

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND CASE NO. 114/2004

ZENA SALEHE MAHSEN.....PLAINTIFF

VERSUS

1. CONSOLATA MAPUNDA.....	1ST DEFENDANT
2. JOHN FRANCIS.....	2ND DEFENDANT
3. JAMES MARWA.....	3RD DEFENDANT
4. ANGELA ANATORY.....	4TH DEFENDANT
5. HILLARY ROBERTS	5TH DEFENDANT
6. DR. SIMEON RWANDALLA.....	6TH DEFENDANT
7. PASCAL ZINGA THOMAS	7TH DEFENDANT
8. JOSEPHINA TEMBA.....	8TH DEFENDANT
9. KASSIM ABDUL KASSIM.....	9TH DEFENDANT
10. ROBERT MALALE EUGENE.....	10TH DEFENDANT
11. ABDALLAH KASSIM MPURU.....	11TH DEFENDANT
12. NATHANIEL SILLAS PERRA.....	12TH DEFENDANT

J U D G M E N T

Hon. Ngwaia, J:

On the first date of its institution, the 28th May 2008, the plaintiff Zena Saleh Mahsen who is suing by her attorney her mother, Jamila Almansa had sued five defendants only. These are Consolata Mapunda, John Francis, James Marwa, Angela Anatory and Hillary Roberts, who are mentioned above, as the 1st, 2nd, 3rd, 4th and 5th Defendants respectively. The plaintiff prayed for Judgment, and decree against all the defendants jointly and severally for the eviction

of the defendants who are in occupation of the suit plot known as plot No.30 Mbezi Industrial area, Dar es Salaam. The title or Certificate of Occupancy is coded as L.D. No. 101734. She also prayed for general damages at the tune of Tshs.68,377,900/=. Demolition of their structures on the said plot and the costs of the suit.

In their respective Written Statement of Defence. The five defendants raised Applications and objections. Those objections were overruled. Consequently on 14/05/2009, leave to amend the Plaint was granted in order to include the other defendants as a result of the prayers and issues that had arisen from the discoveries that had been made.

In the Amended Plaint the other seven defendants as shown above were joined in this suit. The Amended Plaint contained the same reliefs as prayed in the aforesaid original Plaint.

All the defendants disputed those claims. They prayed for the dismissal of the suit with costs on the grounds that as by the 6th July 2009 it was clearly indicated that the disputed plot was reserved by his excellency the President.

They disputed the contents of the Plaint and stated further that their respective plots belong to them because they have both their permanent and non permanent structures situated there on.

They further averred that they bought their respective plots on the suit land from the original inhabitants or owners of that land.

The 3rd defendant on his part stated in his Written Statement of Defence that he inherited the disputed plot from his father who was

in occupation of land under a deemed Right of Occupancy. They have been in occupation of that land before the land was surveyed and granted to Mshabaha Industrial enterprises who failed to develop the land.

The defendants basically disputed the claims by the plaintiff that she bought one disputed land from the 1st defendant. They also disputed the annexed copy of proof of sale and Petty Cash document which neither bears the name of the plaintiff nor that of her Attorney Jamila Almansa her mother.

In her Reply to their respective Written Statement of Defence the plaintiff further stated that Jamila Ahmed and Jamila Almansa is one and same person. Zena Salehe Mahsen is a blood daughter of Jamila Ahmed or Jamila Almansa. The "shamba" was surveyed long before Mapunda, the 1st defendant falsely assumed title to sell portions of the land, as that land belonged to Mshabaha Industries. Her Attorney averred the sale between the plaintiff and the 1st defendant was also null and void as the defendant had no good title, but the plaintiff subsequently obtained good title when M/S Mshabaha's title was revoked. The plaintiff reiterated in her Reply to the Written Statement of Defence that the 1st defendant could not pass title as she had done.

