

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

LAND CASE NO. 2 OF 2020

MAKBUL S/O MOHAMED RAZA JAFFER.....PLAINTIFF

VERSUS

KIGOMA/UJJI MUNICIPAL COUNCIL.....1st DEFENDANT

THE PERMANENT SECRETARY, MINISTRY OF LAND

HOUSING AND HUMAN SETTLEMENT.....2nd DEFENDANT

THE ATTORNEY GENERAL3rd DEFENDANT

J U D G M E N T

09/05/2022 & 20/05/2022

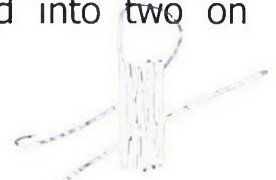
L.M. MLACHA, J.

This case presents a unique situation. As we shall in the course and the end, it's not all civil. It has some criminal elements also. It is a struggle for the ownership of a plot of land known as the NMC plot situated at Kibirizi area Kigoma/Ujiji Municipal which was later baptized to be Plot No. 3, Block 'A' Kibirizi Kigoma/Ujiji Municipal and given to the plaintiff with all it has. It is a huge plot comprising of 80,372 square meters with several buildings. The Plaintiff, Makbul Mohamed Raza Jaffar is in possession of a title deed over the suit plot and wants this court to declare him the lawful owner of



the land as against the defendants Kigoma/Ujiji Municipal council, The Permanent Secretary Ministry of Lands, Housing and Human settlements and the Attorney General (hereinafter referred to as the first, second and third defendants respectively). The defendants do not recognize the title deed. They are questioning it. They say that it was issued contrary to the laid down procedure. They also deny the plaintiff to be the owner of the whole land, but just part of it. They ordered the plaintiff to surrender the title deed to allow subdivision of the land but he resisted hence difficulties leading to the filing of the suit.

The plaintiff stated in the plaint that the Plot was formerly owned by the National Milling Corporation (the NMC), a public corporation, before it was bought by his father, the late M.R.H. Jaffer in a public auction conducted on 5/3/1997 by a court broker appointed by the Resident Magistrate's court of Kigoma in Miscellaneous Civil Application No. 13/1997 (original in civil case No. 16/1995). That he processed and obtained the title deed, No. 6346 LRT Tabora, Land Office Number 716357 in respect of the plot in 2018. But later in 2019, he was called by the first defendant who needed to subdivide the plot. He was served with a 14 days' notice requiring him to surrender the title deed to allow the plot to be divided into two on



17/4/2020. He resisted. He instead issued a 90 days' notice to sue the government. He filed the present suit at the expiration of the notice.

The plaintiff prays for the following orders;

- i. *A declaration that he is the lawful owner of the plot.*
- ii. *A declaration that the first defendant's notice to partition the plot is null and void.*
- iii. *The defendants and or their agents and successors be permanently restrained from interfering with the suit land.*
- iv. *Payment of general damages as shall be assessed by the court.*
- v. *Cost of the suit.*
- vi. *Payment of interest to the decretal sum at the court rate of 7% per annum from the date of judgment to the day of payment in full.*
- vii. *Any other relief the court may deem fit.*

The defendants filed a Written Statement of Defence and denied the claim. They stated that Plot No. 3 Block A Kibirizi Kigoma/Ujiji Municipal was mistakenly given to the Plaintiff after his intentional misleading the office of the Municipal Director. They stated that the Plaintiff inherited the godown from his late father which was bought in the public auction and not the



NMC plot. They put the plaintiff to strict proof of all what is stated in the
plaint

On the assistance of the counsels, Mr. Musa Kassimu advocate for the
plaintiff and both Mr. Allan Shija and Ms. Betrice Mongi State Attorneys for
the defendants, the court recorded four issues namely:

