

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(KIGOMA SUB-REGISTRY)**

**AT KIGOMA**

**LAND CASE NO. 10 OF 2022**

**ZUHURA MUSSA.....PLAINTIFF**

**VERSUS**

**ANASTAZIA CHAHA.....1<sup>st</sup> DEFENDANT**

**GERVAS MASABO.....2<sup>nd</sup> DEFENDANT**

**KASULU TOWN COUNCIL.....3<sup>rd</sup> DEFENDANT**

**HON. ATTORNEY GENERAL OF THE UNITED REPUBLIC**

**OF TANZANIA.....4<sup>th</sup> DEFENDANT**

**JUDGMENT**

6<sup>th</sup> October & 8<sup>th</sup> December 2023

**Rwizile, J**

For some years now, the plaintiff and the first defendant have been in a tug-of-war over the piece of land now known as plot No. 457 block T. situated at Mwilamvya of Kasulu District. The plaintiff claims to be the lawful owner of the land which she acquired in 2003 by allocation from Kasulu District Council. According to her, when she applied for a plot of land with the District Council, she was allocated that land which she has been paying land rent since 2019. She developed the land by digging a well. But when effecting some other developments, the 1<sup>st</sup> defendant

trespassed into it and started construction of a house in between plots No. 457 and 455. This brought about a dispute before the tribunal and later before this court. She therefore claims the following reliefs;

- i. That the sale between the first defendant and the second defendant be nullified and the plaintiff declared the lawful owner of the suit land.
- ii. That upon granting prayers above, the eviction order be issued demanding the first defendant to remove any property illegally erected therein
- iii. Payment of general damages as will be assessed by the court
- iv. Costs and
- v. Any other relief that may be deemed fit to grant.

To deal with this case, two issues were framed, to wit:

- i. Who is the lawful owner of the suit land between the plaintiff and the first defendant
- ii. To what reliefs are the parties entitled?

Mr. Kalimunda Yugalila, a learned advocate represented the plaintiff. The 1<sup>st</sup> and 2<sup>nd</sup> defendants appeared in person while the 3<sup>rd</sup> and 4<sup>th</sup> defendants were represented by Mr. Nickoson Tenges learned State Attorney.

In terms of evidence, Gervas Masabo (Dw2), testified that he was the owner of the said land before it was sold to the first defendant. In his evidence, he said, the land was sold to the plaintiff by him. And that it measuring 20 X 15 paces. It was his evidence that another portion of land was taken by the government upon survey.

The first defendant supports his evidence. It was testified that the purchase price of the land was 40,000.00 TZS in 2001, measuring 20 paces and 15 paces wide. The sale agreement was admitted as exhibit D1. Among the persons who witnessed the sale of the same land are James Luhaha, a cell leader, Shikuzi Vyasi Yotham, and Scolastica. Shikuzi Vyasi (Dw4) testified to that effect in support of the evidence of Dw1 and Dw2.

It was also testified that Dw1 after peacefully enjoying land for years. In 2018, the plaintiff trespassed into the land and erected a building in front of the first defendant's house. It was therefore the evidence of Dw1, Dw2, and Dw4 that the land belongs to the first defendant.

Their evidence, however, was not supported by Spea Mwalukasa, (Dw3). Dw3 is a land officer from Kasulu District Council who said that the suit land, Plot 457 Block T, was surveyed in 1993. The plaintiff, according to him, applied for land and the same was allocated to her. In 2000, he



added, she started paying land rent. Dw3 further said that in those years there were no land laws that required compensation for acquiring land privately owned. According to Dw3, the 1<sup>st</sup> and 2<sup>nd</sup> defendants may have acquired that land at the time there was no law requiring payment of compensation to the land taken by the government.

Upon hearing both sides, it is now pertinent to determine the real controversy between the parties on who is the lawful owner of the suit land.

It is not disputed that the 1<sup>st</sup> defendant purchased the land from the 2<sup>nd</sup> defendant, in terms of evidence of Dw1, Dw2, and Dw4.

It means therefore originally, the land belonged to the 2<sup>nd</sup> defendant acquired traditionally and according to him from his fore parents.

It was the evidence by the plaintiff that her possession of the land in dispute was through allocation by the Kasulu District Council after the application. Her evidence was supported by Dw3 a land officer from the Kasulu District Council. The plot in dispute as shown before, was owned by the 2<sup>nd</sup> defendant who passed title to the 1<sup>st</sup> defendant by way of sale. The ownership of the land by Dw2 was not challenged save that Dw3, testified that upon being surveyed it was taken.

The only document tendered by the plaintiff and Dw3 to prove ownership is the receipts exhibit P1 which has been used by the plaintiff to pay for the same land as rent. In her evidence, she said that she was allocated the plot in 2004, and in 2007 paid for surveys and a sketch. This means the plot was not surveyed until she paid for the survey in 2007. Contrary to Dw3, who said it was surveyed in 1993 and allocated to the plaintiff.

It can be said without doubt that the plaintiff's case, is married by material contradictions. If indeed, it was surveyed in 1993 and allocated to her as said, why then there is a difference in dates of allocation? As above while plaintiff said it was allocated to her in 2004 after applying for it in 2003, Dw3 said, it was surveyed in 1993 and allocated to her who paid for it in 2000. Then the plaintiff, said she paid for it in 2007 as exhibit P1 supports. Dw3 being the custodian of land records, was cast with the duty to prove, when the same was surveyed and why the original owner had no information about its survey. This was crucial because, after coming into force of the Land Act, as Dw3 put it, if indeed that is the case, compensation is compulsory before acquiring land previously owned locally. I hold therefore that in the absence of evidence proving that the plaintiff acquired that land through due



process, she has no better title that passed hands to her. The receipts she tendered are not conclusive evidence of ownership, neither such evidence can vest a better title to her. In the case of **The Registered Trustees of Joy in the Harvest vs Hamza K. Sungura.** (CAT), Civil Appeal No. 149 of 2017 on pages 12 to 13 where the receipts as proof of ownership were discussed as follows;

*"We must pose here and clarify one point, that is 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."*

It should be noted that the plaintiff apart from having receipts for the survey and map, had no other proof of ownership of the land in dispute. Dw3 as well did not have any. Even assuming that land was surveyed in 1993 as put by Dw3, no law prevented the land acquisition body from notifying the owner before taking it for any other purposes. It is clear to me that exhibit D1 a sale agreement between Dw1 and Dw2 executed on 10<sup>th</sup> March 2001, has never been overtaken by any other document to vest a better title to someone else.

Therefore, I do not doubt the evidence of Dw1 who said the land in dispute came into her possession by way of purchase from Dw2 as per exhibit D1.

It is finally concluded that the plaintiff did not prove, she is the lawful owner of the suit land. The plaint in respect is dismissed, but I do not consider, it a fit case to award costs. Each party to shoulder its own costs.



A handwritten signature in black ink, consisting of a series of loops and strokes, positioned above the printed name.

**ACK. Rwizile  
Judge  
08.12. 2023**