

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. 04 OF 2020

ROGERS S/O ANDREW LUMENYELA.....PLAINTIFF

VERSUS

MASAKA D/O MUSSA.....1st DEFENDANT

KIGOMA/UJIJI MUNICIPAL COUNCIL.....2nd DEFENDANT

HON. ATTORNEY GENERAL.....3RD DEFENDANT

J U D G M E N T

9th & 28th September, 2021

A. MATUMA, J.

The plaintiff has sued the defendants jointly for orders and declaration that; he is the lawful owner of Plot No. 437 Block L.D at Kamala and lawfully erected a modern house thereof, for an order of specific performance between him and the 1st defendant to exchange Plots No. 437 and 435 both at Kamala, for permanent injunction against the 1st defendant from further encroachment on Plot No. 437 supra, for

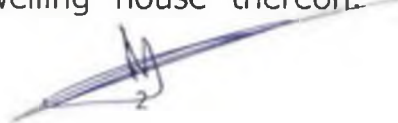


rectification of the 2nd defendant's register to read Plot No. 437 Block L.D as the lawful property of the plaintiff and Plot No. 435 Block L.D as the lawful property of the 1st Defendant, costs of the suit and any other reliefs. Alternatively, the plaintiff is praying for an order of compensation against the 2nd Defendant for unexhausted improvements on the suit plot.

The brief facts leading to the dispute at hand is that; the plaintiff purchased Plot No. 435 Block M.D. Kamala on 25/09/2008 from its former owner namely Jacob Raphael Buberwa. As the condition precedent in the title document is that one should not develop the plot unless submitted the building plan (sketch map) and be physically shown the boundaries of the plot by the 2nd defendant, the plaintiff submitted his building plan to the 2nd defendant in 2009 which was approved and got some officers of the 2nd defendant who went to show him the boundaries of the plot.

It is apparent on record that the area in which the suit plot is, was a surveyed bare-land, and any allocatee of a plot thereof could have not developed it without officers of the 2nd respondent showing him physically the boundaries of the plot i.e the exact location of the plot.

In the circumstances, the Plaintiff having his building plan approved, shown the boundaries of the plot and permitted to develop it, he constructed a modem dwelling house thereon. Soon thereafter it



transpired that the plot in which he was shown and developed was actually not No. 435 but No. 437 which was formerly owned by one Said s/o Khamis.

On the other hand, the 1st Defendant who is alleged to have bought Plot No. 437 from Said s/o Khamis was as well shown Plot No. 441 as Plot No. 437. She developed it and started a living therein. When life was going on it transpired that the plot in which the 1st defendant had developed was not No. 437 but 441. That was in 2014 after the owner of Plot No. 441 had emerged. The second defendant was consulted by the 1st defendant and it is when verification of the plots was re-carried on. On such verification it is when the 1st defendant was informed by the 2nd defendant that her Plot No. 437 was that which the plaintiff has developed; the plaintiff's Plot No. 435 was adjacent thereof. In the circumstances the plaintiff and the 1st defendant mutually agreed (though it is currently disputed) that they should exchange their respective plots because the plaintiff has already developed Plot No. 437 and Plot No. 435 was yet developed. They further agreed that the plaintiff assists the 1st defendant to build a house on Plot No. 435 which is equally to the one she had built on Plot No. 441 so that she vacates therefrom into Plot No. 435 in exchange to plot no. 437. The Plaintiff initiated the process and built such house; a two roomed house with a sitting room by using mud

bricks as it was on plot no. 441. The 1st Defendant finished it by herself by roofing it and shifted therein and started a living on that Plot No. 435. She even installed a water tap which is there to date. The two (the Plaintiff and the 1st defendant) lived peaceful as neighbours until on 4th March, 2020 when the Plaintiff's family awaked in the morning only to find that the 1st defendant has brought her belongings/properties at the veranda of their house (Plaintiff's house) and sleeping there. On being inquired why was she there, she said the heavy rain has demolished her house on Plot No. 435 and God has made her to return back to her own Plot No. 437 and thus it was the plaintiff to give her vacant possession. Without undue delay she started to construct a single roomed house with a sitting room which she finished and started a living therein to date although she is still using her bathroom and toilet on Plot No. 435. Plot No. 437 is thus having two inhabitants; the Plaintiff and the 1st defendant hence this suit for the reliefs I have already indicated herein above.