On the basis of those contents in those pleadings, at the commencement of trial, five issues were framed and agreed upon by the parties. The 6th defendant who was the only represented

defendant by his learned counsel Mr. Komeye and Mr. Z. Maftah learned advocate who represented the plaintiff had also agreed on the following issues:-

1. *Whether the sale of piece of land by the 1st defendant to the plaintiff was valid.*
2. *Whether the sale of the suit land by the 1st defendant to all other defendants was valid.*
3. *Who sold the pieces of land now occupied or owned by the 3rd, 6th, 7th, 8th, 9th, 10th and 11th defendants.*
4. *In the above circumstances who is a rightful owner of the suit land.*
5. *To what reliefs are the parties entitled to.*

PW1 Jamila Almansa testified that sometime in 1997 she bought an unsurveyed land commonly known as a "shamba" for her daughter the plaintiff.

The same was sold to her by the 1st defendant at an agreed purchase price of Tsh.4,500,000/=. The 1st defendant was paid Tshs.3,000,000/= in 1997. A balance of Tshs.1,500,000/= could not be paid, after PW1 had detected that the said land was surveyed and it had a title with Registration No.30469 granted to Mshabaa Industrial Enterprises but the land was undeveloped. The said title was later on revoked in 2004. That same plot was granted and registered under a new certificate of title with No.55487, while the previous title was No.30467. PW1 testified further that the plaintiff refused to pay the balance to the 1st defendant. PW1 decided to apply

that land from the land authority of Kinondoni Municipality who granted her daughter the plaintiff the said land which was registered in the name of Zena Sakel Mahsein.

Her witness, PW2 Charles Manga, a Building Inspector who was working with Kinondoni Municipal Council in the year 2002 told the court that he was directed by the Municipal Engineer to go and inspect Plot No.30, Industrial area in Mbezi following the letter of complaint by PW1. While accompanied by PW1, when they reached on the suit land PW2 found that people had erected buildings on that plot. There were also some completed and uncompleted houses known as "mabanda". The construction on that area did not comply with the rules because the buildings were just squatters.

Her other witness PW3 John Langasi, a land officer working with Kinondoni Municipal Council, testified in court that the Mbezi Industrial Area, Plot No. 30 was surveyed in 1978/79. It was allocated in 1980. It had a temporary file for the Plot with Ref. No. DCC/CD.180/29. This was under the then Dar es Salaam City Commission. The plot have also another file for Kinondoni with Ref. KMC/LD/34823/D/KN/A 16711 for the District. The 1st allocatee of the plot was Takims Holidays who was granted Offer on 18th September 1980. He could not pay within 30 days, thereafter the plot was allocated to Mshabaas Industrial Enterprises on 13th September 1982. He made all the payment but could not comply with the conditions in the offer which required him to complete

constructions within 36 months. A Notice of Intention to revoke the title was issued, thereafter they sent that Notice to the Commissioner for Lands on 10th June 1996. Then they allocated the plot to Salehe Mahsen on. 14th August 2002, vide a letter of offer of Right of Occupancy with Ref. No. LD/101734/28. That 3rd Offer was accepted by PW1 Jamilah Almansah on 30th October 2002, which was signed by the Authorised officer at the Ministry of Lands and Human Settlement Development.

Furthermore it was in PW3's testimony that the industrial area in Mbezi has been variably built with residential houses, industrial structures and churches as well.

PW4, Said Khalfan, who also testified for the plaintiff told the court that, as a fellow resident of Msasani with PW1, and the agent of PW1, looked for the 1st defendant who owned a farm at Mbezi, so that PW1 could buy a farm. PW4 took PW1 to see the farm. As PW1 liked that farm they made payment arrangements whereby the 1st defendant was paid the down payments for the said shamba before Beniamini Paulo Kausala, who was then a ten cell leader who witnessed that transaction. PW4 pointed that some money which PW1 paid the 1st defendant as part payment was witnessed before the advocate.

According to PW4 he also knows the 2nd defendant, John Francis and 5th, 7th, 8th, 9th, 10th and 11th defendants who bought their respective plots on that disputed area from the Local Chairman of the *Serikali za Mitaa* and the 1st defendant.

