

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

AT DAR ES SALAAM

LAND CASE NO. 361 OF 2014

KASHINDE RAJABU MRISHO.....1ST PLAINTIFF

MWAMINI RAJABU MRISHO.....2ND PLAINTIFF

VERSUS

SELEMANI ALLY MADOHOLA.....DEFENDANT

J U D G M E N T

P.M. KENTE, J:

The plaintiffs instituted a suit against the defendant, praying for judgment and decree on the following reliefs:

- a. *An order payment of the sum of Tshs. 350,000,000/=(Three Hundred Fifty Thousand Million only) being Market value of the suit premises Known as Plot No. 45 "A" Block "U" Mtwara Street Dar es salaam, belonging to the 1st and 2nd plaintiffs and which was negligently illegally and unlawful sold to them by the defendant.*
- b. *An order that the defendant to pay Tsh. 17,140,000/= being value of destroyed 1st and 2nd plaintiffs house holds, kitchen utensils, furnitures and family food stocks, family clothes, bed and beddings which were destroyed,*

vandalized, stolen or lost during unlawful demolition and eviction done by the 1st purchaser, and others taken by the court broker.

- c. An order that the defendant to pay Tshs. 2,000,000/= plus interest at 21% annually, which they borrowed on 11/6/2008 from the 2nd plaintiff, together with her sister called Rehema Ally Seleman Madohola for purposes of paying legal expenses in respect of Land Application No. 159 of 2008 at Ilala Land and Housing Tribunal.
- d. An order that the defendant to pay loss of house rental income which the said plaintiffs were receiving from the tenants, from the date of demolition to date of full payment, which it has accrued to Tshs. 13,920,000/= on the date of filling this plaint, there after continue to accrue until full payment.
- e. Order the defendant to pay and refund of rent of Tshs. 2,880,000/= which the plaintiffs were forced to pay to various land lords to date, due to their house being demolished by the 1st purchaser, and his court broker.
- f. An order the defendant to pay general damages to the 1st and 2nd plaintiffs for the suffering, torture, distress, shock and humiliation, embarrassment, disturbance all resulted from illegal demolition and eviction of the plaintiffs by the defendant from the premises.

- g. Interest at commercial rate of 30% from the date of demolition 20th September, 2010 to the date of judgment.*
- h. Interest on the decretal sum at court's rate of 12% from the date of judgment to the date of full payment.*
- i. Costs of the suit, including advocate's fees.*
- j. Any other relief(s) the court may deems fit and just to grant.*

The defendant in his written statement of defence denied the entire allegation in the plaint and prayed for the same to be dismissed with costs.

At the hearing of this case the plaintiffs were represented by Mr. Kimbori, Advocate while the defendant was unrepresented. The following issues were agreed upon between the parties for the court to determine:-

- 1. Whether or not the sale agreement between the plaintiffs and the defendant was valid in law.*
- 2. If the answer to the issue No. 1 is in negative, whether or not the plaintiffs have suffered any loss*

3. *What are the reliefs entitled to the parties.*

In support of their case the plaintiffs' called three witnesses namely Kashinde Rajabu Mrisho (PW1), Ally Shaibu Hamisi(PW2) and Mwamini Rajabu Mrisho(PW3). On other hand the defendant brought 3 witnesses namely Seleman Ally Madohola(DW1), Shaaban Saidi Madunda(DW2) and Zaituni Said Madunda(DW3) to testify in support of his case.

After considering the material parts of the pleadings of both parties, I will now move on to determine the three issues which were raised the said pleadings. The first issue is

Whether or not the sale agreement between the plaintiffs and the defendant was valid in law

In their testimony PW1 and PW2 told this court that they executed the sale agreement in 2007 and paid the whole purchase price and after execution of the agreement they were given vacant possession. In support of the testimony PW1 tendered in court a deed of transfer of an offer of a right of occupancy which was admitted

as exhibit P1. Plaintiffs in their testimony also contended that before they purchase the disputed property the defendant assured them that he was the administrator of the estate of his late father and that the property in dispute belonged to his late father. PW1 further narrated that the defendant showed them a loss report certifying the loss of the letter of offer in respect of the disputed land. PW1 added that after having been issued with a notice to vacate the suit premises, they had to make further investigations and they discovered that the house in dispute was in fact formerly sold to the Ali Shaibu Hamisi. To support this testimony the witness tendered in court a copy of a sale agreement which was executed in 2003 between Ally Shaibu Hamis and Mohamed Selemani Madohola and a report of a formal search in the Ministry for Lands as (exhibit P3).

