

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO 208 OF 2020

STEPHEN AUGUSTINE MINJA
.....PLAINTIFF

VERSUS

THE COMMISSIONER FOR LAND 1ST
DEFENDANT

THE ATTORNEY GENERAL 2ND
DEFENDANT

THE REGISTRAR OF TITLES 3RD
DEFENDANT

KINONDONI MUNICIPALITY 4TH
DEFENDANT

WINFRIDA MSHINDO 5TH
DEFENDANT

JUDGMENT

12th July & 31st August 2022

F. H. MAHIMBALI, J.

The plaintiff Mr. Stephen Augustine Minja, was in 2015 granted a right of occupancy by CT NO 140253 (PE2 Exhibit) for plot No 2077, Block C- Boko Area, Kinondoni Municipality by the 1st defendant and was dully registered by the Registrar of Tittles.

On claims of fraudulent means of obtaining the said plot No 2077 Block C - Boko Area in Kinondoni Municipality, his registered right of occupancy was rectified by the Registrar of Titles, thus making him landless. Surprisingly to Mr. Stephen Augustine Minja, the same land was allocated to Mr. Pereus Mutahungurwa Rwezaura as administrator of estate of the late Winfrida Mshindo (5th defendant).

The rectification/revocation of the plaintiff's land plot, aggrieved him. He tried his best to make a follow-up of his right to Kinondoni Municipal Council but ended up to be detained by police on claims of fraudulent means of obtaining the said land plot. Unfortunately, the said criminal claims could not lead to any criminal case or prosecution against the plaintiff to date.

As per contesting facts of the case, four issues were preferred as road map for the determination of this suit:

1. Whether the process of revocation of the title of the plaintiff by the 1st and 3rd defendants was proper and justifiable in law.
2. Whether plot no 92, Block C Boko area Kinondoni Municipality issued by Dar es Salaam City council is the

same as plot NO 2077 Block C Boko area Kinondoni Municipality.

3. Who is the rightful owner of the suit property in plot no 2077 Block C, Boko area Kinondoni Municipality Dar es Salaam through survey plan no 68653.

4. To what reliefs are the parties entitled to.

Whereas Mr. Stephen Augustine Minja claims to have obtained the said land from Mr. Charles Mikela (PW2) in 2013 (PE1) following their business relationship, Mr. Charles Mikela testified that he had bought the said land in 1993 at a price of 150,000/= from one indigenous by name of Mr. Shabani Mgomba (PE10).

On the other hand, Mr, Perreus Mutahungurwa Rwezaura claims that Winifrida Mshindo (his wife) had obtained the suit land in 1996 following the proclamation of sale of land plots by the then Dar es Salaam City Council. She applied for two plots and himself two. They paid for the purchase plots and that the Suitland which was given to Winfrida Mshindo was named/referred as plot NO 92, Block C - Boko (DE6 dated 21/6/1996).

That his wife Winifrida died on 30th April 2020 while she had already applied for right of Occupancy of the said plot which was then issued on 17th November, 2020 by the Commissioner for Lands (DE4 exhibit). However, in the process of getting the said certificate of right of occupancy, he noted change of plot number from 92, Block C - Boko to plot 2077, Block C - Boko (DE9). It is his testimony that from when they were allocated this land, they have been paying necessary land rents to date (as per exhibit DE7).

As between him and the plaintiff (PW1) or PW2 (Mr. Mikela) he stated that as they followed the due process in applying the said plot, he is confident that the plot is his.

Since the said plot No 2077 Block C, Boko now seems to be contested by two different people (PW1 and DW1), now the first issue comes into play, *“Whether the process of revocation of the title of the plaintiff by the 1st and 3rd defendants was proper and justifiable in law”*.

As to why the plaintiff's right of occupancy was revoked/rectified, the testimony of DW3 with exhibit DE12 tell all the reasons. That these PW1 and PW2 had no good title over the

claim of the said suit plot No 2077 Block C- Boko. The contention that Mr. Charles Mikera (PW2) had not established his ownership over the said suit land for him to pass it to the plaintiff can be a relevant discussion. In explaining how he passed the suit land to the plaintiff, Mr. Mikela (PW2) relied on PE2. However, the Commissioner for Lands challenges the possession of the said land by PW2 to PW1.

The argument by DW3 is this, the Commissioner for Lands faulted the ownership of the plaintiff of the said land relying on DE12 exhibit.

