

**IN THE HIGH COURT OF THE UNITED REPUBLIC
OF TANZANIA**

MOSHI DISTRICT REGISTRY

AT MOSHI

LAND CASE APPEAL No. 29 OF 2020

*(C/f Application No. 107/2015 of the District Land and
Housing Tribunal for Moshi at Moshi)*

ANNA JOSEPH MALLYA.....APPELLANT

VERSUS

USIWAJALI KIDAY..... RESPONDENT

14th July & 30th August, 2021

JUDGMENT

MKAPA, J.

In this appeal Anna Joseph the appellant, challenges the decision of the District Land and Housing Tribunal for Moshi (trial tribunal) in **Application No. 107/2015**, in which the trial tribunal declared the respondent the rightful owner of the suit land.

The brief facts of the case are that, the appellant sued the respondent for trespassing upon her piece of land measuring $\frac{1}{4}$ acres located at Himo Njia Panda Ward within Moshi District in Kilimanjaro Region (the suit land). It was alleged that on 9th February, 2006 the appellant applied to the District Executive Council for allocation of a piece of land and was allocated in the



same year after she had paid the required fees. She further alleged to have peacefully owned the suit land until 25th June, 2015 when she visited the suit land with an intention to develop it and found the same to have been encroached. On the other hand, the respondent alleged the suit land was initially legally owned by James Marandu after he had purchased it from Solomom Lonanaga. That, James Marandu offered the respondent the suit land in exchange of his land measuring 1 and ½ acre located at Kifura area. It was also alleged that, there existed a land dispute (**Augustine J. Temu & Paul F. Lyimo and 345 others V District Executive Director Moshi District Council Land Case No. 1 of 2003**) which involved 345 residents of Kilimapofu and Kilototoni areas, among them James Marandu, in which this Registry ordered the District Council to properly survey the suit land thereafter allocate to the residents. That, the said order is yet to be executed to date, thus residents continued to own their respective lands. Trial ensued, and at the conclusion of the trial tribunal decided in favour of the respondent. Hence, the present appeal comprising the following grounds of appeal;

1. That, the trial chairman misdirected himself in holding that the respondent was to be compensated by the District Executive Director Moshi District Council prior to the



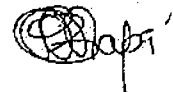
allocation of the suit land to the appellant while this Court had blessed the allocation in **Land Case No. 1 of 2003**.

2. That, the trial chairman misdirected himself in holding that the respondent was entitled to be compensated while was not a party in **Land Case No. 1 of 2003**.

3. That, the trial chairman did not properly evaluate the evidence otherwise the judgment would have been entered in favour of the appellant.

At the hearing of the appeal parties consented and the Court ordered the appeal to proceed by filing written submission. Mr. Faustine Materu learned advocate appeared for and represented the appellant while the respondent appeared in person and fended for himself.

Submitting in support of the first ground of appeal Mr. Materu submitted that, the trial tribunal erred in holding that the respondent was to be compensated by the District Executive Director of Moshi District Council prior to allocation of the suit land to the appellant while this Court had blessed the allocation **in Land Case No. 1 of 2003**. He went on arguing that, as this Court did not declare the allocation illegal, the people who were allocated such lands including the appellant remained rightful owners. Thus the trial tribunal's holding that, the appellant's title derived from Moshi District Council and that people should have



been compensated prior to the re-allocation of the land was a wrong misinterpretation of this Court's judgment.

Arguing on the second ground Mr. Materu submitted that, the trial tribunal erroneously held that the respondent was entitled to compensation while was not a party to **Land Case No. 1 of 2003**. That, in the said case this Court ordered compensation to be effected to plaintiffs only and not otherwise.

As to the 3rd ground, the learned council asserted that, the learned chairman did not properly evaluate the evidence. He finally prayed for this Court to allow the appeal with costs.

