IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM SUB-REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 71 OF 2003

WHITSUN MOSHI ..... PLAINTIFF

VERSUS

PERMANENT SECRETARY, MINISTRY FOR LAND,

HOUSING AND HUMAN SETTLEMENT .....1st DEFENDANT

COMMISSIONER FOR LAND ..... 2nd DEFENDANT

REGISTRAR OF TITLES ..... 3RD DEFENDANT

ATTORNEY GENERAL ..... 4TH DEFENDANT

DAISY Z. MWAKAWAGO ..... 5TH DEFENDANT

JUDGMENT.

S.M. MAGHIMBI, J:

The plaintiff's claim for his right of occupancy in this case is older than many stories told in this court in recent years. The dispute traces its roots in cause of action back to the 20th January, 1990 when a piece of land situated at Plot No. 32 Regent Estate Kinondoni, in Dar-es-salaam Region ("the suit property/disputed property") was allegedly re-allocated to the 5th defendant. Pertinent to note is the fact that the suit property

was granted to the plaintiff back in the year 1973 through a Certificate of Title No. 186150/44 (EXP1). Despite the revocation in 1990, it was not until 25th April, 1991 when the actual notice of the revocation came to attention of the plaintiff through an official search. At that time, the plaintiff alleges to have commenced construction of the building as per approved plans and had expended all together not less than Tshs. 20,000,000/=, on the then completely water-logged plot.

Having had the knowledge of the notice of revocation and re-allocation of the Suitland, the plaintiff had ever since embarked on pursuit to have his right redeemed from the 1st defendant. The plaintiff's claim in this suit is based on what he alleges to be a wrongful and unlawful revocation of his right of occupancy and re-allocation of the said land to the 5th defendant while the title granted to the plaintiff had not been revoked, well, at least not to his knowledge.

In his detailed plaint, the claim by the plaintiff against the defendants jointly and severally, is for a declaration that the plaintiff is the rightful and lawful holder of a right of occupancy over the suit property. The plaintiff further claims for restitution of the title deed on what he alleged to have been wrongfully and unlawfully revoked. The plaintiff also made alternative prayers, in the view of the dispossession, for compensation by way of allocation of another plot of land in a location

of a comparable stature or magnitude and a further compensation for developments already carried thereon before the said dispossession. In the plaint, the plaintiff prayed for judgment and decree against the defendant as follows;

(a) A declaration that the revocation and allocation of the plaintiff's land to the second defendant was for any reason unjustified, wrongful, null and void.

(b) A declaration that the said piece of land has always been the registered property of the plaintiff and for an order that the same be restored to the plaintiff.

(c) In the alternative: an allocation of an alternative piece of land in a location as prime as that on which the land stands together with compensation for the development made thereon, that is to say Tshs. 20,000,000/=.

(d) Compound interest on the sum in prayer (c) above at 41% from January 1990 to the date of judgment and thereafter at the Court's rate until total satisfaction.

(e) Costs

(f) Any other/further relief(s) the Honourable Court may deem proper.

On their part, the first and third defendants were sued for their involvement in the said revocation and dispossession while the fourth respondent was sued as a necessary party. The 5th defendant was the one that the land dispossessed from the plaintiff was allocated to.

In their defence, the 1st to 4th defendants duly represented by State Attorneys from the office of the Solicitor General, claimed that the said revocation and re-allocation respectively were done following the plaintiff's failure to develop the suitland as per the conditions set out in the certificate of right of occupancy (EXP1). The 5th defendant denied the claims by alleging that the suit property was allocated to her in accordance with the laws of the land. All the defendants prayed for the dismissal of the suit with costs.

Mediation having failed, pursuant to the provisions of Order VIIID Rule 40(1) of the Civil Procedure Code, Cap. 33 R.E 2019 ("the CPC"), the following issues were framed for determination:

1. Whether the revocation of the title from the plaintiff by the 2nd defendant was lawful.
2. Whether the re-allocation of the property to the 5th defendant was lawful.
3. If the 1st issue is answered in the negative, whether the plaintiff is entitled to compensation for the developments made in the suit

property (if any), and be re-allocated another piece of land in a location as prime as that on which the disputed land stands.

4. To what relief(s) are the parties entitled to.

In pursuit to prove his case, the plaintiff, duly represented by Mr. Moses Mvungi, learned Advocate, paraded two witnesses, himself as PW1 and one Mr. Boniface Lengaki Mariki who was the plaintiff's neighbour-PW2. On their part, the 1st to 4th defendants had one witness named Kajesa Ambielisye Minga, a Land Officer from the Office of the Land Commissioner of Dar-es-salaam-DW1. On her part, the 5th defendant, duly represented by Mr. Ahmed El-maamry and Mr. Michael Kabuzya, had one witness named Kiyeyeu Daudi Mwakawago, the 5th defendant's son who testified as DW2.