Four issues were framed for determination of this suit namely;

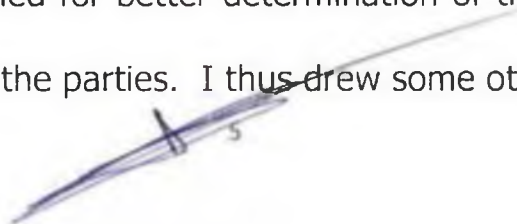
- i. Whether the two Plots No. 435 and 437 are all at Block L.D or at M.D and L.D respectively at Kamala.*
- ii. Whether the 2nd defendant shown the plaintiff Plot No. 437 L.D Kamala as Plot No. 435 MD for his development.*



- iii. Whether the Plaintiff and the 1st Defendant mutually exchanged the plots whereas the Plaintiff took Plot No. 437 LD Kamala and the 1st Defendant took Plot No. 435 MD Kamala and each party developed on the exchanged plots.*
- iv. To what reliefs are the parties entitled to.*

At the hearing of this suit the Plaintiff was present in person and represented by Mr. Method R.G Kabuguzi learned advocate. The 1st defendant was as well present in person with the services of Mr. Ignatius Kagashe learned advocate. Allan Shija learned State Attorney represented the 2nd and 3rd Defendants. The Plaintiff and the 1st defendant gave their respective evidence reflecting what has already been summarized herein above as the brief facts of the case. I thus need not reproduce such evidence but shall be referring to the evidence of each party in the course of resolving the issues. The 2nd defendant on her party gave evidence on how she tried to resolve the dispute between the plaintiff and the 1st Defendant but all efforts ended in vain.

After the parties had adduced their respective evidences and tendered their documentary exhibits, I found that there were some other crucial issues to be determined for better determination of the real question in controversy between the parties. I thus drew some other three issues in

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addition to the earlier on framed issues and summoned the parties to address the court on them. The parties accordingly complied and addressed me on the issues. These were;

- i. Whether the 1st defendant was aware of the plaintiff's alleged trespass or entrance into the dispute Plot No. 437 Block L.D. Kamala in 2008 or 2009 and the developments he made therein (construction of the modern dwelling house) or her awareness was after the transfer of the suit plot to her name in 2017.*
- ii. The 1st defendant having tendered in evidence exhibit D3 the sale agreement to the effect that she purchased the dispute plot on 24th March, 2016 whether her oral evidence that she purchased such plot in 2008 contradicted exhibit D3, and what is the legal effect thereof.*
- iii. Whether the transfer of the suit plot from Said s/o Khamis to the 1st defendant by the 2nd defendant on 13/01/2017 was lawful taking into consideration that the plaintiff had already developed it and residing therein for the past 6 years prior to the transfer without first resolving the plaintiff's status therein by necessary legal actions.*

I will thus determine all the seven issues by renumbering them in this judgment as follows;

- i. Whether the two Plots No. 435 and 437 are all at Block LD or at MD and LD respectively at Kamala.*

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This issue should not detain me much. Although it is true that Block MD and LD are quite different for they stand for the size of the plots whereas Block MD is for plots at the Block of Medium Density, Block LD is for plots of the Low Density. Simply plots on Block LD would be bigger in size compared those on Block MD. But for the purposes of this suit the two plots are all on the same Block which is LD as per the evidence on record. That is reflected by the evidence of both parties. The Plaintiff (PW1) at page 28 of the typed proceedings testified that although the documents for Plot No. 435 indicates it to be MD but it is LD as the system in the Land registry reflects it as such. In his view Acronym MD on his title document was a merely typing error he insisted;

'Even if the system is checked now, they are all LD as they are adjacent plots.'

His evidence was supported by PW7. This witness Mr. Elibariki Andrew Lumenyela who was involved on several issues relating to the two plots stated at page 50 of the typed proceedings;

'At first all correspondences were referring the Block as MD but latter when we started online payments, the Block is referred as LD. Therefore, LD and MD are all referring to the same Block'.

Further corroboration is the evidence of the relevant authority which was given by DW2 Steven Ambrose who is a Municipal Valuer and acting head

of Department of Urban Planning Department in the Municipality of Kigoma. He stated in his evidence at page 87 of the typed proceeding that;

'Plot No. 435 and 437 are of the same size. LD was mistakenly written by then as both plots were MD. But currently they are all LD as they bear 1000 Sqm'

In the circumstances, I conclude the first issue by determining that both Plots no. 435 and 437 are on the same Block which is LD. They are of the same size and in the same location on the same block. In the absence of any developments in them, they are presumed to be of the same value.

ii. Whether the 2nd defendant shown the Plaintiff Plot No. 437 LD Kamala as Plot No. 435 MD for his development.

