

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(KIGOMA SUB-REGISTRY)

AT KIGOMA

LAND CASE NO. 22 OF 2022

PASCHAL LEONARD BIGILWA.....1st PLAINTIFF

THE REGISTERED TRUSTEES OF MHUBIRI

CHURCH OF GOD.....2nd PLAINTIFF

VERSUS

TOFIKI IBRAHIM KALENGA.....1st DEFENDANT

KABANGA INVESTMENTS LIMITED.....2nd DEFENDANT

EXPARTE JUDGMENT

24th October & 7th November 2023

Rwizile, J

Kabanga Investment Limited is a holder of a certificate of occupancy with Tittle No. 13691, Plot No. 14 Block 'O' EXT at Kigoma. The same plot was sold to Tofiki Ibrahim Kalenga. KANISA LA MUHUBIRI CHURCH (Mhubiri Church of God) purchased the same from Tofiki Ibrahim Kalenga on 8th April 2017. The sale was consented to by the seller (Tofiki Ibrahim Kalenga) and his wife.

Bearing in mind that the first buyer did not change the title, it remained in the name of the original owner, i.e. Kabanga Investments. When the

second defendant wanted to change a title upon taking full possession, she met an obstacle, she needed authority from the registered title owner, who could not be traced. In the circumstances, a court order was required to effect a transfer to her name. He came to this court playing for judgment and decree against the defendants for the following: -

- i. Declaratory judgment and decree that the suit land known as Plot 14 Block 'O' Ext Majengo in Kigoma Ujiji Municipality in Kigoma District and region with its exhausted improvements thereon are lawfully owned by the second plaintiff.
- ii. This honourable court's order that the second plaintiff deserves to be registered as the owner of the suit land instead of the second defendant vide certificate of Title No. 13692; L.O. No. 88578.
- iii. Cost of this suit to be provided for.
- iv. And any other reliefs as this Honourable court will deem fit, convenient, and equitable to grant to the plaintiff.

At the hearing, the plaintiffs were in the service of Mr. Method Kabuguzi, a learned advocate, while the respondents were absent. Several attempts were made to secure their presence but were unsuccessful. Substituted service was made by publication in the Nipashe newspaper issue No.

0581271 dated 5th April 2023 on page 18. Despite this due service, the defendants did not appear. The matter was fixed on the 24th of May 2023 for a hearing and other dates that followed, but still, the defendants did not appear or file any defence. The court ordered an ex parte proof on 24th April 2023.

The Pastor of Muhubiri Church Paschal Leonard Bigirwa (Pw1), testified that the church was registered with No. 15504, certificate of registration was admitted in court as exhibit P1.

He testified on how, for the church, he bought a plot from Tofiki Ibrahim Kalenga before a Ward Executive Secretary, the same sale agreement was admitted as exhibit P1. A certificate of occupancy named Plot 14 block 'O' was admitted as exhibit P3. The respondents developed the land by erecting a building worth TZS. 350,000,000.00 for prayers and residence for the pastor.

As time went by, they wanted to transfer the land ownership from Kabanga Investment to Muhubiri Church of God but the respondents were nowhere to be found. In the absence of the authority from the original owner, the land officer demanded a court order, to effect transfers. His evidence as well was supported by Caritas Francis (Pw2) and Josephat

Lutakulemberwa (Pw3). Pw3 is the Arch Bishop of the Muhubiri Church of God and the trustee of the same church in terms of collective exhibit P4.

Having heard the evidence of the plaintiff which is not controverted, I do not doubt that the Registered Trustees of Mhubiri Church of God bought the land from Tofiki Ibrahim Kalenga, who cannot be traced. The sale agreement, exhibit P2 between the plaintiff and the defendant was duly executed. The same was witnessed and the evidence suggests that in the absence of evidence to the contrary, there is no doubt that the case has been proved.

In the event therefore, the main issue whether the plaintiff is the rightful owner of the Suitland is affirmatively determined. The second issue, as to what are the reliefs is determined in the following;

- i. That the plaintiff is the rightful owner of the Plot. No. 14 Block 'O', with a certificate of Title No. 13692; L.O. No. 88578, at Ext Majengo in Kigoma Ujiji Municipality in Kigoma District and region with its exhausted improvements.
- ii. That the plaintiff has the right to the title transferred in her name
- iii. I make no order as to costs.




ACK. RWIZILE

JUDGE

07.11.2023