Moreover, DW4 in his testimony stated how the office of Registrar of Titles after being notified with the fraud report (DE12 - exhibit) by the Commissioner for Lands notified the plaintiff via official letter (DE13) - Notice of rectification of Land Register under section 99 (1) of the Land Registration Act, Cap 334 in respect of plot **277**, Block C.

On one hand, I have digested the testimony of PW1, PW2 and their exhibits (PE1 and PE 10) thoroughly. On the other hand, I have digested the testimony of DW3 and his exhibit DE12 and further the testimony of DW4 with his exhibit DE13. I

have the following questions; first, how did the Commissioner for Lands get that land to allocate to the 5th Defendant? Second, what was the **said Notice of revocation/rectification (exhibit DE13) all about.** I say so bearing in mind that Tanzanian land is public land. Neither does it belong to the Commissioner for Lands nor the President, but to the people of the United Republic of Tanzania. The President is just the Trustee. Therefore, it was not unlawful for Mr. Mikera (PW2) to purchase land from the said Shaban Migomba Mtoro (PE2). As Mr. Mikela purchased it in 1993, the said land (part of it) could only pass to other citizens upon due process of law. By buying that land, he had an interest in it, which interest (right) is protected by law as it is valuable property (See **section 3 (1) b, f and g of the Land Act, Cap 113**). Since there is no evidence to the contrary that Mr. Shabani Migomba Mtoro had not owned that land, the survey and allocation of it to Mr. Stephen Augustine Minja was not unlawful. That land then, could only be taken by the Commissioner for Lands/Government upon due process of law (The land Acquisition Act) as it was being lawfully owned by indigenous/another person. Where someone is in lawful

occupation of land no valid right of occupancy can be offered to anyone else over the same land unless the provisions of the Land Acquisition Act (Cap 118) have been complied with. In the case of **Kimaro vs Joseph Mishili t/a Catholic Charismatic Renewal**, civil Appeal no 33 of 2017, the court of Appeal at Dar es Salaam (unreported) at page 16 appreciated the application of priority principle. It stated:

“The priority principle is to the effect that where there are two or more parties competing over the same interest especially in land each claiming to have titled over it, a party who acquired it earlier in point of time will be deemed to have better or superior interest over the other”

With this priority principle, the Court of Appeal made reference to other cases with similar observation are **Colonel Kashmiri vs Naginder Singh Mathain** (1988) TLR 162 and **Melchades Johan Mbagu, the deceased) and two others**, Civil Appeal No 57 of 2018 (unreported) amongst others.

In the current case, so long as there is no proof how the Commissioner for Lands got the said land for him to advertise for sale to the public, what he did to the land owned by PW2 (Charles Mikela), was unjustifiable and of no legal effect. One

could ask, was it a mere bush (virgin land) or it acquired from the people. If he acquired it, there ought to be complete proof of the said people from whom he acquired the said land. DE12 is in itself not a complete report to deny ownership of Mr. Stephen Augustine Minja in favour of the fifth defendant in the absence of evidence how the Commissioner for Lands got that land for allocation to Ms. Winfrida Mshindo as preferred and done.

Secondly, the Notice of Revocation of the Plaintiff's Right of Occupancy made reference to plot **No 277 Block C** while the plaintiff's plot was No 2077 Block C. Further to this, there is no proof of delivery of the notice to the plaintiff had it been ceramic or trustworthy.

All this considered, it is my finding that in the circumstances of this case, the process of revocation of the Certificate to Title of the plaintiff by the 1st and 3rd defendants was not proper and justifiable in law for none compliance with the provisions of the Land Acquisition Act, Cap 118 R.E 2019 and the Land Registration Act, Cap 334, R.E 2019.

Whether plot No 92, Block C Boko is the same as plot No 2077 Block C, Boko, this is the second issue of the case. I have examined the testimony of DW1, DW3 and DW4 and exhibits DE12, DE13, DE14, I have not seen the relevant material favouring the response of this issue in affirmative. It might be true that where there are issues of re-demarcations and re survey, then change of plot numbers and blocks can arise. However, there must be due notice to those concerned. In the current case, it is perplexing that upon PW1 having been granted the said right of occupancy in 2015, the change of the 5th defendant's plot number is commenced to suit the fifth defendant's interests but at the detriment of the plaintiff. The whole process is circumvented by dubious transactions. With this, I find that there is no valid nexus evidence provided to suggest that plot No 92, Block C, Boko is similar to plot 2077 Block C. The baptism of plot No 92, lock C being plot 2077 Block C is unsupported by material evidence. There is no material and believable evidence to support DW3 and DW4's assertion. It is thus answered in negative.