- 1. Whether the plaintiff is the lawful owner of the land registered under title deed No. 6343, Plot No. 3 Block 'A' Kibirizi area, Kigoma township or only part thereof.*
- 2. If issue No. 1 is answered in the negative, what is the amount of land owned by the plaintiff.*
- 3. Whether the title deed in respect of the Suitland was obtained lawfully.*
- 4. To what reliefs are the parties entitled to.*

The plaintiff, Makbul Mohamed Raza Jaffer (49) was the only witness on his side. He told the court that he is the lawful owner of Plot No. 3 Block 'A' Kibirizi Kigoma/Ujiji Municipal because he is in possession of the title deed (Exhibit P1) in his name. That, on 17/4/2020 the first defendant served him with a notice (Exhibit P2) requiring him to surrender the title deed for subdivision. He could not agree and gave the defendants a 90



days' notice (Exhibit P3) to take them to court. He filed the present case at the expiration of the 90 days.

He went on to say that there was a public auction conducted on 5/3/1997 and his father emerged the highest bidder. He paid the purchase price (Tshs.25 million) and was given a certificate of sale (Exhibit P4) from the court. UNHCR who were tenants of the NMC were informed of the sale by their lawyer through a letter sent to them (Exhibit P5). They replied through a letter (Exhibit P6) and agreed to proceed with him as the new landlord. He went on to say that the land had one godown which was a permanent structure. Other buildings were temporary structures.

He proceeded to say that they paid land rents from 1990 up to 2021. He tendered the receipts (Exhibit P7 collectively). He said that they had to pay NMC debts because the land office refused payment of land rents before payment of earlier debts. They paid in the name of NMC Plot which was its name. The plot changed its name from NMC plot to Plot No. 3 Block 'A' Kibirizi after the survey. They have owned the plot from 1997 up to now, 23 years.



He went on to say that the land was bought by his late father and given to him by way of inheritance. It was given to him through exhibit P8 (An Agreement of the Division of the Estate of the late Mohamed Refique Haji Jaffer to Surviving Beneficiaries). He added that UNHCR became their tenants from 1997 up to 2020/21. He tendered lease agreements (exhibits P9 collectively) covering the period. He went on to say that UNHCR built some buildings in 2014 because the contract allowed them to make alterations. They could make alternations for their own use.

He went on to say that he objected the move to subdivide the plot because they got it lawfully in the public auction conducted by the court on 5/3/1997. It is his plot, he said. He asked the court to grant the prayers contained in the plaint.

The defendants had a total of five witnesses. It was the evidence of DW1 William Mkamba Mbonea, the Legal and Protection Officer of the Refugees Services Department of the Ministry of Home Affairs that, they have 3 refugees camps and one transit camp in Kigoma region. The refugees' camps are in Nyarugusu (Kasulu), Nduta (Kibondo) and Mtendeli (Kakonko). The transit camp is in Kigoma, Kibirizi area, he said. The



Kigoma camp started in 1994. It received refugees from Burundi and Rwanda.

DW1 went on to say that Kibirizi was designated for refugees services under section 3 and 16 (1) (2) and (3) of the Refugees Act to receive refugees from Burundi and Rwanda on their way to Ngara but later received refugees from Congo as well. They got the land from the NMC and kept refugees from 1994 up to 2019. The area turned later to be a referral camp for sick people etc.

DW1 proceeded to say that there is a godown on the upper side and other buildings which included the kitchen, office block and 11 other buildings on the other side. One of the buildings (the main building) is as big as a church measuring around 50x30 or 40 meters. He added that there is a demarcation between the office and the godown. He said that he is aware that the godown was sold and brought by a private person adding that their partners threatened to cut off their support at one time because problems of ownership of the land. The PCCB, Kigoma/Ujiji Municipal, The Regional government and the Principal Secretary Ministry of Lands were engaged to study how the ownership of the land shifted to the Plaintiff, he said. They made a study and came out with the finding that what was



bought was only the godown not the whole land which has an area of 80,372 square meters. What was sold was just the godown and its surrounding land which measures 5,520 square meters only.