The last plaintiff's witness, PW5, Erick Makundi a land officer who was then working in the Ministry of Lands and Human Settlements testified on the records at the said Ministry concerning the disputed Plot No. 30, Mbezi Industrial area. PW5 stated in file No. LD/101734, which reveal also that Mshabaa Industries were allocated the plot by an Offer with Ref. No. D/KN/A/16711/2/SON for 33 years on 1/4/1982. In 1984 the plot was resurveyed and classified as industrial area. On 22/1/2001 the earlier occupation by Mshabaha was revoked, then the purchaser of the said area was allocated the plot on 7/1/2002 after she wrote a letter to the ministry proposing to be allocated the same.

Furthermore PW5 stated that the Municipal Council which is responsible for allocations as supervised by the ministry had no record of allocation of that disputed area to the 1st defendant Consolata Mapunda. The plaintiff's offer, with the name Zena Salehe Mahsen with Reference No. ld/101134/26 resulted into the issuance of title No.54487.

On the side of the defendants case, each of them had a different story as to how he acquired his parcel of land on that registered disputed plot. The 1st defendant, DW1 testified that she bought the suit land from one Saidi Amani in 1976. Later on she built a "*banda*", then she decided to sell pieces of lands to other persons like the 2nd defendant (DW2) John Francis, 4th Defendant (DW4) Angela Anatory, DW5. Hillary Roberts and the 12th Defendant Nathaniel Silas Pierra. The

evidence of DW1 was corroborated with the testimonies of these mentioned defendants who clearly stated so. DW2 said he bought his parcel of land on 4/9/2001. PW5 a Pastor produced exhibit D2 evidencing that he bought the parcels of land on which he has built a residential house and a church.

From the testimony of the 3rd Defendant (DW3) it is stated that he inherited the shamba from his father who got it from his grandfather who was allocated by the government in the operation known as "*Kilimo cha kufa na kupona*" in the year 1974.

The 7th defendant Pascal Zinga Thomas DW7 told the court that he bought that land from one Mikidadi Mohamed Issa at a purchase price of Tshs.600,000/=, on 4th September 2006. Their sale contract was witnessed by Mr. Oswald Mwasuka the Ward Executive Officer who endorsed on the contract and local area chairman known as "*Mwenyekiti wa Serikali ya Mtaa. Mbezi Juu*".

The 8th Defendant Josephine Teemba stated that in 1994 he met Mama Zena the plaintiff. She stayed with her as house girl till 1998. In 2001, while accompanied with PW1 she also bought a parcel of land on the disputed plot as evidenced in the Sale Agreement (Exhibit D3).

The 9th Defendant, PW9 Kassim Abdul Kassim, stated in court that he bought his plot from one Jonas Pulu Haule for Tshs.4,000,000/= on 20th June 1993.

The 10th defendant (DW 10) Robert Malale Eugene bought his land which was a "shamba" by then from one Nganga Tarimo on 18th October 2004. DW10 did so after a through investigation and being ascertained by the CCM Official and Government Officials at Mbezi Juu who included Mr. Mikidadi and Oswald Mwasuka the "Mtaa Chairman", the leaders who endorsed the Sale Agreement. In the same year he started construction of his house.

The 6th defendant Dr. Simeon Rwallandallah too stated that on 24/6/2003 he bought a farm from one Samson Fimbo, his witness who testified as DWXII at a price of Tshs.1,500,000/=. The shamba is near inter chick factory. DW11 Samson Kubiha Fimbo agreed to have sold that plot to DW6 as per exhibit D5, A Sale Agreement which evidenced that he had earlier bought that plot from one Herman Petro.

The other witness DWXI1 Mathias Lugoye witnessed the sale of piece of land to Rwandala in Mbezi Juu near inter chick. According to him the disputed land appeared to have not been surveyed at that time because the houses were not organised, there were more than twenty people who had constructed their houses, a school across and a CCM Office. DW12 who had been living in that area since 1986 in the Saruji flats insisted that a greater part of the area was unsurveyed because it used to be an area for agricultural use after the "*Nguvu kazi operation*".