Having considered the evidence adduced, it is important that in due course of disposal of the case, I should reveal the matters which are not in dispute. The parties are not in dispute that the disputed land was initially allocated to the plaintiff way back in the year 1973 a right which was revoked in the year 1990. Parties are also at one that following the revocation and dispossession, the disputed land was re-allocated to the 5th defendant by the 2nd defendant. It is further undisputed that it is the 5th defendant who is still in possession of the suitland. In a nutshell from the framed issues above, the issue that is to be determined by this court

is on the legality and propriety of the said revocation, dispossession and subsequent re-allocation of the suitland.

My determination of the claims will therefore start with the 1st and 2nd issues which will be determined together. The two issues are whether the revocation of the title from the plaintiff by the 2nd defendant was lawful and whether the re-allocation of the suit property to the 5th defendant was lawful. The two issues will be determined together as they both address the legality of the whole transaction leading to the current suit. The legality of the revocation and dispossession of the property from the plaintiff will justify the legality of re-allocation of the suit property to the 5th defendant and vice versa. In this case, since what is under dispute is an allocation that took place in 1973 and allegedly notified to be revoked in the year 1986 (EXP2) and the subsequent revocation in the year 1990, determination of the matter will rely on the provisions of the Land Ordinance, 1923 (as amended).

The procedures for revocation of right of occupancy in our country is not new. The law, under the provisions of Section 10 of the Land Ordinance, 1923 is clear that:

> *"10. It shall not be lawful for the Governor to revoke a right of occupancy granted as aforesaid save for good cause. Good cause shall include-*

(a) Non-payment of rent, taxes, or other dues imposed upon the land.

(b) Requirement of the land by the Government for public purposes.

(c) Requirement of the land for mining purposes or for any purpose connected therewith.

(d) Abandonment or non-use of the land for a period of five years.

(e) Breach of the provisions of section thirteen.

(f) Breach of any term contained in the certificate or in any contract under section seven.

(g) Attempted alienation by a native in favour of a non-native"

(Emphasis is mine)

In the above provisions, the word "Governor" shall mean the "President" in this case. The bolded provisions seem to be what had moved the 2nd respondent to revoke the plaintiff's land. This is evidenced by the testimony of DW1 where he testified that in the case at hand, the plaintiff, after fulfilling the requirements and signed the Title Deed, there were some conditions that the plaintiff did not fulfil. He revealed the conditions to include the inability to develop the land within the prescribed time which is 36 months, equivalent to three years. As per the law, the

revocation of right of occupancy can only be effected where good cause is established. (See the case of **Ramadhani Selemani Kambi vs The Commissioner for Lands and Others (Civil Appeal 14 of 2020) [2023] TZCA 144 (10 March 2023)**

In this case, as mentioned earlier, it is undisputed that the suit property was revoked from ownership of the plaintiff and re-allocated to the 5th defendant. The plaintiff's claim is that he was not notified of the revocation. As PW1, he testified that he happened to know of the revocation in the year 1990 when he went to City Council to look for a building permit. Further that in July, 1991, he did an official search to know why the title was revoked and who was given the land after him (EXP6). The evidence analysed hereunder shall reveal the legality of revocation.

On their part, the defence claimed that the plaintiff breached some of the conditions of the grant. DW2 testified that the plaintiff did develop the land within the prescribed time which is 36 months equivalent to three years (EXP2). The witness stressed the non-development as the reason for the revocation. However, there is no evidence adduced to prove that the said notice was served to the plaintiff nor was their evidence of non-development of the suitland. It is clear that in his testimony, while being cross examined by Mr. Mvungi, DW2 testified that a letter of revocation

was written to the plaintiff in 1986. It was written by the City Council to the plaintiff (EXP2). The letter was informing the plaintiff of the 2nd respondent's intention to revoke the title. As per the letter the plaintiff was given 28 days to reply to the letter and that the procedure used then was to send documents by a postal address and that the address that was given to the 2nd respondent's office was the same address that was used to send the plaintiff that notice. He could however not show any evidence that the plaintiff ever received that letter. This evidence is defeated by the plaintiff's oral and documentary evidence as shall be apparent.

PW1, the plaintiff on his part testified that when he was making follow ups at the City Council is when he found out about the revocation. He informed the authorities that he did not receive that letter of revocation nor notice thereto. His testimony was further that he had received a letter from the Dar City Council, a letter dated 20/09/1990 (EXP3). The letter was referring to a letter dated 14/09/1990 which plaintiff explained why he could not develop the suit property within the prescribed time. The letter of 14th September referred to is what the plaintiff explained himself as to why he did not develop the land. In the EXP3 the Council was satisfied with the explanation given by the plaintiff as to why the land was not developed.