Following this finding, the Deputy Minister for Lands directed a rectification. They formed several teams to execute the directive. They issued a directive to the plaintiff to surrender the title deed. They drew some drawings to create boundaries. A sketch map indicating the boundaries of the godown (exhibit D1) was prepared. They had meetings with the plaintiff but he refused to surrender the title deed for sub division of the land. He said that the court certificate was clear that what was sold was only the godown which had specific boundaries around it. It is surrounded by poles and a trench (Mfereji), he said. He said that its land is around 5,500 square meters (making reference to the sketch map, exhibit D1). He added that this measurement leave a margin of about 20 meters to the godown. They needed to make a subdivision to give the plaintiff what he bought but he refused to give co-operation.

DW1 went on to say that Mr. Sekulu Seungwe who was the Regional Administrative secretary (RAS) in 2008 formed a committee to establish boundaries of government lands. He is the one who gave permission to



allow the Refugees Services Department, using the support of UNHCR, to build other buildings at the NMC Plot for purposes of accommodating refugees. More buildings were built by the Refugees Services Department using the support of UNHCR between 2011 and 2015. He added that, earlier, during the operations of the NMC, there were two permanent structures, the godown and the office block. Other buildings were built later by the government on the assistance of UNHCR.

Dw2 Halima Mbagga (30), a surveyor from Kigoma/Ujiji Municipal told the court that plot No. 3 Block 'A' Kibirizi was formerly known as the NMC Plot. It had no number because public plots had no numbers in those days. They were identified through the name of the institution. She said that the area had one plot which was known as *silabu* which was later divided to create 3 plots. Plot No. 1 was set aside for "*Wasiojiweza*", Plot No. 2 for Orphanage (Mwocachi) and plot No. 3 was for NMC. The three institutions conducted their activities in the area without problem earlier.

She went on to say that she never made the survey. It had already been done long time ago. She just applied to the Ministry of Lands to get approval of the numbers for the plots three in the course of assisting the plaintiff to get the title deed. She relied on existing documents without




making any site verification. She said that the procedure needed her to do site verification but she did not do so. She thought that it was a plot which was already known. She acted on the direction of DW4 Paul R. Misuzi who was the Authorized Land Officer. She acted on an oral communication from DW4. She added that DW4 never gave her an order for site verification. She said that there were short comings in the process due to lack of site verification. She took action relying on existing documents and directives of DW4.

DW4 who is now working as a senior land officer with the Tanzania Ports Authority Dar es Salaam (TPA) was the Authorized Land Officer of Kigoma/Ujiji Municipal in the period. He said that he worked with the council from December 2016 to December 2020. He told the court that while in the course of search for land rent defaulters in February 2017, he met a file written NMC Plot Kibirizi. On perusal, he discovered that, the area of the plot in the system and the map were the same but the units of paying rents were different. The map had square meters but the system had square feet. The system recorded it as residential instead of service trade. That made him (Plaintiff) to pay very little rent. His further perusal lead him to a draft title deed. There was a comment on it that, the plot



had no plot number. The owner was also dead. He sent the file to DW2 Halima, the surveyor who worked on it. The file returned to him with Plot No. 3 Block 'A' Kibirizi. He demanded and was given letters of administration and the distribution of estates. He sent the draft to Tabora. It returned as a title deed. DW4 added that the plaintiff brought documents showing that there were tenants in the area paying rent to him. There was also a certificate of sale showing that the plot had been sold to Jaffer, the plaintiff's father. The certificate showed that he bought the godown not the plot. The purchase receipt also showed that he bought the godown. He agreed that he is the one who wrote the notice (Exhibit P2). He joined hands with DW1 that there were meetings which examined the matter and found that the title deed had been issued wrongly. That, what was sold was only the godown, the rest of the land remained as government property. But later during cross examination he defended what he did, saying that he believed to be the right thing. He believed the land to belong to the plaintiff. He said that he came at the site but did not make a thorough search because he had the file and information from the surveyor (DW2) in favour of the Plaintiff. He believed that buying the godown meant buying the whole land.



