispute since 1990s. It was not in my view, practically possible and this proves again how land officers are always at the centre of the conflicts of land like this one. Saying this as I have said before, is similar to what this court said in the case of **Nialey Saidi Mpare vs Ephream. S Chuwa and 3 others**, Land Appeal No. 60 of 2019 as cited by the plaintiff. It was stated by the plaintiff that revocation did not follow the law. He did not show how. The duty of the 3rd defendant which has been discharged is proof that the letter was sent to the plaintiff informing him of revocation intention and he was given time to do the needful. The notice according to Dw5 was sent via normal addressed commonly used by the plaintiff. I have therefore to agree with the 3rd defendant that laid down procedure of revocation was followed.

On the last issues, which is to what reliefs are the parties entitled. The plaintiff's claims in the plaint did not include any alternative reliefs. But it was in his submission where the alternative prayers featured, where he prayed should otherwise be paid a total of 600,000,000/= being compensation of the value of the land in dispute. That means, the amount of 400,000,000/=, while damages for trespass be the sum of 200,000,000/=.

On this party, it should be noted that parties are bound by their pleadings. What the plaint presents is what should be considered. Submissions are words from the bar, neither do they constitute pleadings which can be based to determine the case nor evidence that prove the case. If the plaintiff had such alternative prayers, he ought to have brought the same in the normal way.

But still, I have held that the right to the suit land is for the 1st defendant. This means, the plaintiff's claims in this respect cannot be granted. Therefore, the judgement is entered for the 1st defendant that she is the rightful owner of the suit land. He is also condemned to pay costs of the suit.

**A.K. Rwizile**

**JUDGE**
**15.02.2021**

Recoverable Signature

X

Signed by: A.K.RWIZILE

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