It is important to note at this point that, throughout the testimonies of PW1 and PW2 which was not actually denied by the defendants, the original piece of land was water logged and the plaintiff had to incur extra costs to fill the land with earth materials, this is evidenced by EXP7 which is a letter informing the plaintiff that his right of occupancy was revoked on 19/01/1990 and re-allocated to Daisy Mwakawago on 20/01/1990. The letter also said the valuation of the land was done in the year 1988 and he was called to collect his compensation on the improvements made on the land. At this point, the evidence of the plaintiff establishes that the development of the land had started by filling the land with earth materials as it was water logged.

Furthering its satisfaction of the plaintiff's explanation on failure to develop the land, the EXP3 also granted the plaintiff 18 months as extension of time to complete construction in the suit property and Director of City Council issued a building permit to the plaintiff. It started with EXP4, an application for building permit for the suit property dated 11/09/1990, along with Plan No. 927/90 dated 11/09/1990 along with one receipt of payment No. 515-207 with Serial No. 624800. The application was granted vide EXP5 which is a Building Permit No. 26730 dated 23/10/1990 and a General Inspection form. At all this time though, the defendant claimed that the plaintiff's title had already been revoked. The

evidence of the plaintiff shows that even if there was such a revocation (which am not concluding there was a legal one) the same was not communicated not only to the plaintiff, but even the other relevant authorities did not have knowledge of the revocation. There was also EXP8 tendered by the plaintiff which are receipts concerned with payments that the plaintiff paid on the 08th Sept 1990 for the suitland. The payments were for land rent and property tax for the years 1986-1991. The payments of Tshs. 1365/- and Tshs 2,500/-were made on 08/09/1990.

At this point, I will make reference to the cited case **Ramadhani Selemani Kambi vs The Commissioner for Lands and Others** *(supra)* where the Court of Appeal in dealing with the issue whether the notice was duly served where it held at page 18:

> *"The argument advanced by the learned State Attorneys that the delay in posting of the notice did not deter the appellant from responding sounds attractive but wholly untenable and we reject it regardless of the fact that the revocation did not occur immediately. The upshot of the foregoing is that we are satisfied that unlike the trial judge, the respondents did not succeed in discharging their burden of proof that the appellant was duly notified before the revocation of his right of occupancy. We thus find merit in ground one and allow it."*

As for this case, the 1st to 4th defendants failed to prove that the said notice was duly served to the plaintiff. In the case of **Attorney General vs Sisi Enterprises Ltd (Civil Appeal 30 of 2004) [2005] TZCA 2 (15 June 2005)** the Court of Appeal cited with affirmation the case of **In Ellis V. Home Office (1953) 2 QB 135,** Morris LJ. stated: - where it was held:

> *"One feature of the public interest is that justice should always be done and should be seen to be done."*

Since there is no evidence that the notice actually reached the plaintiff, it is therefore conclusive that the plaintiff was denied of his fundamental right to be heard before his right of occupancy was revoked. The 1st issue is answered in favour of the plaintiff, the revocation of the plaintiff's right of occupancy was unlawful, null and void.

The next issue is whether the re-allocation of the property to the 5th defendant was lawful. I must admit that the peculiarity of this case has pushed me to extra thinking in deciding this matter. Much as it would have seemed an easy issue consequential to the determination of the first issue, but the circumstances of this case are rare from what is usually on the market. The land unlawfully revoked to the detriment of the plaintiff was re-allocated to the 5th defendant. In an ordinary case, the proper order would have been to nullify the grant of the said land to the 5th

defendant and re-locate the same to the plaintiff. However, in this case, what seems to be the most appropriate way to deal with the issue is more of equity than law. The reasons are elaborated.

It was the evidence of DW2 that his mother (5th defendant) was allocated the land after duly applying the same and granted by the 2nd and 3rd defendants. The same was the evidence of the plaintiff as PW1, that he came to learn that the land was allocated to Mwakawago. If the issue was sale and purchase of land, then we would have termed the 5th defendant as the bonafide purchaser for value. In this case, since the 5th defendant was not involved in any process of the unlawful re-allocation of land, **and more so important** she has been in occupancy of the suit land, developed the land and has been their family home ever since, revocation of her title would be an unfair route to take. This is also evidenced by the plaintiff in his plaint where he opted for an alternative prayer of compensation by an allocation of an alternative piece of land in a location as prime as that on which the land stands together with compensation for the development made thereon, that is to say Tshs. 20,000,000/=.

Therefore, Since the evidence did not show any malice in her process for grant of right of occupancy having been so allocated the land by the 2nd defendant, she cannot be subjected to any consequences of the orders

of this court. Equity would call for her peaceful enjoyment of the suitland as she was not a part of the unlawful revocation of the suit land. That being the case, save for facilitation of the valuation process should that stage be necessary, the 5th defendant shall remain the lawful owner of the suitland.