It was the evidence of the Plaintiff PW1 that when he wanted to buy Plot No. 435 MD, the seller thereby in a company of Land Officers went to show him such plot physically on the block and its boundaries. He testified at page 19 of the proceedings,

'I went to the Municipal Council for search and I satisfied myself that the said Jacob was a lawful owner of the plot. I took the Municipal Officer namely Julia Kyaruzi to show me the demarcations of the plot. When we reached there he showed us the exact area Jacob had shown us prior... We then started the purchase process and finally bought the plot.'



This witness (Plaintiff) further testified that after the purchase process he went to the plot for the second time with TRA and Land Officers presumably for verification and valuation for the purposes of Government revenues. His evidence got corroborated by several other evidence such as witnesses in his case and those of the defence side. For avoiding discussion of this issue at length let me skip the plaintiff's witnesses and see those of the defence side.

DW1 herself Masaka Mussa testified that when she wanted to buy Plot No. 437 on 2008 she went to the land officer to verify it. After she was assured that '*Hiki Kiwanja ni halali na Kipo*', she moved with the Land Officer to the locus in quo for physical verification;

'We then moved to the plot with the Land Officer who went to show me the beacons'

She further testified that in 2009 she found some people leveling the plot alleging that it belonged to someone else, the Plaintiff. She went to the Land Officer to report. It is when herself and the Plaintiff were directed by the Land Officer to meet on the locus in quo to verify each one's plot. The land officers started their measurements and verified that the plaintiff was right and developed on his exact Plot No. 435. To quote her she testified;

'Thereafter the Land Officers started to measure the area 'Wakavuta futi zao'. They then told me that 'pale hapakuwa kwangu nimevamia. Pale ni kwa Rogers'. They then shown me an adjacent plot thereat stating that 'Kile ndo kiwanja changu halisi, namba yangu ndo inasoma pale'.

DW1 the 1st defendant went further that even when she attempted to ask the Land Officers as to why they were taking her from her Plot No. 437 which the Plaintiff was developing she was told;

'Mama usitufundishe kazi, Kiwanja chako ni namba 437 LD Kamala na Kiwanja cha Rogers ni Namba 435 M.D. Kamala. They thus claimed that the adjacent plot they shown me is the very Plot No. 437 LD Kamala'.

With this piece of evidence from the 1st defendant herself it is clear that each one of them was shown her/his plot by the relevant Land Officer and Rogers the Plaintiff was shown plot No. 437 as 435 MD thereby developed it with the honest heart that he was developing his plot no. 435.

On her side, the first defendant developed on the adjacent plot as Plot No. 437;

'I put the stone to that other plot which I was told it was the very Plot No. 437. I built there a mud house'.

So, the two (Plaintiff and 1st defendant) lived peaceful on their respective shown plots until when another third person emerged and claimed that the plot which the 1st defendant was living was his. Upon further

verification in 2015, she was told by the Land Officers that her exact plot was that which the plaintiff has built and that such other third person was the exact owner of where she has built. She even refused to vacate telling them;

'Aaa!!! Ofisi ya Ardhi ndiyo mlinitoa kwenye kiwanja hiki. Na ndio mlinileta kwenye kiwanja hiki. Inakuwaje leo mnaniambia kwamba siyo Kwangu?'

She was then taken to the exact Plot No. 435 in exchange to 437 which the Plaintiff has already built/developed.

She refused as stated by herself at page 66;

'I refused that plot because; Kiwanja cha kwanza nimetolewa, kiwanja cha pili nacho nimetolewa kwanini nije hapa. Ninaweza pia kuachwa hewani.'

The 1st defendant had in fact admitted during cross examination at page 78 that they were both misled by Land Officers;

'I agree that Rogers was as well misled by Land Officers as they did to me'.

She even admitted that several other inhabitants thereof as evidenced by plaintiff's witnesses encountered the same problem but they settled by exchanging their respective plots the solution which was not her preference;

'They exchanged the plots as they agreed "waliridhiana" but on my side I refused, maongezi maana yake kuna kukubaliana au kukataa mimi nilikataa. The manner in which our neighbours settled their disputes is not necessarily be the same manner to settle my dispute'.

