IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

LAND APPEAL NO. 2 OF 2021

(Originating from Application No. 405/2020 in the District Land and Housing Tribunal for Dodoma)

DODOMA MUNICIPAL COUNCIL.....APPELLANT

VERSUS

AMINA MUSSA ISSA.....RESPONDENT

JUDGEMENT

Date of Last Order: 08/12/2022
Date of Judgment: 17/02/2023

Mambi, J.

The appeal is at the instance of the appellant **Dodoma Municipal Council**. Parties herein were at logger heads over a piece of land (a shamba) measuring 26 metres North, 37 metres South, 33metres East and West. The suit land was bordering with the shamba of John Machaka to the Northern side, The University of Dodoma to the Southern side, to the Eastern side with the shamba of Tiliza Masinga and to the Western side with Dodoma City.

It would appear that the respondent having bought the suit land from one Tiliza Masinga in 2012 she constructed two commercial huts where she was running food businesses from 2012 to 2014 when the appellant's predecessor, the Capital Development Authority (CDA) demolished the said structures. It was upon that demolition the respondent herein sued the appellant at the Dodoma District Land and Housing Tribunal (the *DLHT*) for orders among others that she be declared the lawful owner of the suit land, payment by the appellant of Tshs 9,600,000/= being the value of the two demolished commercial huts, Tshs 25,000,000/= being the value of the destroyed furniture and consumables and Tshs 34, 950, 000/= for loss of income.

The appellant disputed the respondent's claims stating that it was the respondent who had trespassed over the CDA land.

In the DLHT two issues were framed, the first was whether the applicant/respondent was a lawful owner of the suit land and the second was whether the defendant/appellant was justified in law to pull down the applicant's/respondent's premises.

After the trial the DLHT made the decision in favour of the respondent. Dissatisfied with the entire decision of the DLHT, the appellant is before this Court faulting on three related grounds of appeal in which the appellant essentially contends that the trial DLHT failed to evaluate properly the evidence before it.

In this appeal the appellant had the legal services of Nice Tibilengwa a learned State Attorney whereas the respondent of Paul Nyangarika-Learned Counsel.

Submitting for the appellant the learned State Attorney contended that in respect of proof of ownership of the suit land at the DLHT, the respondent relied solely on customary ownership as proved by PW4 Tiliza Masinga. It is on the records that PW4 testified that she owned the suit land customarily after having inherited it from her parents and later in 2012 sold it to the respondent. On the other hand the evidence on the appellant based on the fact that the suit land was/is the property of its predecessor the CDA as evidenced by Exhibit DI that is a Certificate of Occupancy. The learned State Attorney submitted that the owner of a registered land is that person for the time being in whose name that land is registered. The learned State Attorney referred this Court to Section 2 of the Land Registration Act Cap 334 R. E 2019, also the decisions in **Salum Mateyo vs Mohamed Mateyo** (1987) TLR 111 **Amina Maulid Ambali and 2Others vs Ramadhani Juma**, Civil Appeal No. 35 of 2019(CAT-unreported)

With regard to the issue that whether the demolition of the respondent's structures on the suit land was justified or not, The learned State Attorney contended that since the suit land was/is the property of the appellant who followed proper procedures on demolition by issuing a demolition notice then it ought not to be hold countable to those who defied.

Submitting for the respondent, Mr. Nyangarika, in respect of Exhibit D1, that is a certificate of title to the CDA, he referred on paragraphs of the title deed and contended that the title deed only existed up to 1988 and thereafter on a year-to-year basis depending on the payment of the annual rent. The learned counsel argued that there were no receipts tendered at the DLHT showing that the appellant maintained the

certificate of occupancy after 1988. The counsel further averred that in the absence of the required receipts of annual payment of annual charges from 1988 onwards it was as good as saying there was no title. Furthermore, the respondent counsel submitted that the land was for the CDA to sublease and not for its ownership.

In the alternative Mr. Nyangarika argued that even if it is taken that the appellant was/is the holder of the certificate of occupancy of the land in Dodoma Municipal Council, he contended that the same was illegally procured as original owners, the natives who owned it customarily were not compensated. The learned counsel referred this Court to sections 3(1)(g) and 34(3)(b)(iv) of the Land Act, Cap 113 [R: E 2019] and the decisions of the court in **Metthuselah Paul Nyangasa vs Christopher Mbete Nyirabu** (1985) TLR 103 (CAT). **James Ibambas vs Francis Sariya Mosha,** (1999) TLR 364 and **Attorney General vs Lohay Akonnay and Joseph Lohay** (1995) TLR 80,

The counsel went on contending that at the DLHT there were/are ample evidence by PW3 Yona Ngobito the then Iyumbu Village Chairman that the respondent was not compensated by the CDA as it offered unfair compensation offer which was rejected by the respondent before the CDA took it to themselves to demolish the houses. It was Mr. Nyangarika view that the mere fact of offering the compensation to the respondent is enough evidence that CDA recognized the ownership of the respondent over the suit land. The counsel added that the fact the appellant issued a business license in respect of the suit land it was another evidence of recognition of the respondent's ownership over the suit land.

With regard to the decision of **Salumu Mateyo*supra*** and **Amina Maulid Ambali*supra*** relied by the appellant Mr. Nyangarika contended that they are distinguishable in the present case since the respondent was not compensated and further that there was no dispute between the seller of the suit land one Tiliza Masinga and the buyer the respondent herein.