The next issue was dependant on the 1st issue as well, if the first issue been answered in the negative, whether the plaintiff is entitled to compensation for the developments made in the suit property (if any), and be re-allocated another piece of land in a location as prime as that on which the disputed land stands. The first issue has been answered in the negative, the revocation of the plaintiff's right of occupancy was declared unlawful. Hence at this point the 3rd issue is answered in favour of the plaintiff as well, he is entitled to compensation as shall be analysed and determined.

According to DW1, there is (EXP7) which is a letter from the Ministry of Land dated 19/08/1991 to the plaintiff. In the last but one para the survey was on 1988 and the estimated improvements of the land then was Tshs. 45,000/-, he however admitted to have no records that the plaintiff collected his money for the improved developments. This is sufficient evidence to prove that there were actual developments on the

suitland done by the plaintiff. The issue is the justification of the developments made by the plaintiff.

According to the EXP3, a letter which replies to the plaintiff's request to have the time for development extended. In the said letter, the City Land Officer admitted that the plaintiff had filled in some rubble in the suitland. This confirms the plaintiff's claim that he had used some financial resources to develop the land by having the plot filled with rubbles. This answers the third issue which is dependent on the 1st issue. Since the first issue is answered in the negative, the revocation of the plaintiff's land did not follow procedures hence unlawful, the plaintiff is entitled to compensation for the developments made in the suit property including filling the same with rubble. However, the plaintiff did not quantify the said developments. I understand that time has long lapsed since the developments to have substantiated the costs of developments to today's value. Since the plaintiff claimed for Tshs. 20,000,000/- as compensation for the developments made therein and since none of the defendants adduced evidence to counter the fact on developments, I find the award of Tshs. 15,000,000/= to the plaintiff for the improved developments would suffice in this case.

As for the prayer to be re-allocated another piece of land in a location as prime as that on which the disputed land stands, I find the prayer to

be justified under the circumstances. Since the land was unlawfully dispossessed from the plaintiff, the proper order would have been to order the delivery of empty possession of the suitland to the plaintiff. Since law and equity does not call so as explained above in determination of the 2nd issue, the wisdom adopted by the plaintiff was to pray for an alternative piece of land and leave the 5th defendant in peaceful enjoyment of suitland.

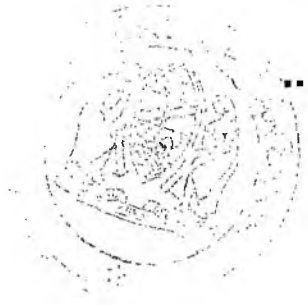
On above findings, I hereby grant this prayer of the plaintiff. The 1st to 4th defendants are hereby ordered to compensate the plaintiff by allocating him with another piece of land in an area as prime as where the suitland is located. In case that the prime areas mentioned above have no pieces of land for allocation, then the 1st to 4th respondents shall, in collaboration with the plaintiff, value the suit land (without any improved developments), have the value of the land (without buildings or any erections included) ascertained and the value of the land as it stands (in monetary value) shall be compensated to the plaintiff.

On the 4th prayer of any other reliefs, given the time that has lapsed and the plaintiff's long journey to pursue his right, he is entitled to costs of this suit. In conclusion therefore, the suit is decided in favour of the plaintiff and partly in favour of the 5th defendant as follows:

1. The revocation of the right of occupancy land from the name of the plaintiff is hereby declared to be unjustified and wrong hence null and void.
2. The plaintiff's prayer (b) in the plaint is not granted for reasons of equity and the 5th defendant being re-allocated the land and having lived in the premises for a long time.
3. The 5th defendant shall remain the lawful owner of the suit property.
4. The 1st to 4th defendants are hereby ordered to compensate the plaintiff by allocating him with another piece of land in an area as prime as where the suitland is located.
5. In case that the prime areas mentioned in (4) above have no pieces of land for allocation, then the 1st to 4th respondents shall, in collaboration with the plaintiff, value the suit land (without any improved developments), have the value of the land (without buildings or any erections included) ascertained and the value of the land as it stands (in monetary value) shall be compensated to the plaintiff.
6. The 1st to 4th defendants shall pay Tshs. 15,000,000/= to the plaintiff for the improved developments on the suitland.

7. The above decretal sum shall attract an interest of 10% per annum from the time the cause of action arose in 1990 to the date of judgment and a further 7% per annum from the date of judgment to the date of full satisfaction of the decretal sum.
8. The plaintiff shall have his costs.

Dated at Dar-es-salaam this 16th day of October, 2023



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S.M. MAGHIMBI

JUDGE