Further there is the evidence of DW2 that there was a requirement that every owner of the plot must have the land officer to show him or her the relevant plot physically. In the circumstances the witness confirmed that he was sure that the plaintiff was shown the plot though could not state with certainty whether the Plaintiff was shown on the exact location of Plot No. 435 or 437.

I thus determine the second issue in the affirmative that the 2nd defendant shown the Plaintiff Plot No. 437 LD Kamala as Plot No. 435 MD Kamala. The 2nd defendant being the relevant Land Authority, the Plaintiff cannot be said to have trespassed in such plot. He honestly entered therein and developed it accordingly. What happened was misallocation of the plots by the 2nd defendant to both the Plaintiff and the 1st Defendant.

iii. Whether the 1st defendant was aware of the Plaintiff's alleged trespass or entrance into the dispute Plot No. 437 Block LD Kamala in 2008 or 2009 and developments he made therein (construction of the modern dwelling house) or her awareness was after the transfer of the suit plot to her name in 2017.

Addressing on this issue the learned counsels for both parties submitted that the 1st Defendant became aware of the Plaintiff's entrance into the dispute plot in 2009 when she found him leveling it for his further developments thereon. Mr. Kagashe learned advocate for the 1st Defendant further submitted that the 1st Defendant took some actions on the same very year 2009 after she found the Plaintiff thereon. I agree with the learned counsels on their observation on this issue. The 1st defendant became aware of the plaintiff's entry into the dispute land in 2009. That is born from the evidence of both parties as rightly submitted by respective advocates.

The 1st defendant had in fact testified that it was on 2009 when she got the plaintiff leveling the Suitland. She intervened and the 2nd defendant resolved the dispute by verifying the two plots whereas the plaintiff was confirmed to have developed in his respective plot, currently the one in dispute. She was on her party taken to another plot and shown as her respective plot. In that respect she left the plaintiff to develop Plot No. 437 as Plot No. 435. She is thus estopped from denying the plaintiff to a lawful enjoyment of the developments he has made on Plot No. 437. She is estopped under the provisions of section 123 of the Law of Evidence Act, Cap. 6 R.E. 2009 which clearly provides that;



"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed, in any suit or proceedings between himself and that person or his representative, to deny the truth of that thing".

Otherwise she should have consistently denied the plaintiff from developing the said plot. By that time the plaintiff was yet to build his house. He was just leveling the plot.

The act of the 1st defendant to come and claim possession of the dispute plot in 2020 after the alleged destruction of her house on Plot No. 435 by rainfall, which is 12 years from 2009 when she first became aware of the alleged trespass is nothing but malicious mind and jealous to the developments of her neighbour which cannot be accepted in the due administration of justice.

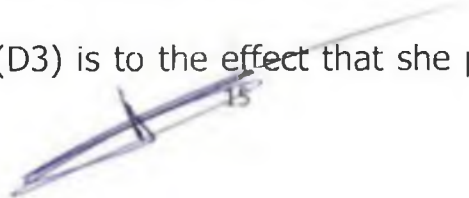
- iv. The first defendant having tendered in evidence exhibit D3 the Sale Agreement to the effect that she purchased the dispute plot on 24th March, 2016 whether her oral evidence that she purchased such plot in 2008 contradicted exhibit D3, and what is the legal effect thereof.*

Mr. Kabuguzi learned advocate for the Plaintiff maintained that the oral evidence of the 1st Defendant that she purchased the suit plot in 2008 contradicted her documentary evidence exhibit D3 which states that she bought such plot in 2016 on the 24th March. He further argued that in law where there is documentary evidence, the oral evidence cannot stand. He cited section 100 of the Law of Evidence Act and the case of *Nasibu Daudi versus Joha Lukwaila, Land Case Appeal no. 22 of 2016* (HC at Tabora, Mallaba J).

The learned advocate further argued that only exhibit D3 would stand against the oral evidence which has no value in the circumstances of this case which relates to land whereas the law requires documentations.

On the other hand, Mr. Kagashe and M/S Betrice learned counsels for the defendants submitted that there was no any contradiction between the oral evidence of the 1st Defendant and her documentary exhibit D3. They argued that the 1st Defendant bought the dispute land in 2008 as per her oral evidence and the Sale agreement exhibit D3 was merely initiated for the purposes of processing the transfer of the plot to her name.

It is undisputed fact that the 1st Defendant gave two different versions in respect of when exactly she purchased the dispute plot. Her oral evidence is to the effect that she bought the dispute plot in 2008, but her documentary exhibit (D3) is to the effect that she purchased it in 2016.