DW3 Steven Ambrose (38) is a valuer at the council. He is the current head of the Lands and Town Planning Department. He said that the plot belonged to the NMC. It had a godown. They got a report that the godown had been sold. On search, they discovered that the plaintiff did not bring key documents to the Land Officer. There must have been a copy of the judgment, receipt and certificate of sale. The plaintiff produced a certificate of sale without a copy of the judgment and receipt of sale. He perused the certificate of sale and said that the plaintiff bought a godown on 28/10/1997 not the entire plot. He expressed doubt as to why he was given title to the whole land. He said that given the span of time, 1997 to 2018, there must have been a site inspection to ascertain what was on the ground because the reality is that there were other buildings other than the godown in the plot. Site inspection could also allow them to seek for documents from users of the other buildings. There is also a form to ascertain boundaries which was to be filled by neighbours. It is missing.

DW5 Elias Daudi Mwasembe (35) is the Authorized Land Officer Kigoma region. He said that he knew the plot in 2020 when the deputy minister visited Kigoma. An issue was raised that the council had issued the title



deed illegally. She directed the council to work on the problem. They called the plaintiff friendly. He came with Mzee Shen and had a discussion together. The Land officer (DW4) came to explain. They moved to the site. They advised the plaintiff to accept subdivision to get his rightful share. They discovered that the land officer did not do due diligence. He said that if he were him he could seek for a copy of the judgment, make a site visit and compare with what was before him. He added that there was a certificate of sale but there was no copy of the judgment and the order. Further that, there must have been a valuation before the sale. He added that the certificate of sale showed that what was sold was a godown at NMC Plot for Tshs. 25,000,000/= not the NMC plot.

DW5 proceeded to say that they had similar scenarios in Kasulu and Kigoma/Ujiji in respect government plots. Those who bought government houses did not buy the whole land. Subdivisions had to be made to allow people to get their respective shares. He added that when they visited the site they saw other buildings built by the government not the godown alone. The plot has more than 80,000 square meters but what was sold was just the godown. They needed to do subdivision to give him his share while leaving the rest of the land to the government.



I will now more to discuss the issues starting with the first issue. In order to answer the first issue which is whether the plaintiff is the lawful owner of the land registered under title deed No. 6343, Plot No. 3 Block 'A' Kibirizi area, Kigoma township or only part thereof, one has to start by the question *what was sold?* Was it the NMC plot with all what it had or just the godown? The plaintiff says that the whole plot, the NMC plot, was sold to his father, the late Jaffar. To support this view, he has tendered the certificate of sale issued by the RM's Court of Kigoma on 28/10/1997 (Exhibit P4), a letter from K.K. Kayaga advocate dated 20/8/1997 (Exhibit P5) informing the United Nations High Commissioner for Refugees (who were tenants of NMC) of change of ownership, a response from the United Nations High Commissioner for Refugees (Exhibit P6) accepting the changes, demand notices for payment of ground rent of several plots owned by the plaintiff's father which included the NMC plot, payment receipts (Exhibit P7 collectively) and copies of lease agreements between him and the UNHCR (Exhibit P9 collectively).

On the other hand the defendants have brought DW1 who told the court that the Refugees Services Department of the Ministry of Home Affairs had activities in the area from 1994, long before the sale of the godown. They

are the ones who invited the UNHCR in the area to receive refugees from Rwanda and Burundi in 1994 and later from Congo as a transit camp to other camps. That there was a godown, the office Block and other temporary structures in the area long before 1997 the court auction. He also said that, the current permanent buildings which are seen in the area were built by the government using financial support from the UNHCR in different periods between 2008 and 2011. He told the court that what was sold was only the godown as seen in the certificate of sale and not the entire NMC plot. DW2 Halima Mbagga said that government institutions did not have plot numbers in those days. They were recognized by the name of their institution hence NMC plot.

DW1, DW3 and DW5 told the court that only the godown was sold as reflected in the certificate of sale and not the NMC plot which make reference to the entire land.

