

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 173 OF 2005

RASHID M. NAMPISO.....PLAINTIFF

VERSUS

**JAMILA SURURU.....1ST DEFENDANT
THE COMMISSIONER FOR LANDS.....2ND DEFENDANT
THE ATTORNEY GENERAL.....3RD DEFENDANT**

JUDGMENT

B.R. MUTUNGI, J.

Before I embark on the merits of this matter I would like to make an introductory remark that I am a successor in office in this case. The matter proceeded before Longway, J then Nchimbi, J up till the evidence of DW3 who was the last defence witness. I have only been involved in the writing of this judgment.

Having said so let me now highlight what entailed the dispute at hand. The plaintiff Rashid Napiso is claiming against the defendants JamilaSururu, the Commissioner for

lands and the Attorney General (first, second and third defendant respectively) jointly and severally for a declaration that he is the lawful occupier of the piece of land situated at Kinondoni Area. To be precise the piece of land is Christined plot No. 90 Block T Tegeta Kinondoni Area within Dar es salaam City and for an order of payment of 30,000,000/= as general damages for unlawful revocation of his right of occupancy by the second defendant plus interest at the current commercial rate from the date of judgment to the date of payment in full.

In the alternative, the plaintiff is claiming for re-fund of Tshs. 9,561,236 plus interest at the current commercial rate being value of unexhausted improvements already made on the suit land together with the paid up land rent up to year 2003/2004 and general damages to the tune of 30,000,000/=.

In support of his case the plaintiff testified that in June 1988 he had applied for and legally allocated the suit land by the second defendant. After being allocated the suit land, the plaintiff dully paid all the requisite fees and

proceeded thereafter doing the same, in all the following years as he had been issued with an offer.

In the year 2003 the plaintiff prepared plans for development of the suit plot. What the plaintiff did was to construct a foundation for a single storey building.

To the plaintiff's surprise, the first defendant confronted him and claimed ownership of the said suit plot. As the two were disputing over the said plot, the matter was referred to the second defendant. Contrary to his expectation, the second defendant revoked the plaintiff's offer and offered the suit land to the first defendant.

On the other side the defendants had three witnesses. DW1 who was the step father of the first defendant narrated of how the suit plot was allocated to the first defendant in 1988 after making a formal application.

In 2002 they started developing the suit land only to find the plaintiff on the land. Fate had it that in 2003 the first defendant passed away and one Amina Hussein was appointed the administrator of the estate of the first

defendant. DW2 Amina Hussein had the same story to tell as that of DW1 as she testified that the suit plot was allocated to the first defendant in 1988 following an application made by him.

DW3, Suzan Mallya a legal officer from the second defendant's office came out loud that the plaintiff had no legal right over the disputed plot. This is evident from the records to be found in second defendant's office. It is on record that the first defendant was granted an offer LD/13/4/96/PJC of 10/8/1988 and had been paying the requisite fees/rent ever since.

DW3 further clarified that having received the plaintiff's complaint over the suit land, the defendant's office carried out an investigation and found that the letter of offer in the name of plaintiff had no relation with the relevant plot file. That it is to say it was not in relation to plot 90 Tegeta but plot No. 58 Block "F" Tegeta.

The investigation further revealed that the first receipt 7/13/0925 was issued by the "WizarayaUtumishi" on 1/5/1988 not by the Ministry of Lands.

There was also another receipt 7/394/72 which was issued by the internal revenue (samora branch) office on 20/6/1998 and not the Ministry of Lands.

DW3 clarified further that the proper letter of offer is LD/1341961/1/PTC dated 15/8/1988 for Plot No. 90 Block "F" Tegeta. DW3 went further and explained that ownership is conferred by a letter of offer or title and not by payment of rent or fees alone. In 2004 the second defendant's office wrote the plaintiff a letter informing him that he was not a lawful owner of the disputed plot and asked to vacate the suit plot. In view of this DW3 stated in black and white that the Government is not to blame as it never issued the said receipts, furthermore he is not entitled to any compensation.

The issues that were framed by the court were;

1. Whether the plaintiff was lawfully allocated the suit land by the second defendant
2. Whether the first defendant was lawfully allocated the said suit premises by the second defendant

3. Whether the revocation of plaintiff's title over the suit land by the second defendant was lawful
4. Whether the plaintiff had made any developments on the suit land
5. To what reliefs if any are the parties entitled to.

I now turn to the framed issue starting with the first issue this can only be answered by the documents that were tendered. The plaintiff tendered a letter of offer issued by the second defendant (Exhibit P1) and various land rent exchequer receipts and a payment receipt for acquisition of building permit (Exhibit P5). To substantiate the second defendant's allocation of the suit plot to him contrary to what the plaintiff was trying to suggest there is the evidence of DW3 together with the letters from the second defendant's office. These letters clearly show the second defendant's stand in the whole issue. The Commissioner for Lands one F. Kanuti on 24/8/2007 puts it in black in white that all the payment exchequer receipts and the letter of offer were all forged documents. This is the very position that was also stated by DW3 from the same office. The

commissioner puts it very clear that it cannot be said that the plaintiff in the given scenario was lawfully allocated the suit plot. It follows therefore that the evidence is very clear that the plaintiff was never lawfully allocated the disputed land by 2nd defendant.

The second issue is answered straight away in the positive as all the documents tendered by the defendants side specifically the letter of offer, the payment receipts and letter from the Ministry of Lands dated 10/11/2003 show very clearly that the one allocated the suit plot is the first defendant. DW3 was also of the same view.

In so far as the revocation of the plaintiff's letter of offer is concerned by the second defendant this was obviously done lawfully. Having found that the letter of offer was forged and all the subsequent payment receipts, the only remedy that the second defendant had was to revoke the plaintiff's letter of offer.

The issue of exhausted improvement carried out on the suit land by the plaintiff, these had been acknowledged by the second defendant but as he had been declared a

trespasser and had no colour of right he was ordered to remove them. There is no way in the given situation that he could be compensated for the same as he had entered unlawfully on the said plot.

Lastly on the issue of reliefs, it is obvious the plaintiff does not deserve anything as he was on the suit land unlawfully with forged documents. He was the maker of his own fate and should now face the consequence which is that, his case stands dismissed with costs.

Right of Appeal Explained.

B.R. MUTUNGI
JUDGE
5/9/2014

Read this day of 5/9/2014 in presence of Miss Iesulie (State Attorney) for the 2nd and 3rd defendants, the 1st defendant in person and in absence of plaintiff duly notified.

B.R. MUTUNGI
JUDGE
5/9/2014