Her oral evidence cannot be said to be consistent with exhibit D3. The two are contradictory to each other as rightly argued by Mr. Kabuguzi learned advocate. Her oral evidence that; ***"I bought such plot from Said Hamis in the year 2008 at the cost of Tshs 550,000/=***" at whatever imagination cannot be said to have equal meaning with the sale agreement exhibit D3 which reflects that she bought the dispute plot on 24/03/2016 and paid the purchase price on such date as it reads at paragraph 4 thereof that; ***"The purchaser hereby binds himself to pay the whole purchasing price at the time of executing this deed"***.

The Sale agreement exhibit D3 was executed before the Resident Magistrate a learned brother and Commissioner for oath and cannot thus be said to have been fabricated in the sense that on such date there was no real business between the 1st Defendant and Saidi Khamis for the sale and purchase before him. Or else the document would have spoken by itself as the law requires that the document must speak by itself. Arguments by Mr. Kagashe and Betrice that exhibit D3 was executed merely to facilitate the transfer for the sale which was executed way back in 2008 are not born on records. They are mere submissions in the cause of hearing the issues which is bad in law as it was held in the case of ***Morandi vs Petro (1980) TLR 49***, when the Court rejected to act on allegations coming by way of submission on appeal. The court remarked;

"Submissions made by a party to an appeal in support of the grounds of appeal, are not evidence but are arguments on the facts and laws raised before the Court.

Such submissions are made without oath or affirmation, and the party making them is not subject to cross examination by his opponent".

In the like manner, the learned counsels for the defendants are barred from reading words into exhibit D3 that the same was just cementing the sale of 2008 while the document itself is clear that the sale was on 24/03/2016. In the circumstances of this case, in the presence of exhibit D3, the oral evidence has no room as rightly argued by Mr. Kabuguzi.

In that respect I rule out that the 1st defendant if at all she purchased the Suitland, then it was in 2016 on 24th March.

By that time the plaintiff was already in occupation of the said plot with his modern house built thereon. The 1st defendant thus bought the suit plot with bad intention. Just to acquire locus to disturb the plaintiff because she had started such disturbances in 2009 without any locus. The act of the 1st defendant to buy the plot in dispute which was in full occupation of another person and whom she had started a quarrel/some misunderstanding even prior to the purchase in 2009 is what in Swahili has been used to be referred to as "***Kununua Kesi***".


She was "**buying**" the case that would be between the plaintiff and Said Khamis who was registered as the owner thereof up to 13/01/2017 as again rightly argued by Mr. Kabuguzi learned advocate.

As to the legal effect thereof, such purchase was unlawful because the plot was not free from encumbrances due to the fact that the plaintiff was already in its occupation claiming title thereof. The 1st defendant ought to have caused the said Saidi s/o Khamis take the necessary legal measures to have the plaintiff evicted therefrom before she could buy it. Perhaps Saidi s/o Khamis could have settled the matter as other neighbours settled. He could have taken Plot No. 435 in lieu of his Plot No. 437 which was full developed taking into consideration that he had not developed Plot No. 437 as per the condition in the title document. The 1st defendant thus bought the plot to pre-empt such legitimate expectation of amicable settlement as happened to all other neighbours who faced the same problems of misallocations. The 1st defendant's purchase of Plot No. 437 Block LD Kamala from Saidi Khamis is hereby declared unlawful as it was calculated to injure the interests of the Plaintiff who was in possession of it under the honest claim of right as I have resolved in the second issue herein. His honest claim of right was not distinguished at the time the purported purchase was executed.

- v. *Whether the Plaintiff and the 1st Defendant mutually exchanged the plots whereas the plaintiff took Plot No. 437 L.D. Kamala and the 1st Defendant took Plot No. 435 MD Kamala and each party developed on the exchanged plots.*

This issue is answered in the affirmative. This is due to the available evidence and the conduct of each party. It is on evidence that after it was finally settled that the plot which the plaintiff had built his dwelling house was Plot No. 437 LD Kamala and that which the 1st Defendant was shown and developed was No. 441 LD Kamala, the two agreed to exchange the plots for the 1st defendant to take Plot No. 435 LD (MD) which was just adjacent thereof and which was yet developed being registered in the name of the Plaintiff. I am aware that the 1st defendant testified at page 74 of the proceedings that she did not exchange the plots but at least she admits to have gone to develop and live on Plot No. 435 in lieu of Plot No. 437. She stated;

'I did not make any agreement with Rogers for the exchange of plots. On Plot No. 435, it was Rogers who built the foundation. It was a force used by the Land officers who were brought by Rogers who threatened me that if I refuse, I will lose everything'



This quotation of the 1st defendant's testimony is a clear indication that she agreed though on fear to loose everything had she refused to exchange.