Responding to the issue as whether the DLHT was right in its compensation orders, Mr. Nyangarika submitted that since the respondent was not compensated by the appellant then she remained the owner of the disputed land and thus the demolition conducted by the CDA was illegal hence liable for compensation.

I have considerably gone throughout the grounds of appeal, the replies, the records and the submissions in support and against the appeal. The main issue which this Court is called upon to determine is whether the DLHT rightly determined the issue of ownership of the suit land. Alternatively, whether the DLHT in its decision evaluated properly the evidence before it.

The DLHT in its decision found that the respondent having bought the suit land from one Tiliza Masinga in 2012 who had been in occupation for many years without interruption was a rightful owner and hence entitled for compensation by the appellant. It appears that the DLHT chairman had in mind that since the respondent was not yet compensated by the appellant then she remained the owner of the suit land.

Going through Exhibit D1 one finds that the title deed was issued to the CDA in 1987 granting the suit land to the authority for 99years. Since then, there were no claims of compensation until 2020 when the respondent filed the case subject of this appeal. There is no doubt that

PW4 Tiliza Masinga in her evidence stated that the suit land was her property and her late husband having inherited from her late parents. She added that she was born thereat and that in 2012 she sold it to the respondent. Indeed, Exhibit P1 a sale agreement evidences the same. However, Yohana Ngobito, PW3 the then Iyumbu Village Chairman stated that respondent was among the villagers whose lands were to be compensated by the CDA. PW3 added that valuation was done over two houses built by the respondent but the respondent was unsatisfied with the valuation and refused the compensation issued by the CDA by writing a letter complaining on the same. By these testimonies it appears that since when the suit land was declared a planning area followed by issuance of title deed to the CDA in 1987 no one emerged to claim for compensation until 2012 when the respondent bought it. Now the question is, if at all the holder of title to land under customary law is or has not been compensated over his land remains the owner after a declaration by the planning authorities or survey. The decision in **Metthuselah Nyangasa** cited by Mr. Nyangarika is relevant. Mr. Nyangarika seems to suggest that, in that case the rationale derived by the Court of Appeal, was that when an area has been declared planning area the customary rights of occupancy continue to exist until when the holder(s) have been compensated. This interpretation, in my view is not correct. In that case as I read it, the Court (Mustafa J.A and Omar J.A who signed the majority judgment) observed that a person holding title under native law and custom but in an area which had been surveyed would have an inferior title to the plot in case another person is granted the same under Land Ordinance. It seems the Court there agreed with

the interpretation of the law by the learned advocate of the respondent Mr. Mkatte. The Court there stated;

> *"Mr. Mkatte who appeared for the respondent would seem to contend that the trial Judge did not hold that the right of a holder of a right of occupancy by virtue of native law and custom is extinguished solely because an area has been declared a planning area. He however seemed to state that a right of occupancy granted in terms of section 6 of the Land Ordinance Cap.113 confers a superior and overring tittle"*

Then Mustafa J.A went on to state;

> *"At any rate I am not and prepared, on the rather inconclusive and tenuous arguments advanced in this appeal, to hold that the right of a holder of a right of occupancy by virtue of native law and custom is extinguished and thereby becomes a squatter on an area being declared a planning area"*

I understand that passage to mean; which appears to be the most sensible interpretation that a squatter, in an area declared a planning area would not be thrown out mercilessly. He would be entitled to something, say, compensation but that does not mean that the two can co-exist.

So, in the eyes of law, squatters cannot equate themselves to any person holding a title under right of occupancy even where that squatter is there under customary law. Once an area is declared to be an urban planning area, and the land is surveyed and divided into plots, whoever occupied the land even under customary law would be informed to apply for rights of occupancy if the wishes. If such person sleeps on such a right and the plot is given to another, the squatter, in law, would have to move away and in law strictly would not be entitled to anything.

Looking at these testimonies on the respondent's side there is no any valuation report tendered before the DLHT nor even the said letter by the respondent refusing the alleged compensation offer. One wonders if at all the valuation was conducted and issued to the respondent why then she failed to prove before the DLHT? Worse still the alleged evaluation is said to have had been done in recent years that is after the land was already allocated to the CDA. This doubt further entitles this Court to view that the suit land was/is the property of the appellant as evidenced by Exhibit D1. Similarly, this Court is of the considered view that the respondent and her predecessors were occupying the suit land as trespassers after the grant of the right of occupancy to the CDA.

Coming to the issue of demolition. There is no dispute that the land referred in Exhibit D1 was occupied by many trespassers and there is no dispute that the appellant notified all the trespassers of the intended demolition. Further that the respondent who this Court deems, at the time she was buying the suit land, she was aware of the owner of the suit land, nevertheless she went ahead in developing it. This Court finds whatever the respondent did was at her own peril. Now, that being the case, then to hold the appellant countable for the loss suffered by the respondent for her defiance to the notice is the same as to condemn an innocent person for the negligence of the defiant person.

In view of the foregoing discussion this Court finds that the DLHT was wrong in its decision and therefore this Court allows this appeal by quashing the DLHT decision and setting aside its orders.

No orders as to costs.

Order accordingly.

A. J. MAMBI

JUDGE

17/02/2023

Judgment delivered in Chambers this 17th day of February, 2023 in presence of all parties.

A. J. MAMBI

JUDGE

17/02/2023

Right of appeal explained.

A. J. MAMBI

JUDGE

17/02/2023