

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO 93 OF 2021

JOHNSON LEONARD MAHURURU

.....PLAINTIFF

VERSUS

EMMANUEL JOHN NCHIMBI..... 1ST

DEFENDANT

THE COMMISSIONER OF LANDS 2ND

DEFENDANT

THE REGISTRAR OF TITLE DEED 3RD

DEFENDANT

THE ATTORNEY GENERAL 4TH

DEFENDANT

JUDGMENT

24th June & 31st August 2022

F. H. MAHIMBALI, J.

The land in dispute involving the parties to this case concern ownership of land the suit land in plot No 221, Block G at Tegeta area in Dar es Salaam.

Whereas the plaintiff claims the suit land to be his as he lawfully purchased it from Salum Sefu Sani of CCM Tegeta (the father of PW2 -exhibit PE1). On the other hand, the first defendant Dr. Emmanuel Nchimbi (Ambassador), claims it to be his as he was lawfully allocated the said land by the office of

the Commissioner for Lands after he had made an application (DE1 exhibit). Upon payment of necessary fees and or charges, in 2016 he was granted with the Certificate of Occupancy in respect of the suit land in plot No 221, Block G Tegeta – Dar es Salaam.

To resolve this contest, three issues were preferred as being compass of the case, namely:

1. Whether the 1st defendant lawfully obtained plot No. 221, Block G at Tegeta area in Dar es Salaam
2. Who is the lawful owner of plot No 221, Block G at Tegeta Area in Dar es Salaam.
3. What reliefs are the parties entitled to.

According to the plaintiff, the suit land was originally owned by Salum Sefu Sani of CCM Tegeta. After the survey of the said land owned by Mr. Salum Sefu Sani, he had remained with some plots but others were taken by the office of the Commissioner for Lands for the consideration of the survey done. Following the said allocation of some plots to Mr. Salum Sefu Sani, the plaintiff had managed to purchase the plot in dispute from the said Salum Sefu Sani (the vendor). Prior to

the purchase of the suit land, the plaintiff had earlier purchased from the same vendor on 12th day of June 1998 plot No 219, Block G located at Tegata in Kinondoni (PE2 exhibit) at a price of 7,000,000/=.

In the purchase of the former land (Plot No 219 Block G located at Tegeta in Kinondoni), he was given certificate of offer establishing ownership of the said land by the vendor (PE4 - exhibit). So that is to say the purchase of plot No 219, Blok G was accompanied by certificate of offer owned by the vendor.

However, in a subsequent contract/sale, the same plaintiff Johnson Leonard Mahururu on 24th May 1999 appears to have purchased the second plot allegedly belonging to the same Mr. Salum Sefu Sani (PE1). Notably, this subsequent sale does not establish whether the said vendor had certificate of offer it being registered/surveyed land. Nevertheless, PW3 (Mr. Hassani Salumu Seif) who introduced himself as the son of the vendor, told the court in his evidence that his father had sold at different times his two plots of land to Mr. Johnson Mahururu. His father had a total of five plots namely 215, 217, 219, 221 and 223 as given to him by the office of the Commissioner for Lands after his big farm had been surveyed by the

Government. The first sale was in respect of plot No 219 Block G and the latter sale (in 1999) was in respect of plot No 221 Block G in which he witnessed both transactions for his father. PW3 testified further that amongst the plots allocated to his father by Ministry of Lands, others had certificate of offer and others had not.

Therefore, the plaintiff on the strength of PE1 exhibit as collaborated by PE2 and PE4 exhibits, claims that the said suit land is his.

On the other hand, Dr. Emmanuel Nchimbi (Ambassador) claimed the suit land as his, following the allocation of the said land to him. To substantiate his claims, he relied on exhibit DE1 - form No 19 for application of surveyed land, Certificate of Right of Occupancy (DE3). With this evidence he contended that, he was validly located the said plot No 221 Block G, Tegeta Area - Dar es Salaam by the Commissioner for Lands.

In consideration to the first issue, whether the 1st defendant was validly allocated the said land by the Commissioner for Lands, DW1 says yes. He says yes, because he made a formal application to the Commissioner for Lands in responding to the public notice (advertisement for sale) as per

DE1 exhibits. He paid necessary fees after the approval of his application form (F.19). Later, he was issued with the certificate of Right of Occupancy.

On the other hand, the plaintiff contends that, after he had purchased the said Land (PE1 exhibit), he later went to the Registrar of Titles office to inquire about the ownership of the paid plot where he was replied that it had no allocation (PE6). Thereafter, the plaintiff applied by letter the grant of Right Occupancy in respect of land in plot no 221, Block G (PE5).

Thereafter, he kept on making follow-ups to the Commissioner for Lands' office of his application of Right of Occupancy but in vain (exhibits PE8, PE11) and replies by the Commissioner for Lands (PE7 and PE13).

In his further follow-up on ownership of the said plots (219 and 221) he ended up being arrested and detained by Police on allegations that he had dubious documents (PE13 exhibits). Thereafter he came to know that Mr. Emmanuel Nchimbi was granted right of occupancy of the disputed plot.