I am however far to believe that she was forced because under the evidence on Record, the 1st Defendant was courageous enough even to refuse the advice and directives of both the *Kamati ya Wilaya* and that of *Kamati ya Ulinzi na Usalama ya Mkoa* as evidenced in exhibit P4 (the Video Clip in the Compact Disc).

In that regard, there is no any alternative suggestion that she could fear mere words of Land Officers whom she did not even name.

It is further in evidence that it was the Plaintiff who started to build on Plot No. 435 for the 1st Defendant and the 1st Defendant finished the construction and shifted thereat. She also installed a water tape and continued with her life without any disturbance to the Plaintiff until on 04/03/2020 when she vigorously shifted into Plot No. 437.

There is abundant evidence that at all times the plaintiff lived on Plot No. 437 and the 1st defendant lived on Plot No. 435. Such evidence is unchallenged by either defendant. Also, there is undisputed video clip exhibit P4 supra which show the house of the Plaintiff on plot no. 437 and



that of the 1st Defendant on Plot no. 435. PW2 Gidion Burundi a neighbor thereby confirmed.

'By that time Masaka was living on another plot which was said to be owned by Rogers and it was Rogers who assisted her to build there'.

According to this witness the first defendant's complaint was only the size of the house built by the Plaintiff for her on that plot;

'Masaka came to me complaining that the house which was built for her by Rogers was small. She wanted Rogers to build her a big house. Rogers agreed and extended the house'.

This evidence was even corroborated by the 1st defendant herself when she testified that she was told to shift to Plot No. 435 and Rogers ordered to assist her in building the house equivalent to what she had developed on Plot No. 441 so that she vacates therefrom to give vacant possession to its true owner. Rogers complied to the directives of land officers but in the due course of the execution she realized that Rogers was building for her a small house;

'Rogers then started construction on Plot No. 435 but the same was in the size of the house I was living in which was very small compared to the size of the foundation. I then told Rogers; Kumbuka wale watu walikwambia umjengee



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nyumba saizi ya msingi nilikuwa nimejenga. Na wewe mwenyewe ndiye uliwaleta'.

According to her Rogers became furious telling her;

'Kwanza hata hivyo nilikuwa natoa msaada tu. Nenda kwa hao watu wakujengee'.

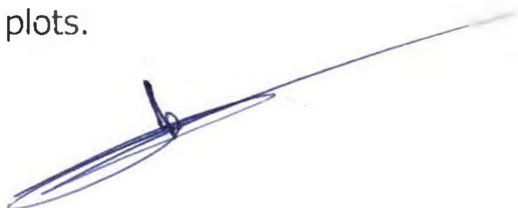
Rogers then stopped and she herself engaged the Marson to complete the construction on Plot No. 435;

'I decided to find a Marson and continued to build the house on that small foundation he had built. I finished the building in the same year 2015 and shifted in that house on November, 2015'.

She then installed a water tape and paid Tshs 420,000/= for it. She concluded at page 68,

'I then constructed a toilet over there and started my life'.

With all these evidence, the Plaintiff and the 1st Defendant had mutually agreed to exchange the plots regardless that there was no written agreement. The conducts of the two are consistent with the averments of the plaintiff that they had agreed to exchange the plots after they realized that they were both misled by the 2nd defendant on the physical location of their respective plots.



Even though I have determined in the other issue herein above that, the 1st defendant by the time of such agreement was yet purchased plot No. 437 from Saidi s/o Khamis. She was a person without locus into the negotiations and the Plaintiff acted with her by being deceived by her as the lawful owner of Plot No. 437 in which the plaintiff was already in occupation and development. By that time only Saidi s/o Khamis was entitled to negotiate with the Plaintiff.

The 1st defendant had no any colour of right to negotiate with the Plaintiff. The 1st defendant's locus if any accrued on 24/03/2016 when she purchased plot No. 437 from Saidi s/o Khamis and subsequently on 13/01/2017 when the transfer was effected.