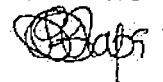
Responding to the 1st ground the respondent submitted that in **Land Case No. 1 of 2003** it was ordered that the plaintiffs be compensated. That, although he was not party to the said case he successfully established his ownership of the suit land at the trial tribunal whereby he summoned DW2 who testified the fact that he did transfer the suit land to the respondent in exchange for a 1 and ½ acre land in Kifura.

It was the respondent's further argument that this Court's Judgment was yet to be executed despite Deputy Registrar's execution order to the Director of Moshi District Council to carry out valuation within three months from 11/11/2020 as ordered in the judgment. It was the respondent's view that, the appellant did not have automatic right over the suit land as the same would

have been realised upon compliance by Moshi District Council with orders and directives of the High Court. He contended further that, payment of land rent over the suit land alone is not a conclusive ownership. He relied on the case of **The Registered Trustees of Joy in the Harvest V Hamza K. Sungura, Civil Appeal No. 149 of 2017, CAT** at Tabora.

It was the respondent's further assertion that at the trial tribunal the appellant did not prove that all orders by this Court in **Land Case No. 1 of 2003** were fully complied with, thus the trial tribunal was right in deciding that the appellant had to make follow up with the Moshi District Council for an alternative plot.

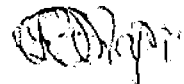
As regards to the 2nd ground, the respondent argued that as long as DW2, James Marandu was party to the **Land Case No. 1 of 2003** and had exchanged the suit land with him, his rights were safe guided by the original owner of the suit land. Alternatively, the appellant should have instituted a case against the Moshi District Council for passing over the title which legally did not possess nor compensated him as per this Court's Order in **Land Case No. 1 of 2003**. That means therefore, the complaint that the respondent is not entitled to compensation on the ground that he was not party to **Land Case No. 1 of 2003** is a misconception since the legal owner DW2, testified before the trial tribunal to have exchanged the suit land with the



respondent. He finally prayed for the court to dismiss the appeal with costs.

After going through both parties' submission and thorough perusal of trial tribunal's records, I now get on determining the grounds of appeal.

In the first ground of appeal the appellant had raised an issue on the trial tribunal misinterpretation of this Court's judgment in **Land Case No. 1 of 2003**. The said judgment was admitted as Exhibit D2 in which the 347 plaintiffs claimed right over the villages of Kilemapofo and Kilototoni which were declared planning area by the defendant, the District Executive Director of Moshi District Council. The plaintiffs claimed that the two villages were not gazetted as such in **GN No. 176/1996** while the defendant claimed the same to have been gazetted as planning area in **GN No. 176 of 1996**. In the end the trial Judge declared that Kilema Pofu and Kilototoni Villages were within the planning area as gazetted under **GN No. 176 of 1996**. However, since the plaintiffs have been in possession for 17 years and had acquired rights as adverse possessors, in their planning, the defendant was ordered to conduct valuation of plaintiff's land including unexhausted improvements and compensate the plaintiffs in monetary terms. The relevant



portion (pages 19 and 20) from this court's judgment **Mziray J**, (as he then was) is reproduced hereunder;

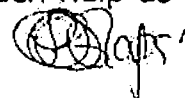
"As for the reliefs that the parties are entitled to, as I stated herein above that notwithstanding the procedural irregularities which occurred in the whole process, the fact still remain that the survey have already been effected and the plots have been allocated to other citizen. Now what is the fate of the plaintiffs, should they be left uncompensated? The answer is definitely left for the defendants to do the following; boundary of the land of each plaintiff should be established and the land to be measured to know its size, valuation to be carried to the land of each plaintiff this should include the unexhausted improvements made by each plaintiff the plaintiffs should be fully involved in this exercise. Computation of the value of the victims land should be made in monetary terms. The plaintiffs should be fully involved in these computations and thereafter fill the land forms in respect of compensations. The names of each plaintiff should then be published indicating the amount each will receive. There after the mode of payment should be revealed and payments to be effected accordingly. I believe that if this is done the dispute will be resolved once and for all. The repetition of this exercise to be done only to the plaintiffs in this suit."