DW13. Athumani Yasin Ligande, who has been a chairman of the "Serikali ya Mtaa" since 1999 testified that they had organised that when people will to sell one another land they had to go to their office. Subsequently in the year 2001 the defendant and his son Costa Mapunda sold their pieces of land to Pastor Hillary (DW5), John Francis (DW2) Angela Anatory (DW4) and other who went to their office. Their office ensured that there were streets to pass and repass. DW13 insisted in court that the disputed area is not an industrial area otherwise it should not have been built by people.

On being cross examined by Mr. Maftah he insisted again that since he had been in that area since 1991 when he retired from the army, when the area was a sisal estate and he was quite aware that none of the occupants had Offers for that area, then the Central Government had not surveyed the area.

DW4 Ally Mgomi A, surveyor who was employed by Kirondoni Municipality was assigned to go to the disputed area to recover the boundaries of the industrial plot on the survey plan. He went there only to find that the area was covered with a lot of houses which had been built there on.

On being cross examined by the defendants DW14 stated that the site plan with No. E 225/23 signed by A. Z. Shushu (Exhibit D6) regarding Plot No. 30 Mbezi area is for Plot No.30 Mbezi Industrial area, with title No.30467 as per the official search on 27/10/2003.

Regarding the search by the DW1 of 28/4/2004 it shows that the title deed for that Plot is No.55487 for the same plot.

On being cross examined further DW4 stated that there is also official search in their records of 09/07/2007 which indicated that the title deed for Plot No.30 Mbezi area had title No.30467. Regarding the two titles deed, DW4 insisted that if a plot had two title deeds then it is incumbent upon the Commissioner for Lands to revoke one of the titles.

The last witness was DW5 *Deo Victor* an Assistant Registrar of Titles who testified that Title No.30467 of Plot No. 30 Mbezi Industrial area Dar es Salaam was first issued to six people, namely Joseph Minga, Mathew Alexander, Alexander Sauka, Augustino Minja, Stephen Minga and Malweta Wilbroad with trading company name of Mshabaha Industrial Enterprises. The title was issued on 20/12/1984 and Registered on 10/5/1985. Later, on 19/01/2004 the office of Registrar of Titles received an Application from the Commissioner for Lands known as an Application for Recording of Revocation of a Right of Occupancy which was signed by the then Commissioner for Lands Mr. Albert Adul Msangi on 13/01/2004.

The Application was annexed with the Instrument of the President of the United Republic of Tanzania of Revocation of the Right of Occupancy L. O.70663 for the occupiers failure to comply with Development Conditions Under Item 1 (v) (c) of the Letter of Offer that was signed by the Minister for Lands and Human Settlement. The same was made under Section 103 of the Land Registration

Ordinance, 1953. The revocation was filed under the Ring Document No. 96148 dated 19/1/2004. This witness confirmed that up to the date when he testified in court the title was and or is still under the President of the United Republic of Tanzania.

When he was cross examined by Mr. Maftah, DW4 insisted that he did not know the owner of title No. 55487, because title No. 30467 had been revoked by the President on 19/1/2004. The last search which was done on 29/6/2009, as per the Registrar of Title's records showed that the title to that plot was still under the President. DW5 further tendered the original files containing all the documents for title No. 30467, Land Office No. 70663, for Plot No. 30 Mbezi Industrial area Dar es Salaam. The file was observed by the court, and it clearly showed that it has a Certificate of Occupancy of 99 years which has the Application for Revocation of a Right of Occupancy under Section 103 of the Land Registration Ordinance, annexed with the Instrument of the President of the United Republic of Tanzania. The certified photocopies of that Application for Revocation of title and the Instrument of the President were admitted as exhibits D7 and D8 respectively.

In view of the foregoing testimonies which I have narrated at length, the issues that had been framed shall be determined in seriatim.

On the 1st issue, whether the sale of piece of land by the 1st defendant to the plaintiff was valid. In short as admitted PW1, on behalf of the plaintiff herself the 1st defendant Consolata Mapunda had no good

title to pass to the plaintiff or any one else by way of sale, because she did not own the land in dispute. It is clear from the narrated evidence that as from 20th December 1984 the disputed area under Plot No.30 Mbezi area was registered and granted to Mshabaha Industrial Enterprises. Consolata Mapunda had photocopies of the title and Offer of that plot.