Even though I doubt if truly she bought such plot due to what I have explained herein above that she had contradicting evidence as to when exactly she bought the plot. Her oral evidence has no any support and she seems untrustful for her contradictions. Also, because her advocate and the counsel for the remaining defendants argued that exhibit D3 did not reflect the real transaction. If that is the case, the alleged purchase of the suit plot by the 1st Defendant is questionable.

She might have been a person taking advantage to fill in the vacuum i.e. Saidi s/o Khamis is no where to be seen, he was not brought as a material witness to confirm whether he really sold his plot to her and when was it.

Be it as it may she entered into a mutual agreement by deceiving the plaintiff that she had title on Plot No. 437 but the agreement was there as herein above demonstrated.

vi. Whether the transfer of the suit plot from Said s/o Khamis to the 1st Defendant by the 2nd Defendant on 13.01.2017 was lawful taking into consideration that the plaintiff had already developed it and residing therein for the past 6 years prior to the transfer without first resolving the Plaintiff's status therein by necessary legal actions.

On this issue Mr. Kabuguzi learned advocate argued that the transfer was unlawful because it was done at the time when there was a well-known conflict between the plaintiff and the 1st Defendant over the same plot since 2009. He was of the view that the 2nd Defendant ought to have refrained from transferring the title until the dispute of ownership thereof resolved between the Plaintiff and Saidi Khamis who by then was the registered owner of such plot.

On their party Mr. Kagashe and M/S Beatrice learned counsels for the Defendants argued that the transfer was lawful because there was no Caveat, the Plaintiff's plot was well known to be No. 435 and thus transferring plot no. 437 which was not belonging to him was not bad in law.

On this issue I agree with Mr. Kabuguzi learned advocate as against Mr. Kagashe and Betrice. As revealed in evidence of both parties, both the 1st defendant and the 2nd defendant were aware since 2009 that the Plaintiff was in occupation of Plot No. 437 although at first it was mistakenly referred to as Plot No. 435. It was the 2nd defendant who approved the Plaintiff's building plan on that plot and even issued a building permit to him to develop the plot.

According to the evidence of the 1st Defendant herself, the 2nd defendant told her in 2015 that since the Plaintiff has already developed Plot No. 437 she could not be allocated it;

'...they told me that; Hata nivyo Rogers ameshajenga, huwezi kukipata kile Kiwanja. Sisi ndiyo wenye mamlaka ya ardhi.'

In the circumstances, there was already an encumbrance on the plot by the presence of the Plaintiff in it whether lawfully or unlawfully. The 2nd Defendant knew as such and was thus legally barred to effect the transfer of such plot to any person unless the status of the one in physical possession would have been legally resolved. The transfer was thus as good as the re-allocation of the land which was in occupation and development of another without prior consultation and an adequate compensation to the exhausted developments. That is bad in law as it was held in the case of ***Village Chairman KCU Mateka versus***

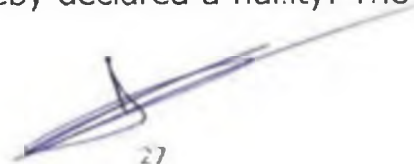
Anthony Hyera [1988] TLR 188 in which this Court held that Common sense and equity forbids the land authority to allocate a land within its jurisdiction which is under the possession of another who is developing it without prior consultation and adequate compensation. It was further held that the Land Authority which allocates land which is already under development and possession of another person would not only bring lawlessness and anarchy to the Society but also retard the development of such society.

I am aware that the learned counsel M/S Beatrice argued that what happened in this case was not double allocation but misallocation to the effect that double allocation would be bad but misallocation would not distinguish the title of the real owner but there is a very slight difference between the two terms. There differences are only semantic. Physically they mean the same thing. Misallocation is just putting someone into possession of the plot which is owned by someone else without distinguishing the existing title thereof. That is good as double allocation, nothing more.

In the instant case, as I have said the plaintiff although purchased his plot (435) in 2008, he was placed on Plot No. 437 believing that it was Plot No. 435. He who put him there was the 2nd Defendant who is the relevant land authority. He honestly occupied it and started developing the same

in 2009. In 2011 he started a living therein with his family. This was open to the general public and seeable by everybody including the 1st defendant and the 2nd defendant. The 1st defendant's actions to condone the presence of the Plaintiff on Plot No. 437 (the suit land) and her shifting to plot No. 441 then to Plot No. 435 entitled the Plaintiff to honestly believe that she had no more claim on plot No. 437 and thus developing it without fear of future loss. The 2nd Defendant's action, approving the building plan thereon and issuing the building permit entitled the Plaintiff to honestly believe that he was legally able to develop such plot without any encumbrances. Mr. Kagashe argued that the building plan was approved for plot no. 435 and not 437. Yes! I agree, but physically it was plot no. 437 which was being referred to as plot no. 435. Basically, since the plaintiff purchased plot no. 435 was shown that of 437 by the vendor and later by the land authority as revealed herein above. Therefore, since day one he was in mind of the plot in dispute as plot no. 435.