The next issue for consideration is who between the plaintiff and the 5th defendant a lawful owner of plot No 2077

Block C Boko. As per discussion above, it is vivid that the plaintiff got the said land from PW2 in 2013. PW2 testified how he got the suit land from one Shaban Magomba Mtoro in 1993 (DE10 exhibit). Since there is no contrary evidence that Mr. Chalres Beatus Mikela (PW2) owned that land since 1993 (PE10 Exhibit) and that part of that land was surveyed by the Commissioner for Lands and re allocated to the 5th defendant, there ought to be clear and believable evidence how the Commissioner for Lands acquired/obtained that land from the Public in 1996 while it was under the possession of PW2. In the case of **Kimaro vs Joseph Mishili t/a Catholic Charismatic Renewal**, civil Appeal no 33 of 2017, the court of Appeal at Dar es Salaam (unreported) at page 16 appreciated the application of priority principle. It stated

“The priority principle is to the effect that where there are two or more parties competing over the same interest especially in land each claiming to have titled over it, a party who acquired it earlier in point of time will be deemed to have better or superior interest over the other”

In this case, even if the Commissioner for Lands had lawfully revoked/rectified the certificate of right of occupancy of

the plaintiff and re-allocated it to 5th defendant, the circumstances leading to the grant of the same plot 2077 Block C earlier allocated to PW1 to the 5th defendant are not conspicuous, sound, convincing and believable. As the said land was validly given to the Plaintiff by PW2 in 2013 who (the said PW2) got it in 1993 and that PW1 applied for his right of occupancy and obtained it in 2015, by priority principle, he had a superior right over the 5th Defendant. His land could only then be validly taken by the Commissioner for Lands in due compliance of the law to re allocate it to the 5th defendant. Otherwise, all this done by the land officers from Kinondoni Municipal council and officers from the Commissioner for Lands either misdirected their principal (Commissioner for Lands) or misapprehended the law in advising the Commissioner for Lands. As that land was never validly owned by the Commissioner for Lands, he could not then easily revoke the title of ownership of the PW1 in favour of the 5th defendant. Being Commissioner for Lands, does not make one the superior land lord over all the public land in Tanzania. He can only be so by acquiring all the land as per law, if need be and lawfully accepted.

The purported steps taken by the Commissioner for Lands and Registrar of Titles to disentitle the plaintiff's ownership of his land in plot 2077 Block C are not ceramic, trustworthy and decisive. I say so basing on the testimony of DW3 and DW4 who relied on exhibits DE12 and DE13.

Therefore, the only way to take that land from the plaintiff was by acquiring it under section 3 and 11 of the Land Acquisition Act, Cap 118 R. E. 2019, however subject to the payment of full, fair and prompt compensation to the original owner from whom the land is taken [see **section 3(1) of the Land Act**, Cap 113 R. E. 2002 and **Mulbadawo Village Council and 67 Others V. National Agricultural and Food Corporation** (1984) TLR 15]. However, in the circumstances as it was not for public use, the best alternative was to find another land to the 5th defendant but not disowning someone and giving it to someone else. Therefore, the third issue is answered in favour of the plaintiff as rightful owner of the suit land.

The last issue for consideration is, what reliefs are the parties entitled to. Upon digest to the plaintiff's case as well as

parties' submissions; and considering the response to the first three issues (above) and having declared the plaintiff as rightful owner of the suit land, I make the following orders as far as the reliefs sought are concerned.

- i. It is hereby declared that the plaintiff is the rightful owner of the land situated at plot No 2077 Block C, Boko Area Konondoni.
- ii. All the five defendants (1-5) are hereby restrained from entering, using or dealing with that land in anyway.
- iii. The revocation or rectification done by the 1st and 2nd defendants in respect of right of occupancy No 140253 for plot No 2077 Block C Boko Area in Kinondoni against the plaintiff is illegal and of no legal effect. The same reverts back to the plaintiff with immediate effect by the Registrar of Tittles.

As it is the suit involves Government, I make no order as to costs. Parties shall bear their own costs.

That said the plaintiff's case succeeds to the extent explained above.

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



F.H. Mahimbali

Judge

Court: Judgment delivered this 31st August 2022 by live video link connected from Musoma High Court and High Court Land division - Dar es Salaam in the presence of Mr. Augustine Kusalika, Advocate for the plaintiff, Mr. Luoga, state attorney for the defendant, Mr. Said Seif, advocate for the 5th defendant and Mr. Gidion Mugo, RMA.

Right of appeal is explained.

F.H. Mahimbali

Judge