Looking at the documents which were tendered one can see that the only document which can show what was sold is the certificate of sale. There is no other document which show what was sold. The certificate was issued in the case of **The General Manager National Milling Corporation v. Alice C. Mwakasaka and 3 others** RM Civil Application No. 13 of 1997

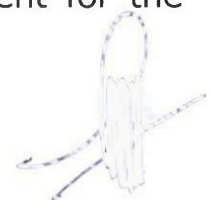


(original RM's Court Civil Case No. 16 of 1995). It shows that, M.R.H. Jaffar was declared the purchaser at a sale by public auction conducted on 5/3/1997 '*having purchased **ONE GODOWN SITUATED AT KIBIRIZI AREA – KIGOMA***'. It speaks of one godown. The plaintiff did not tender a copy of the ruling of court or the court broker's report to give us more particulars. DW2 and DW4 who are professional in the field did not bother to look for the ruling of court and or the court broker's report. The certificate did not talk of the NMC plot. It made reference to '*one Godown*'. The defendants have brought evidence showing that there was a godown, the office block and other temporary structures in the area. The certificate did not mention the office block and the other buildings. The plaintiff agrees that there were other buildings in the area which he called '*temporary structures*' but did not say whether these other buildings were bought in line with the godown or not. So, both parties agree that there were other buildings at NMC plot which were not sold in line with the godown.

Having examined the evidence carefully, as I have tried to demonstrate above, I am in agreement with the defendants that what was sold was the godown and nothing more. The plaintiff has failed to prove that he bought

other buildings in line with the godown. In law he who allege must prove. See section 110 of the Evidence Act Cap 6 R.E. 2019 as interpreted by the court of Appeal in **Wambura Waryuba vs The Principal Secretary Ministry of Finance** & Another Civil Application No. 320/01 of 2020. I have seen no proof. The evidence is clear. More so, if Mr. Jaffer had bought more than the godown, he could not accept a certificate written *one godown!* And if the godown had been sold together with other buildings and the surrounding land, the certificate must have shown so because it was meant to certify what was sold.

What about the payment of ground rents in the name of NMC plot? The plaintiff paid ground rent for NMC plot from 1990 to 2021. He wants to use this as a justification that he bought the entire land and was recognized as such. I don't think that this is correct in view of the evidence of DW4 that they forced him to do so to increase government revenue. They had pressure to increase revenue and decided to force him to pay all rents including rents for the period from 1990 to 1997 when he was not in occupation of the land. The plaintiff paid, but I think, that he had no justification to pay earlier rents because they were illegally imposed on him. In the same reasoning, he had no justification to pay rent for the



whole plot while his part was only the godown which was a small portion. No wonder he kept on cheating as was pointed out by DW4 because the amount involved could be very big. He could simply say No because those were illegal payments. If the plaintiff owned just the godown in an area which had other buildings which did not belong to him, there was no justification whatsoever, for him to pay ground rent for other people if he had no an ill intention. I think he paid them because he had a hidden agenda. The payments in the two scenarios were illegally made and cannot in any way, in my view, be used as a peg to justify the ownership of the plaintiff to the NMC plot. See **The Registered Trustees of Joy in the Harvest Vs. Hamza K. Sungura**, Civil Appeal No. 149 of 2017 where it was said that receipts that were tendered to show that the respondent was paying land rent in respect of the disputed property, cannot legally be considered conclusive documentary proof vesting title or conferring ownership of the disputed property to the respondent (pages 12-13).

What about the lease agreements? The plaintiff tendered several lease agreements between him and the UNHCR and later CARITUS, exhibit P9 collectively. Reading through, I can put the agreements in two groups; the period from 1997 to 2007 and the period from 2008 to 2021. The plaintiff



started started with the rent of Tshs. 12,000,000 per year. Rent kept on increasing up to 93,492,000 per year. The rented premises remained the same.