It was thus legally wrong for the 1st and 2nd defendants to transact behind the plaintiff and effect the transfer of Plot No. 437 LD Kamala to the 1st defendant without consulting him, negotiating with him and or taking any legal action to make the plot free from his occupation. The transfer was thus unlawful and it is hereby declared a nullity. The transfer was made



in disregard to the interests of the plaintiff who was not a trespasser in its real meaning.

vii. To what reliefs are the parties entitled to.

As it is undisputable fact by both parties that the Plaintiff is the lawful owner of Plot No. 435 Block MD now referred to as Block LD Kamala, he is declared a lawful owner thereof. The 1st defendant is therefore declared a trespasser on Plot No. 435 Block MD/LD Kamala and ordered to give vacant possession to the plaintiff with an immediate effect.

In respect of Plot No. 437 Block LD Kamala, the Plaintiff shall remain in occupation thereof as a technical owner because he has incurred costs for developing such plot innocently having been misled by the Land Authority (the 2nd Defendant) for locating it as plot No. 435. He shall remain in occupation until paid compensation for unexhausted development thereof to the tune of **Tshs 90,000,000/=** which he claimed in evidence and none of the other parties disputed such value. The compensation shall be paid by the 2nd Defendant as she is the one who misled the Plaintiff to develop such plot.

Alternative to the compensation herein above decreed, the ownership of Saidi s/o Khamis over plot no. 437 shall be revoked subject to the relevant legal processes or he shall be given an alternative plot by the 2nd

Defendant so that Plot No. 437 Block LD Kamala be registered in the name of the plaintiff Rogers Andrew Lumenyela. The Compensation or registration of the dispute plot into the names of the Plaintiff must be done in not more than six months from the date of this judgment. To make it clear, plot no. 435 shall not be treated as an alternative plot. That is an independent plot to the dispute at hand and the Plaintiff volunteered to surrender it just to have the dispute resolved amicably. I am aware as per evidence on record that the Plaintiff lost his other Plot No. 466 Block LD Kamala in an attempt to have amicable settlement of the dispute but all ended in vain. He cannot lose as well Plot No. 435 herein above. As his efforts did not succeed let him enjoy his property without losing his interests on plot no. 437 supra. His humanity has always been used by both the 1st and 2nd defendants to drag him into unnecessary costs and irreparable losses. The law should intervene and protect him. These good people and humanity citizens like the plaintiff should be protected as the peace and harmony of the Nation rests into their good hands and hearts.

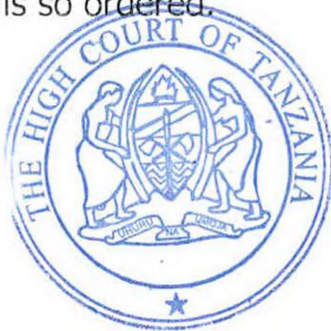
The 1st Defendant is declared trespasser to Plot No. 437 Block LD Kamala and it is hereby ordered that she gives an immediate vacant possession or else be forcefully removed thereof by using Court Broker and if she will

not vacate peacefully necessitating the use of the Court Broker, she shall bear the costs to be incurred to remove her therefrom.

The 1st defendant may wish to fight for her rights against her vendor who sold her dispute plot while the same was not free from encumbrances as herein above stated. She should however remember that the requirements of the law is always that the buyer must be aware before buying.

With the herein above observations, this suit is allowed to the extent herein above explained and the defendants are condemned costs of this suit. Right of Appeal to the Court of Appeal of Tanzania subject to the guiding Laws and Rules thereof is explained.

It is so ordered.




A. Matuma

Judge

28/09/2021

Court: Judgment delivered in the presence of Mr. Allan Shija learned State Attorney for the 2nd and 3rd Defendants and Mr. Ignatius Kagashe learned advocate for the 1st Defendant who is also holding brief of Mr. Method Kabuguzi learned advocate for the Plaintiff.

Right of appeal is explained.

Sgd: A. Matuma

Judge

28/09/2021