

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

LAND CASE NO. 9 OF 2019

ZENA ZUBERI KIMOLO..... APPLICANT

VERSUS

FAUSTINO SHEDRACK KAYOMBO1st DEFENDANT

ZAITUNI MUSSA PANGAMAWE.....2nd DEFENDANT

JUDGMENT (EX- PARTE)

MRUMA, J

The Plaintiff Zena Zuberi Kimolo instituted this suit against the Defendants Faustino Shedrack Kayombo and Zaituni Musa Panga Mawe seeking for declaration Orders that:

1. The first Defendant has trespassed onto her Land covering three (3) acres;
2. The second Defendant has facilitated the 1st Defendant in trespassing on her land.
3. She is the lawful owner of a piece of land which is about three acres located at Magomeni Village,

Dunda Ward in Bagamoyo District which has striated value of Tshs 200,000,000/=

4. She be awarded costs of the suit
5. She is entitled to general damages and;
6. Any other reliefs as the court may deem fit and just to grant.

It is the statement of the Plaintiff in his plaint that she is the lawful owner of piece of land measuring three acres which is located at Mugamboni village in Duuda Ward in Bagamoyo District having purchased two acres from one Isack Simon Mora who in turn had acquired it by purchasing from the 2nd Defendant Zaituni Musa Pangwe. It is the statement of the Plaintiff that she bought another acre (to make it three acres) direct from the 2nd Defendant.

The Plaintiff's complaints against the Defendants are that on 31st January 2019 she received an information from the hamlet chairman (ie Mwenyekiti wa Kitongoji) of Kaole secondary Scholl area to the effect that Forster Auctioneers and General Traders have been directed by the first Defendant to order the Plaintiff and other occupiers in adjacent area to vacate the suit land. Based on that information she filed this suit.

Effort to serve the 1st Defendant by ordinary service Proved futile and on 25th .5.2019 this Court (Mutungi,J) ordered Defend to be served by substituted service by publication in Mwananchi Newspaper. Publication was effected in the Mwananchi Newspaper of 14th June 2019 and Citizen of the same date. That notwithstanding the 1st Defendant did not enter appearance. On 19.8.2019 the court ordered case against the 1st Defendant to proceed ex – parte. On 7.10.2021 court was informed that case against 2nd Defendant had been settled and that the Plaintiff had a decree against that Defendant. According to the Court record a consent settlement order was prepared and signed by the parties and filed in Court 4.9.2019

At the hearing of the case, the plaintiff called two witnesses – herself and Ibraim Mbiu Bendera (PW2) In her testimony, the plaintiff Zena Zuberi Kimolo , who testified as PW1, testified that she acquired the suit land by purchasing two acres from one Isack Mota and another acre from the 2nd Defendant Zaituni Musa Pangawe, she tendered in evidence a certified copy of the sale agreement (exhibit P1) which shows that on 20th November 2015 Isack Simon Moti sold to her two acres of land situated at Magambani village, Dunda Ward in Bagamoyo District. The

agreement was witnessed by Mr. Ibrahim Mbiu Bendera, advocate of P.O.Box 11472, Dar es Salaam.

As stated herein before Mr. Ibrahim Mbiu Bendera testified in this case as PW2. He told the court that he knows the plaintiff Zena Kimolo since 2000 as the wife of his school and working mate. He said that on 20.11.2015 Zena Kimolo and one Isack Simon Mota went to his office with a sale agreement and requested him to attest it. He attested it. The witness was able to recognize exhibit P1 as the sale agreement between the plaintiff and one Isack Simon Mota which he witnessed.

It is trite that the standard of proof in a Civil Case is on the balance of probabilities which means that the party bearing the burden of proof must prove that her case is more probable than not. This principle applies regardless as to whether the case is being heard ex- parte of inter parties.

As stated at the outset of this judgment this case proceeded ex – parte against the 1st Defendant and apparently the 2nd Defendant supported the Plaintiff's case. The Plaintiff testified that she purchased the suit land from one Isack Simon Mota. She produced in evidence the sale agreement (exhibit P1) which substantiate her claims. Her testimony was supported by that of Mr. Ibrahim Mbiu Bendera (PW2) who attested and witnessed the sale agreement.

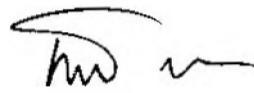
As this evidence is not contested this court finds that the evidence of PW1 she purchased the suit land from the 1st Defendants is more probable than not. This court therefore finds that the plaintiff purchased three (3) acres of land from the Defendants as per exhibit PI. Having purchased the suit land and in absence of any evidence to the contrary, the Plaintiff acquired ownership thereof. This court therefore declares the Plaintiff as the lawful owner of the suit land which is a three (3) acres piece of land situated at Magambani village, Dunda Ward in Bagamoyo District.

Regarding trespass by the 1st Defendant on the suit land no evidence was led to prove this tortious act. Apart from stating in the plaint that the 1st Defendant with the aid of the 2nd Defendant has trespassed onto her land the plaintiff did not give any evidence to prove trespass. **Black's Law Dictionary 10th Edition by Bryan A. Garner at page 1733** defines trespass as "wrongful entry on another's real property" The plaintiff did not lead any evidence to prove wrongful entry by any person into her land.

The plaintiff is claiming for general damages. General damages are damages that the law presumes to follow from the type of wrong complained of. The wrong complained of in this case is trespass which as

I have just stated the plaintiff has failed to prove. Thus she cannot be entitled to general damage.

In summary, the Plaintiff's suit succeed on one item only and that is; she is the lawful owner of the suit land which comprised of three(3) acres located at Magambani Village in Dunda Ward of Bagamoyo District.. The Court so declares. As the 1st Defendant didn't contest the suit. I make no orders as to the costs.



A.R.Mruma

Judge

28/7/20122

28/7/2022

Coram: Hon. A.R.Mruma

For the Plaintiff: Present and represented by Mr. Zacharia Kegora
advocate for

For the 1st Defendant

For the 2nd Defendant

Cc: Delphina

Court: Judgment delivered this 28th day of July 2022 in presence of the
Plaintiff and her advocate Mr Zacharia Kegoro but in absence of
Defendants.



A. R. Mruma

Judge

28/7/20122