It is the contention of the plaintiff that the 1st Defendant had not passed/followed the lawful procedure for him to be

granted the ownership of the said plot. He considered it as a dubious transaction.

DW2 (Land Officer from the Commissioner for lands) Ms Adelfrida Camilius Lekule stated that Plot No 221 Block G is owned by the 1st defendant as he legally applied for it (DE1 exhibit), paid necessary fees (DE2 exhibit) and eventually granted the right of occupancy. She said that according to the land office records (Commissioner for Lands), she recognized the application of right of occupancy in respect of the said plot no 221 and 219 Block G by the plaintiff. Nonetheless, with plot No 221 Block, the plaintiff failed to provide necessary annexures. Furthermore, the plaintiff failed to establish how he lawfully acquired it from the said vendor and whether the vendor had a valid title of the said plot.

In my assessment to the available evidence by the Plaintiff and defense, it is clear that the plaintiff has failed to establish if Mr. Salum Sefu Sani first lawfully owned that suit plot for him to have validly sold that land to him. I say so because unlike plot No 219, Block F (PE2 exhibit) in which the vendor had certificate of offer (PE4 exhibit), with plot No 221, Block G purchase agreement (PE1 exhibit) in the absence of valid and

believable evidence that the vendor had title over the same land, it is a suspicious sale. For the purchaser to claim right of possession/ownership, the vendor must first establish valid and believable evidence that he owns the land lawfully. If the same vendor had certificate of offer for plot No 219 Block G (PE2 and PE4 exhibits) why did the purchaser (plaintiff) not inquire from him the validity of his ownership in respect of the alleged possession. This suggests that, there was no due diligence by the plaintiff in purchasing surveyed plot. Plot No **221 Block G** being a surveyed and registered land, its purchase process must be with due diligence. In the absence of due diligence search, the buyer is barred by the legal principle that buyer beware. Surveyed and Registered land is not purchased easily like un surveyed or unregistered land. By the way, even the un surveyed land, people still make some inquiries from the neighbours and local authority to establish if the vendor is real and that the parcel of land is free from any dispute or any government project. The argument that he inquired its ownership from the Registrar of Title and Commissioner for Lands' office and was satisfied that it was unoccupied, it contradicts with his own belief that the said plot was being owned by Mr Salum Sefu Sani. From that point, he must have

raised suspicion on the ownership of the said vendor over the said plot.

However, as per exhibit DE5, the explanations of Johnson Leonard Muhururu on how he purchased the said land contradicts with his own sale agreement (exhibit PE1).

All this gathered and considered in comparison between the testimony of PW1 and PW2 on one hand and the testimony of DW1 and DW2 on the other hand and examining exhibits DE1 PE2, PE4, PE5,PE6), the suit land being surveyed and registered land was validly allocated to the 1st Defendant. The claims by the plaintiff are without basis as he purchased the surveyed and registered land without doing due diligence. There has been no proof if Mr. Salum Seif Sani had been owning it lawfully before the purported sale to the plaintiff. An argument that he made search of it and established that it was not occupied, it was not a license that he could get it. Granting of Land Rights by certificate of occupancy is a process. As he doesn't know who engineered the surveying process of the plot/block, by being not occupied by the time of his search, it was not then a guarantee to his ownership. He is not protected or served with the principle of first priority as celebrated in the

case of **Ombeni Kimaro vs Joseph Mishili Catholic Charismatic Renewal**, Civil Appeal No 33 of 2017, Court of Appeal at Dar es Salaam (unreported). As **between him and Mr. Emmanuel Nchimbi, the plaintiff had no any right of claim. I would probably advise him to go back to the vendor and claim his purchase money if the deal was real.**

That said it is my finding that the first issue is answered in affirmative that the 1st defendant lawfully obtained landed plot no 221, Block G at Tegeta Area, Dar es Salaam.

With the second issue *“who is the rightful owner of the disputed plot, No 221 Block G- Tegeta”*, it depended much on the answer to issue no 1 above. With the reply to the issue no 1 in affirmative, it follows suit that the 1st defendant is the lawful owner of the disputed plot No 221, Block G - Tegeta. I say so because the 1st defendant having been dully allocated the said plot and fully paid all the necessary fees/charges, there is no one save the first defendant who is the rightful owner of plot No 221 Block G-Tegeta. The response would have been difficult/challenging had the plaintiff established legally owning it. In that absence, he cannot append tittle to unestablished property.

Lastly, as to what reliefs are the parties entitled to. As the plaintiff's claims stand unestablished, I hereby dismiss his suit with costs.

DATED at DAR ES SALAAM and MUSOMA this 31st August 2022



F.H. Mahimbali

Judge

Court: Judgment delivered this 31st August, 2022 by video link, connected from Musoma High Court and High Court Land Division - Dar es Salaam in the presence of the Denisy for Matata, advocate for the plaintiff, Mr. Luoga, state attorney for the 2nd, 3rd and 4th defendants, Mr. Gidion Mugo, RMA and 1st defendant being absent.

Right of appeal fully explained to any aggrieved party.

F.H. Mahimbali

Judge