The agreement dated 17/3/1998, describe the rented premise as:

"the warehouse at Kibirizi area and its exterior premises in Kigoma for temporary housing of refugees or storage of commodities or any other purpose useful to refugees." (Emphasis added)

That also applied for agreements signed on 29/5/1998, 10/9/1998, 11/12/1998, 22/6/1999, 10/12/1999, 29/2/2000, 31/7/2001, 5/2/2002, 6/3/2003, 21/4/2004, 22/2/2005 and 19/12/2005 and 13/6/2007.

Agreements which followed changed the description of the suit premises and format. They carry a sub heading called PROPERTY LEASED. It reads as under:

*"The property forming the subject matter of this Lease Agreement is **the entire building and entire compound, commonly known as the 'NMC' building, including all fixtures, movable and immovable associated thereto, located in Kibirizi, Kigoma Region, The United Republic of***



Tanzania (hereinafter referred to as: premises)" (Emphasis added)

My reading of the first set of lease agreements which extended for a period of 10 years show that the leased premises was the godown and its external premises. There was no mention of other buildings or the NMC plot. My reading of the second group of lease agreements show that the leased premises was the NMC building and its fixtures. I think that "NMC building" had reference to the NMC godown. Again, there was no mention of other buildings or the NMC plot.

I think that if the parties had intended the leased premises to be the NMC plot they had no reason to decline to say so specifically. It follows that the lease agreements has no relevance in proving ownership of the plaintiff to the NMC plot. Utmost they explain laxity or negligence on the part of NMC officials who could not collect rent in respect of the rest of the land. They also suggest some hidden agendas between NMC officials and the plaintiff.

In issue No. 2 the court is invited to find the amount of land owned by the plaintiff. This is not an easy question to answer given the facts on the ground. The evidence is clear that NMC owned a big piece of land, 80,372 square meters while what was bought by the plaintiff was just the godown



whose external land could not be disclosed. NHC held the land in its name, without plot number and title deed, just like other government institutions. That was the practice in those days as was explained by DW2; to hold land in the name of institutions where several buildings could be located in one plot in the name of the institution. That was the practice and is still the practice for many institutions. Harbours, airports, Schools, dispensary, courts can be good examples. They hold lands in the name of institutions. This is a fact. When I was on the way to the suit premises for example, I passed across the Kigoma harbour and Railways. I could see several buildings and godowns for the harbours and Railways, all grouped together in their respective plots, forming part of the same institution without any demarcation. That also applies to schools, hospitals, the police and many others. One can see several buildings in one plot for each of them. There is no any demarcation between the buildings because they belong to the same institution and serve the same purpose. There is no plot number or demarcation between the buildings. It is only recent when the Judiciary has started to look for plot numbers and title deeds. But even though, there is no any demarcation between the buildings. The problem may arise when one building is sold as was done in this case.



Where there are several buildings in one plot and it happens that one building is sold, it is difficult to say what amount of land was sold in connection to the particular building. It all depends on facts of each particular case. The common practice is, as was suggested by DW5, for parties to sit and agree. The plaintiff was called for the purpose and gave corporation. He however, on the advice of his family or counsel, declined to give corporation in the end. The defendants moved to the site and examined the land. They found that there was land which was set aside to serve customers for the godown. There were poles around the godown. There was also a trench separating the area from the rest of the land. They drew a sketch map (exhibit D1) and set aside land measuring 5,520 square meters as the land for the plaintiff in respect of what he bought.

I visited the land in the company of the parties being lead by PW1, DW4 and DW5. I could see the godown (a huge godown) and the office block facing the godown (which is also equally big). Apart from these huge structures, there were other buildings scattered in the area. All were built of blocks and cement though appeared to have been vacated and vandalized. I could not see any temporary structure or any extensions from the godown as said by the plaintiff. The other buildings were

scattered and independent. They could not appear to be an extension of the godown.