It is therefore clear that the shamba was surveyed long time before Consolata Mapunda, 1st defendant, falsely assumed title to sell parcels of land to some of the defendants and the Plaintiff. The disputed land belonged to Mshabaha Industries. The sale between the plaintiff and the 1st defendant was therefore null and void as the 1st defendant had no good title to pass to both the plaintiff and the defendants. The 1st and 2nd issues framed therefore are answered in the same way, that is the sale of the piece of land by the 1st defendant to the plaintiff and other defendants was invalid for the reason I have stated.

Regarding the 3rd issue, the Defendants have revealed in their respective narrated evidence and mentioned the names of the persons who sold their respective portions of land to them. They have also mentioned the dates and the unauthorized person who witnessed those respective sale transactions of the land, and how they bought the land without observing the laws governing land conveyance. It all seems the Defendants who bought land from the 1st defendant and

others were cheated by the sellers of the respective parties of the land who claimed ownership of the disputed land.

The Attorney for the plaintiff (PW1) on the other hand too, seems to be treacherous, because when she felt she had been cheated by the 1st defendant, she wrote a letter, termed the Application letter to the Land Officer at Kinondoni (Exhibit P4). In my PW1 considered opinion PW1 processed the revocation process while assisted by unscrupulous land officer which she said *"I followed up the revocation process which took long up to 2002 when I was called to the Ministry to be allocated plot after revocation"*. Annexure P4 to the plaint shows that, the plaintiff claimed to have bought the suit land on 24th January 1997. Sometime in July 1997 she wrote that Application to the land officer almost other things stating that:-

"Muda mrefu sana umepita niliponunua shamba kwa bi C. Mapunda kwenye eneo la Mbezi. Hilo shamba mimi nilikuwa nalima viazi, mihogo, mboga mboga na nyakati za kilimo hupanda mahindi, pia kuna mazao mengine ya kudumu kama miembe, mikoroshu, minazi na mingine, pia pana . . . kwa bahati nzuri eneo hilo limepimishwa viwanja vya kiwanda, kwa hiyo na mimi naomba shamba langu mnimilikishe kama kiwanja cha kiwanda".

This letter was written only after six months had elapsed after purchasing, and in fact after she had only paid the 1st defendant part of the purchase price. It all seems the plaintiff wrote this letter with

intent to mislead the Land Officers in order to obtain that land through presenting this false information to the Land officers.

Upon further scrutinizing the Letter of Offer of Occupancy – exhibit P7 which has been signed by the Authorised officer at the Ministry of Lands on 09/10/2002 and accepted by the plaintiff on 30/10/2002;

It leaves a lot to be desired, as to what prompted this unusual practice of issuing a new Offer before the Revocation of the Certificate of Occupancy belonging to Ms. Mshabaha Industrial Enterprises on

Mbezi industrial area Plot No. 30, was effected on the 19th January 2004. It is vivid that the said Letter of Offer with No. 0006509 dated 14/08/2002 (Exhibit D4) was given to the plaintiff before the revocation took place. This is obvious that it was unprocedural to offer to another person a Right of Occupancy where there was an

existing one on the same land or when there were some encumbrances on the land. It is noted with authority that this letter of Offer -- exhibit P4, which I consider a questionable Letter of Offer

was used by the plaintiff to process the unclear Certificate of Occupancy, title No.55487.

It must be understood that, under **Section 30(1) of the Land Act, [CAP. 113 R.E. 2002]** it is provided that, it is held that a Letter of Offer may be considered as Title Deed, if indeed a Certificate of Occupancy is not given after 180 days since the acceptance of the

Letter of offer. For the sake of clarity and avoidance of doubt, the said provision is quoted in extensor as follows:-

Section 30(1); *where a certificate of occupancy in respect of a plot of general or reserved land is not issued to a person who has not accepted a letter of offer in respect of that plot of general or reserved land within one hundred and eighty days of receipt of that acceptance by Commissioner, the offeree may apply to the Registrar of Documents in the prescribed form to register the letter of offer for the purposes of creating a notice of impending ownership delivered to the Registrar under Section 27 of the Land Registration Act, and, subject to the provisions of this Section, the provisions of that Act shall apply to that letter of offer as if it were a certificate of Occupancy”.*

It is an that vain that it is my finding that there was double allocation done on the said disputed plot. Indeed there were two titles on the same plot from the 30th November 2002 to the date when the Revocation was issued.

