

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)
AT KIGOMA
(LAND DIVISION)
ORIGINAL JURISDICTION
LAND CASE NO. 1 OF 2020**

AHADI LULELA SAID..... PLAINTIFF

VERSUS

REGISTERED TRUSTEES OF VINCENTIAN CONGREGATION 1ST DEFENDANT

KIGOMA/UJIJI MUNICIPAL COUNCIL 2ND DEFENDANT

HON. ATTORNEY GENERAL 3RD DEFENDANT

BILALI ALLY KINGUTI 4TH DEFENDANT

FERUZI BARAKA (Administrator of the estate of the late

HAMIS BARAKA) 5TH DEFENDANT

J U D G M E N T

4th June & 28th July, 2021

I.C. MUGETA, J.

Ahadi Luleha said (the plaintiff) bought a piece of land from Bilali Ally Kinguti (4th defendant). The land (the suit land) is located at Kamala street, Bangwe Ward. The sale agreement was tendered as exhibit P1. The purchase price is Tshs. 28,000,000/= . Since then, the plaintiff has neither been able to enter nor to utilize the dispute land. It turned out to be owned by the Registered Trustees of Vincentian Congregation (1st defendant) who have a title deed

to that land. The plaintiff has sued the defendants to claim for vacant possession. In the alternative, the 4th defendant be ordered to pay back the purchase price, general damages and costs of the case.

The 4th defendant does not dispute to have sold the dispute land to the plaintiff. He testified that the land belongs to him having bought it from the family of Ramadhani Rafu in 2010. The sale agreement was tendered as exhibit D12. The purchase price is Tshs. 10,000,000/=. Hamis Ramadhani Rafu testified as DW9. He is a son of Ramadhan Rafu who, allegedly, owned the dispute land as family land. His evidence supports the 4th defendant that he bought the land from his (Hamis) family. Wilbroad Kazumbe (DW8) supported Hamis Ramadhani (PW9) that the land belongs to the family of Ramadhani Rafu. He testified that in 2014 he was secretary of the committee at the village level which inquired into the ownership of the land between Ramadhani Rafu and Hamis Baraka from whom the first defendant derived the title to the dispute land. According to Wilbroad (DW8) the committee found that the land belongs to Ramadhani Rafu. He tendered the report of the Committee as exhibit D13.

The Kigoma/Ujiji Municipal Council and Attorney General (2nd and 3rd defendants respectively) are sued for having issued the title deed to the 1st defendant after a demarcation survey conducted in 2000 and the

regularization survey conducted in 2014. Steven Ambrose (DW6) testified for both the Municipal Council and the Attorney General. His evidence is to the effect that at the demarcation survey, Hamis Baraka was identified as the original owner. However, the dispute land was allocated to Nditegeyeko Hamis on condition that he pays compensation to Hamis Baraka for his unexhausted improvements. He failed to pay the compensation and in 2004, the land was allocated to the original owner, Hamis Baraka. The letter offer issued to Hamis Baraka was admitted as exhibit D1. He testified further that later, the administrator of the estate of Hamis Baraka disposed of the land to the 1st defendant who applied for change of title and after the regularization survey he was issued with the title deed which was tendered as exhibit D3. Steven Ambrose admitted to have received a complaint from the family of Ramadhani Rafu to the effect that the dispute land belongs to them. The complaint and the reply thereto were admitted as exhibits D7 and D8. In the reply it was stated that the land office record shows that the original owner is Hamis Baraka.

Padre Linto Stephen (DW1) is a trustee of the Registered Trustee of the first defendant. He testified in court that the 1st defendant bought the dispute land from the 5th defendant. He tendered the letter offer as exhibit D1 and the title deed as exhibit D3. Medadi Mutongole (DW2) is an advocate before

whom the agreement between the first defendant and the 5th defendant was executed. He tendered it as exhibit D5. Baraka Hamis (DW3) is a son of Hamis Baraka. He testified to the effect that the dispute land was property of his father which, upon his death was disposed of to the 1st defendant by the 5th defendant. Engilbert Ronana (DW4) and Kiza Mahamudu (DW5) testified that to their knowledge the dispute land was a property of Hamis Baraka. Service to the 5th defendant proved impossible, therefore, he was served by publication. It was until at the hearing stage when his son (DW3) reported of his demise. The Court had ordered the case to proceed in his absence.

One major issue was framed for determination namely; who is the lawful owner of the dispute land. The second issue is about the reliefs sought.

It is undisputed that the 1st respondent is the registered owner of the dispute land per exhibit D3 (the title deed). The dispute centres on who owned the land before it was surveyed between Hamis Baraka and Ramadhani Rafu. The evidence of Steven Ambrose from the Municipal Director Office is clear that when the initial survey was conducted in 2000, Hamis Baraka was identified as the original owner of the land. He was issued with the letter offer in 2004. Therefore, when the 4th defendant purchased the land in 2010, the land had been surveyed and allocated to Hamis Baraka. Consequently,

those who sold it to him had no legal title over that land. In **Amina Maulid Ambali and 2 others v. Ramadhan Juma**, Civil Appeal No. 35 of 2019, Court of Appeal – Mwanza (unreported) at page 6 last paragraph to page 7 it was held: -

"... when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be the lawful owner unless it is proved that the certificate was not lawfully obtained."

In this case, there is no evidence that the 1st defendant obtained the certificate unlawfully. The 2nd defendant issued the offer letter to Hamis Baraka as original owner of the land and the administrator of his estate disposed it to the 1st defendant. The family of Ramadhani Rafu who claims to be the original owner too has never challenged the decision of the 2nd defendant nor asserted their title to the land against Hamis Baraka. Even in this case, no counter claim has been made against the 2nd and 5th defendants. However valid their evidence might be, it cannot establish title against a co-defendant with a competing claim of ownership. Further, it is my view that the report of the land village committee contained in exhibit D13 tendered by Wilbroad Kazumbe (DW8) to the effect that the dispute land belonged to the family of Ramadhan Rafu was not commissioned by the

2nd defendant. I find it to be neither binding to the 2nd defendant nor valid because its conclusion did not consider evidence from the family of Hamis Baraka. The committee gave the right to be heard to the family of Ramadhani Rafu in exclusion of the family of Hamis Baraka.

It follows, therefore, that the first defendant lawfully obtained title to the land and the disposition of the land to the plaintiff by the 4th defendant was unlawful. He had no title to the land because those who sold it to him had no title too. For that reason and in answer to the first issue, I hold that the dispute land is a property of the 1st defendant.

On reliefs, I order the 4th defendant to refund the plaintiff the purchase price namely Tshs. 28,000,000/=. The 4th defendant shall also pay Tshs. 5,000,000/= to the plaintiff as general damages. The 4th defendant shall pay costs of the case to the plaintiff and the rest of the defendants.



I.C. Mugeta

Judge

28/7/2021

Court: Judgement delivered this 28/7/2021 in presence of the plaintiff and in presence of Mr. Daniel Rumenyela, advocate for 1st defendant and Mr. Ignatius Kagashe for 4th defendant and in absence of 2nd, 3rd and 5th defendants.



A.J. Kirekiano

Deputy Registrar

28/7/2021