I think that the land which was allocated to the plaintiff was reasonable in the circumstance of the case. And if there is any shortcoming, the plaintiff should not be heard to complain because he was give opportunity to take part in the exercise and refused. I think what was being proposed for him in exhibit D1 was fair and reflect the truth. It is thus my finding and decision that the plaintiff's land is 5,520 square meters as reflected in the sketch map, exhibit D1,

I will now move to the third issue, whether the title deed in respect of the suit land was obtained lawfully. I have the evidence of the plaintiff which in a way is supported by the evidence of DW4 that the title deed was obtained legally. He said that following the death of his father, estate proceedings were initiated which gave him the ownership of the plot. He then came to the council and lodged the certificate of sale and the distribution estates to DW4 who engaged DW2 to prepare the plot number. The NMC plot was named plot No. 3 Block 'A' Kibirizi. He paid the fees and was given title to the land. He believes that the title was issued to him legally.



On the other hand I have the evidence of DW2, DW3, DW4 and DW5 which show that there were short comings in the process namely; (i) The Land Officer did not receive a copy of the judgment/Ruling of court to ascertain what was sold, (ii) Both DW2 and DW4 who were key players in the matter and professional, did not make a site visit to verify what was in the plot, (iii) DW2 the surveyor, acted on directions given to her verbally by DW4 and the documents in the file and assigned plot number without making site verification and (iv) both DW2 and DW4 processed the title without the form which is ordinarily filled by neighbours to clear boundary disputes. They took for granted that the plaintiff owned the whole land without cross checking with neighbours.

I have considered the evidence closely. I think there was a serious violation of procedures. The evidence given by DW2 and DW4 fell short of professional standards expected from them. DW2 and DW4 who are trained and professional had no reason to take things for granted. They had no reason to rely on the certificate of sale, receipts of ground rent and lease agreements to process the title without the ruling of court and a proper site visit. It was the ruling of court which could tell them what was sold. A site visit and the use of the boundary form could assist them to



clear third party interests. They skipped all this. DW4 mislead DW2 who was very young in the profession by then, to process the number speedily. The speed involved in the matter show that DW4 had an interest to serve. He intended to assist the plaintiff to get a title deed to cover up the matter. And indeed, even when he was before me he appeared as having some interests to serve.

Further to that, the certificate of sale spoke of a godown in an area which had many other buildings not mentioned in the certificate of sale but DW2 and DW4 proceeded to process the title deed. The plaintiff agrees that those other buildings do not belong to him but pushed to process the title deed covering the whole area. This, in my view, was also criminal.

It is thus my finding that the title to the land was illegally procured and thus in operative in law.

The last issue is on the reliefs. The plaintiff has been found to own the godown and land around it as specified in exhibit D1 only. His title has been found to have been illegally procured and inoperative in law. In **Obed Mtei v. Rukia Omari** [1989] TLR 111 the Court of Appeal nullified the survey and documents which followed after a finding that the surveyor did



not follow the procedure. That was also the position of this court in **Filbert Augustine Kashaga v. Winton January Mwasambili and Bukoba** Municipal Council, H/C Land Case No. 11 of 2016. In the latter case, this court nullified the processes for faulting the procedure. I will follow the trend.

This case now ends us under;

- i. The title deed, exhibit P1, is declared illegal, inoperative, null and void.
- ii. The NMC Plot Kibirizi area Kigoma/Ujiji Municipal to be resurveyed so as to give the plaintiff ownership of the godown and land around it as reflected in exhibit D1, covering **5,520** square meters, while the rest of the land remain as government land under the Treasury Registrar as custodian of government assets.
- iii. The plaintiff to be given a title deed of the godown and land around it as shown in exhibit D1.
- iv. Save for what has been said above, the suit is otherwise dismissed.
- v. No order for costs.



L.M. Mlacha

Judge

20/5/2022

Court: Judgment delivered in presence of the plaintiff and his counsel Mr. Kasimu Musa and Anold Simeo and Josephine Chilongozi State Attorney.



L.M. Mlacha

Judge

20/5/2022

ORIGINAL