It is on this Tracing title principle or application of the process of tracking the title to ownership or tracing of property or the genesis that it is very evident the disputed plot as up to this date has two Certificate of titles with two different Title Numbers and with different informations in the different land offices concerned with allocation of plots. The plot had different information in the Land Office at Kinondoni Municipality and in the Ministry of Lands and Human Settlement Office in the office of the Commissioner for Lands and the

Registrar of Titles. It is evident also that PW3 and PW5 the Land Officers were unable to clarify on the presence of the two certificate of titles in the year 2006. In the year 2013, PW15 the Assistant Registrar of titles testified that the title of the disputed plot was still under the President of the United Republic of Tanzania who had revoked title No.30467. The other documents regarding title No.55487 were in the Office of the Commissioner for Lands. Whence the purported title No.55487 is yet to be registered in the Land Registry Office in accordance with **Section 29 of the Land Act [CAP.113 R.E. 2002]** which reads:-

"29 (1) Where a Commissioner determines to grant a right of occupancy to a person who.

(a) Has accepted a letter of offer of a Right of Occupancy; or

(b) In occupation of Land under a Right of Occupancy or under an acceptance of an offer of a Right Occupancy; or

(c) Is otherwise entitled to a Right of Occupancy, he shall issue a certificate, referred to as a "certificate of occupancy" to that person.

(2) A certificate of occupancy shall be issued in the

name of the President and shall be in a prescribed form.

(3) A certificate of occupancy shall be deemed to be duly and validly executed if it is signed by the commissioner and sealed with his official seal and purports to be signed and sealed by the President and further proof of such execution shall not be required for the purpose of Registration under the Land Registration Act.

(4) The occupier to whom a certificate of a certificate of occupancy is issued shall sign at the bottom of the certificate as acceptance of the terms and conditions of that certificate of occupancy shall be valid or give rise to any liabilities on the part of the state or any rights on the part of the occupier to whom the certificate has been issued until it is so signed".

The certificate of occupancy with title No.55487 (Exhibit P7) was signed by the commissioner on 20th April 2004 but it was registered on the 1st April 2004. That is before the signature of the commissioner. This again leaves a lot to be desired in that the quoted provisions of Section 29 (3) were not complied. The interpretation of Section 29 (3) of the **Land Act, [CAP 33 R.E. 2002]** is that before registering a certificate of Occupancy it must

be signed by the commissioner. The certificate of Occupancy that was tendered in court by the plaintiff does not comply with the above subsections which witness the basic requirements for a certificate of Occupancy to be registered.

Again in view of the evidence adduced in court it also seems that the same is yet to be registered on the office of the Registrar of title because the records in the Registrar of title's office show that the plot is still under this Excellency the President of the United Republic. This conflicting statement from the office of the Registrar of titles and my reflection of the totality of evidence is that the certificate of title with No. 55487 was registered prematurely. It is also tainted with illegalities and hence a premature Registration of title makes it invalid and or legally null and void.

This should be understood in clear terms that a title which is obtained through dubious means and or which is acquired through illegal procedures is void and cannot be valid as provided for under **Section 178(1) the Land Act, [CAP.113 R.E.]** which reads:-

"Section 178(1). Nothing in this Act shall be taken or construed to validate, affirm, authenticate or give any legal effect to any grant of a right of occupancy or any issue of a certificate of occupancy or a customary certificate of Occupancy, or any disposition, or any contract

for any of the earlier mentioned transactions which was obtained or induced by any corrupt action, on the part of any government or public or local government official whether that government or public or local government official was directly involved in that transaction or not, and notwithstanding any rule of law in Tanzania to the contrary, such a transaction is hereby declared to be and to have been from its inception an illegal transaction, void and having no legal effect".