A reading from the above excerpt it is plain clear the offices of the District Executive Council was ordered to;

A handwritten signature in black ink, appearing to be 'M. M. M.', written over a circular stamp or mark.

- i. Establish boundaries of each of the plaintiffs to that case
- ii. Identify the size by measuring each of the plaintiff's piece of land.
- iii. Evaluate plaintiff's bare land together with unexhausted improvements
- iv. Compute the value in monetary terms
- v. Fill land forms for compensation for each plaintiff
- vi. Publish plaintiff's names while stating against each name compensation amount and further the exercise should involve plaintiffs who were parties to **Land Case No.1 of 2003**.

No evidence had been adduced to the effect that, this court's decision (**Mziray J**) had been appealed against nor revised. Similarly, no evidence had been adduced that this court's order have been executed to date. In the circumstances there can be no doubt that the plaintiffs in **Land Case No. 1 of 2003** continued to remain legal owners of the suit land in **Land Case No. 1 of 2003**. Also, not in dispute is the fact that the suit land in the present appeal once belonged to James Marandu who was among the plaintiffs in the Land case (*supra*) who later exchanged the same with the respondent. In my view this amounted to double allocation that the suit land allocation to the appellant herein was double allocated to him by the Offices of the District Executive Council, despite of being aware of the orders by this Court. PW2, land officer was not of much help as



at first he testified to be unaware of the **Land Case No. 1 of 2003**, and asked the Court to give him time to peruse the case file. Thus, the trial chairman did not error in holding the way he did. I find the first ground of appeal baseless and proceed to dismiss it. Turning to the second ground as analysed above, the respondent did acquire the suit land in exchange for another piece of land by one James Marandu who was among the plaintiffs in **Land Case No. 1 of 2003**. Thus, even though the respondent was not among the plaintiffs in that case, his right of ownership of the suit land was safeguarded by James Marandu whose testimony as DW2 was never objected. I find this ground is not valid and I dismiss it.

As to the last ground that the trial chairman did not properly analyse the evidence, I am unable to agree with the appellant and I find it necessary to refer to page 5 of judgment where the trial tribunal chairman observed;

"Though the Applicant established through PW1 (The Applicant) and PW2 (The Land Officer) that she was allocated the plot in 2006 by the Moshi District Council, but since this plot is part of the Respondents farm which was also a subject In the Land Case No. 1 of 2003. It was the duty of the Applicant to prove that the Moshi District Council who she originated the tittle from did actually settle the dispute with the said residents."



The trial chairman went on;

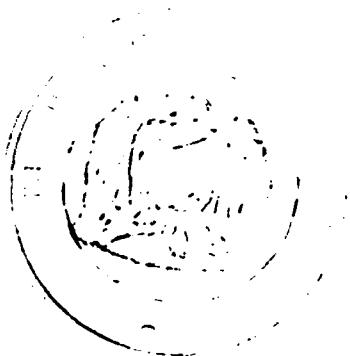
"The Applicant's tittle is derived from Moshi District Council and the Applicant failed to establish that the Moshi District Council abided to the Orders of the High Court which ordered the residents to be compensated prior to taking their land for survey and allocation of the same to other people."

From the aforementioned analysis my view is, the trial chairman did properly evaluate the evidence and arrived at a just decision which I found no ground to fault as the suit land had since not been officially reallocated with compensation as ordered by this Court. This ground has no merit and the same is dismissed.

On the basis of the foregoing analysis, this appeal deserves dismissal and I proceed to dismiss it with costs. Consequently, the trial tribunal's decision is upheld.

It is so ordered.

Dated and Delivered at Moshi this 30th day of August, 2021.



S. B. MKAPA

JUDGE

30/08/2021