

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

LAND CASE NO. 314 OF 2016

NURDIN ABDALLAH MUSHI.....PLAINTIFF

Versus

MUTTA ROBERT RWAKATARE.....1ST DEFENDANT
ROSE RWAKATARE.....2ND DEFENDANT
KAULILA HUMPHREY RWAKATARE.....3RD DEFENDANT
TIBE RWAKATARE.....4TH DEFENDANT

EXPARTE JUDGMENT

Date of Last Order: 11/05/2018

Date of Judgment: 18/06/2018

S.A.N. WAMBURA, J:

This is an exparte judgment where by the plaintiff **Nurdin Abdallah Mushi** instituted this suit against the defendant and prays for Judgment and Decree against the defendants for the following orders;

- a) A declaration that the plaintiff is the rightful owner of the suit premises comprising Plot No. 347, Block 43, Mwenge Area, Kinondoni Municipality.*
- b) An order that the defendant should immediately vacate the suit premises and handover the same to the Plaintiff.*
- c) The payment of specific damages to the tune of Tshs. 20,000,000/= from each defendant.*
- d) Costs to follow events.*

e) Any other orders and reliefs this Honourable court shall deem fit to make.

On 09/06/2015 this court ordered the suit to proceed *ex parte* against the 1st defendant.

The plaintiff was represented by Mr. Ntanga Learned Counsel.

The brief facts of this matter are that Pw 1 Nurdin Abdallah Mushi bought the disputed land on 20/06/2013 at the sum of Tshs. 100,000,000/= from the Rwakatare's family namely Mutta Rwakatare, Tibe Rwakatare, Rose Rwakatare and Humphrey Rwakatare. He contended that the setters inherited the same from their late father and the administrator of the estate was Mutta Rwakatare. He tendered the sale agreement (Exhibit P 1) as proof of the sale.

He then paid the transfer fees and the capital gain tax. He was given a receipt which was admitted as Exhibit P 2. It is on record that after paying the fees, he transferred the title into his name as evidence in Exhibit P 3.

Pw 1 contended that at the time when he bought the suit land, there was one person who was living there. That the said person is still living at the suit land and has refused to vacate from the suit premises. He therefore prayed to this court to vacate him from the suit premises.

It is a cardinal principal of law under the Law of Evidence Act Cap.6 R.E. 2002 that whoever desires a court to give judgment in his his/her favour; he/she must prove that those facts exist.

Section 110 (1) (2) of the Law of Evidence Act Cap. 16 R.E.2002 reads as follows, I quote;

"Section 110(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

Section 110(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".

The above provision places the burden of proof to whoever desires the court to give judgment as to any legal right or liability dependent on existence of facts which he/she ascertain.

According to the evidence on record, the plaintiff managed to prove as to how he acquired the disputed land. It is on the record that he purchased the disputed land from the defendants on 20th June 2013 as evidenced by a sale agreement (Exhibit P 1). The agreement shows that all the children who are the heirs of the deceased agreed to sale the disputed property to the plaintiff having inherited it from their late father Kenneth Rwakatare.

Clause 7 of the agreement reads as here under quoted:-

"Clause 7. Essence of ownership by the vendors

*The **vendors have inherited the property from their father, the late KENNETH JOHN RWAKATARE and following the distribution of the deceased estate** by the administrator vide inventory dated 10th June, 2013 which was filed in court on 12 June, 2013."*

[Emphasis is mine].

Moreover under clause 5 of the agreement, the defendants agreed to ensure that the tenant in the suit premises would be

removed or made to vacate the premises. For clarity clause 5 reads as follows; I quote;-

"Clause 5. Covenants binding upon the vendors/ transferors:

- ***To ensure that the tenants in the premise which is the subject of this sale are removed or made to vacate the premises."***

[Emphasis is mine].

Thus from the evidence, I have no doubt that the plaintiff is the lawful owner of the disputed property having lawfully purchased it from the defendants.

Since the Plaintiff has proved his case on balance of probabilities, then this court orders as follows;-

- a) The plaintiff is declared as the rightful owner of the suit premises comprising Plot No. 347, Block 43, Mwenge Area, Kinondoni Municipality.
- b) The defendants should immediately vacate the suit premises and handover the same to the Plaintiff.

On the issue of payment of specific damages to the tune of Tshs. 20,000,000/=, this court finds that the plaintiff has not proved the

same so as to warrant this court to grant the said damages. The plaintiff has pleaded the said amount without showing proof as to how that amount has accrued. In absence of such proof, this court cannot grant the pleaded amount.

It is trite law that specific damages must be specifically pleaded and proved. This legal position was reiterated in the case of

Masolele General Agencies Vs African Inland Church Tanzania [1994]

TLR 192 where it was held that;

"Once a claim for a specific item is made that claim must be strictly proved, else there would be no difference between a specific claim and a general one...."

In the upshot, judgment is entered in favour of the plaintiff to the extent shown above.

The defendants are ordered to issue vacant possession within a period of three (3) months from the date of the delivery of this judgment. They are also condemned to pay costs of the suit.


S.A.N WAMBURA
JUDGE
18.06.2018