For the said reasons I hold that the revocation of the former title and the issuance of the New Certificate of Occupancy was tainted the illegality. One wonder why there should be contradicting testimonies of the Land officers. For instance PW5 Mr. Erick Makundi's testimony leaves a lot to be desired when he testified that the former title on plot No.30 Mbezi Industrial area was revoked on 10th March

2001 contrary to the Assistant Registrar of title's testimony by witness Victor Deo's who proved to the court that the title to the suit plot was revoked by his Excellency the President on 19th January 2004. On being cross examined PW5, confessed that the Notice on the intention to revoke Title No. 30467 was never published on a gazette nor served to parties having interest on the land. This again was against the legal procedures for revocation as indicated in the **Land Act, [CAP.113 R.E. 2002,] Part IV sub part 4 Section 48 (1)** and (2) which provide for the actions to enforce revocation for breach of condition, when the Commissioner is satisfied that there are such actions he shall:-

- (i) *Serve a notice of revocation in the prescribed form on the occupier*
- (ii) *Cause a copy of that Notice to be served on all persons having an interest in the land and*
- (iii) *Notify the Registrar of the service of the Notice which shall be recorded in the land Register.*

2. *A Notice of Revocation shall, subject to the provision of this Section, take effect ninety days after it has been served on the occupier?”.*

It is on the aforesaid ground that I hold that the plaintiff does not have a clean title over the land. Accordingly the said title with CT. No. 55487 is nullified as it was issued prior to the revocation of CT No. 30467. Worse, the title was acquired without observing the aforesaid mandatory statutory requirement under the *Land Law Act, CAP. 113 R.E. 2002*.

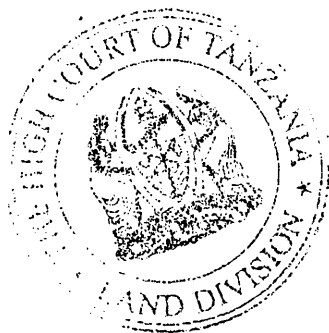
The defendants too who are in occupation of the suit land are declared **Defacto Possessors** of the suit land.

With the foregoing analysis, it is clear that the plaintiff is not the lawful owner of the suit plot. As such he has no justifiable cause for an eviction order and or demolishing the defendant's structures on the suit land.

Her prayer too for damages cannot be granted. I hold so because as aforesaid the plaintiff is no a lawful owner of the disputed land. More so she has no right whatsoever because of the principles in awarding damages in Tanzania which have been reiterated in the case of ***Tanganyika Bus Service Company Ltd (KAMATA) 1985 TLR 204*** where the High Court held that:-

“... those damages are payable because they are direct, foreseeable and reasonable and quite in line with the Rule in *Hardley vrs. Baxendale* : (1984) 9. EX. 341”.

In the end result the Plaintiff's suit is dismissed in its entirety. The plaintiff is condemned to pay the costs.



A.F. Ngwala
A.F. NGWALA
JUDGE
06/07/2015

06/07/2015

Coram : A. F. Ngwala, J.

Plaintiff : Present

For Plaintiff : Mr. Mtatiro

1st Defendant : Absent

2nd Defendant : Absent

3rd Defendant : Absent

4th Defendant : Absent

5th Defendant : Absent

6th Defendant : Absent

7th Defendant : Absent

8th Defendant : Absent

9th Defendant : Present

10th Defendant : Present

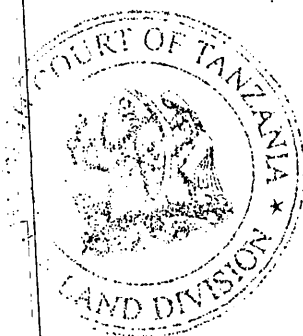
11th Defendant : Absent


12th Defendant : Absent

For Defendant : Absent

Court: Judgment delivered in the presence of parties present and Mr. Mtatiro for the Plaintiff.

Court: Right to Appeal to the Court of Appeal of Tanzania explained.




A.F. NGWALA
JUDGE
06/07/2015

