

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND CASE NO 31 OF 2019

NEKITETO EDWARD SOKOINE..... PLAINTIFF

VERSUS

RAKESHI Y.K VOHORA.....1ST DEFENDANT

AFRICAN BANKING CORPORATION (T) LTD (Banc ABC)2ND DEFENDANT

BEST GROUP (T) LTD.....3RD DEFENDANT

ESSIMINGOR ESTATES LIMITED.....4TH DEFENDANT

SABURI ESTATES LTD.....5TH DEFENDANT

RHINO PLANTC, EQUIPMENT AND TRANSPORT LTD.....6TH DEFENDANT

DAVID SULLE.....7TH DEFENDANT

HIRAN K.S.....8TH DEFENDANT

CONSENT JUDGMENT

7th & 14th June, 2022

N.R. MWASEBA, J.

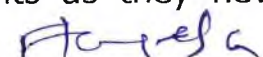
The plaintiff herein instituted a suit against the defendants jointly and severally for:

- a. A declaration order that the plaintiff herein is the lawful owner of the suit properties.




- b. A declaration order that the sale sanctioned by the 2nd defendant and executed by the 3rd defendant on the 11th October 2019 is void *ab initio*.
- c. A declaration order that the 7th defendant has no authority over the suit property and thus had no good title.
- d. A declaration order that the sale of the suit property between the 7th defendant and 8th defendant is null and void.
- e. An order of permanent injunction to restrain the defendants, their servants, and agents from evicting the plaintiff or trespassing to the suit property.
- f. General damages to the tune of Tanzania Shillings Six Hundred Million (TZS 600,000,000.00).
- g. Costs of this suit
- h. Any other relief (s) this Honourable Court may deem fit.

In court, Mr John Masangwa learned counsel represented the plaintiff, Mr Phillip Mushi appeared for the 1st, 4th and 5th defendants, Ms Elizabeth Majura was appearing for the 2nd and 3rd defendants and Mr Jeremiah Mtobesya appeared for the 6th defendant. The matter proceeded *ex parte* against the 7th and 8th defendants as they never



appeared in court or file their defence though they were duly served by a substituted service through publication in Mwananchi Newspaper.

When the matter was coming for final pre-trial conference on 7th June, 2022 Mr Masangwa learned counsel for the plaintiff informed the court that they have already settled the matter between the plaintiff and the 2nd 3rd and 6th defendants. He further contended that the 1st, 4th, and 5th defendants admitted the claim in the plaint. So, he prays that the court records the settlement as per **Order 23 rule 3 of the CPC** and also records an admission against the 2nd, 4th and 5th defendants in accordance with **Order 15 Rule 1 and 2 of the CPC**. He then prayed to adopt their deed of settlement as per **Order XXIII of Civil Procedure Code**.

Mr Mushi learned counsel for the 1st, 4th and 5th defendants contended that they do not dispute that the suit property belongs to the plaintiff as per paragraph 5 of their amended written statement of defence. Hence, he avers that without prejudice the said defendants do concede that the suit land belongs to the plaintiff. He clarified that the said defendants are not bound by the deed of settlement filed herein in the court. And that they pray not to be condemned with costs. 

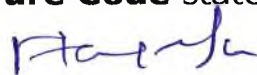
Finally, Mr Masangwa submitted that if the defendants do not dispute that the suit property belongs to the plaintiff, he prays that the title deed be handled over to the plaintiff. Again, this was not contested by Mr Mushi Learned Counsel.

I have gone through the pleadings and the submissions from both parties. Under paragraph 5 of the amended written statement of defence of the 1st, 4th and 5th defendants. It was pleaded that:

"...the mentioned farm No 7/2/1 under certificate of title No 21826 has always been under occupation, control and use by the plaintiff herein. It remains a commitment by the 1st, 4th and 5th defendants herein to release and transfer the said farm to the plaintiff herein without any condition attached to the plaintiff."

Mr Mushi Learned Counsel referred the above paragraph in his submission that they conceded that the disputed land belongs to the plaintiff. And they pray not to be condemned with the costs of the case.

Order XV Rule 1 and 2 of the Civil Procedure Code states that:



- 1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the court may at once pronounce judgment.*
- 2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.*

Being guided by the above provision, and taking in consideration that the 1st, 4th and 5th defendants conceded that the disputed land belongs to the plaintiff, I hereby declare that the suit land belongs to the plaintiff and thus the 1st, 4th and 5th defendants hand over the title deed to the plaintiff.

Coming to the case against the 2nd, 3rd and 6th defendants they have settled their dispute amicably. Under **order XXIII Rule 3 of the Civil Procedure Code**, [Cap 33 R.E 2019] the plaintiff and the 2nd, 3rd and 6th defendants settled their disputes and filed their deed of settlement in court on 17/5/2022.

Order XXIII Rule 3 of the Civil Procedure Code stipulates that:

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"Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit."

Mr Masangwa Learned Counsel who was also holding brief for Mr Mtobesya for the 2nd, 3rd and 6th defendants submitted in court that they had already settled their dispute and filed their deed of settlement. The settlement deed was dully signed by both parties. Therefore, being guided by **Order XXIII Rule 3 of the Civil Procedure Code**, I hereby mark the case between the plaintiff and the 2nd, 3rd, and 6th defendant settled as per deed of settlement.

In the upshot, the farm No 7/2/1 under certificate of title No 21826 belongs to the plaintiff and that the 1st, 4th and 5th defendants should hand over the related title deed to the plaintiff. Moreover, the suit against the 2nd, 3rd and 6th defendants is marked settled as per deed of settlement. Each party should bear its own costs.



It is so ordered.

DATED at **ARUSHA** this 14th day of June 2022.



N.R. MWASEBA



JUDGE

14.06.2022