This testimony was collaborated by the testimony adduced by PW2 who was the 1st purchaser of the suit land. In his testimony this witness contended that he bought the suit house from one Mohamed Madohola and that before he bought the said house he

made a search and was satisfied that the same belongs to the said Mohamed Madohola who was the defendant's uncle.

On the basing on the above pieces of testimonies, the plaintiffs' alleged that the sale was not valid in law as the defendant had pretended to be the administrator of estate of the late Mohamed Seleman Madohola a fact which was not true and upon such pretences sold the said house while knowing that the same had already been sold to another person.

To counter the plaintiffs' claim DW1 told this court that the sale transaction was valid as he is the owner of the suit house having inherited it from his father who died in 1999. This evidence was collaborated by the testimony of DW2 and DW3 who also told this court that the defendant inherited the suit house from his late father therefore, the sale agreement was valid.

Now, there is no doubt that the house in dispute was first sold by the defendant's uncle to another person in 2003. It is also not disputed that the plaintiffs also bought the same house from the

defendant in 2007. Going by the evidence from the defendant's witness it is clear that the defendant did not have any letter of administration and he was not the owner of the suit house. It is in the testimony of DW2 who contended that the defendant was appointed as administrator but this was just a mere allegation and there was no any document to prove it. The witness also seems to have hearsay evidence as according to her, she did not have any idea as to when the defendant's father died and she was not sure if at all the defendant was appointed as an administrator of the estate of his father and that he did not have the requisite capacity to sell or otherwise dispose of any property that belonged to his deceased father.

In that situation, I am settled in mind that the sale transaction which was conducted between the plaintiffs and defendant was not valid in law because the defendant had no good title to pass over to the plaintiffs.

It is a settled principle of law that, a person without a good title to goods cannot pass a good title to the transferee than his own. This has been enshrined in the ancient Latin maxim **nemo dat quod non-habet**, which means that no one can transfer a better title than he himself has.(vide **Bishopgate Motor Finance Corporations Ltd .V. Transport Brakes Ltd** [1949] 1KB 322.

From the above analysis, it is my finding that the sale agreement between the plaintiffs and the defendant was not valid in law. It was null and void.

If the answer to issue No. 1 is in negative, whether or not the plaintiffs have suffered any loss.

Having found that the house in dispute was sold to the 1st purchaser in 2003 and the fact that the plaintiffs and the defendant had entered into an unlawful sale agreement and that, as a result the plaintiffs were evicted from the disputed house and the same was demolished, it is as well undisputed that in the course of the

eviction their properties were destroyed. In this regards the it is certainly clear that as a result they suffered a serious loss as they lost their properties and they were subjected to torture both physically and mentally, due to unlawful demolition of the disputed house.

To what reliefs are the parties entitled.

Having considered the weight of the evidence adduced in support of the plaintiffs' case, it is my finding that the evidence given by the plaintiffs was much stronger and convincing than that of the defendant in the sense that the defendant had no good title to pass over to the plaintiffs since the disputed house had already been sold to PW2 since 2003, In the light of what is stated above, I order the defendant to pay the plaintiffs a total of Tshs. 80,000,000/= being the purchase price of the suit house. However, I cannot order the payment of Tshs. 350,000,000/= as prayed by the plaintiffs as there is no legal justification for the court to do so. The reason for this holding is that the prayer sought is a kind of a specific damage and the law requires specific damage to be specifically and strictly proved. The plaintiffs have failed to prove the amount claimed and only relied on

a mere word of a mouth. To that end the prayer for sh. 350,000,000/= is dismissed for want of proof.

Moreover, I order the defendant to pay Tsh. 17,140,000/= being the value of the 1st and 2nd plaintiffs households, kitchen utensils, furniture and family food stocks, family clothes, bed and beddings which were destroyed, vandalized, stolen or lost during the demolition and eviction.

As to the prayers under items (c), (d) and (g) in the plaint, the court cannot grant these prayers as there is no evidence to support them. The law requires that one who alleges must prove. The plaintiffs' claims in the above prayers have not been supported by any documentary evidence and the court cannot rely on mere words which have not been substantiated.

I also order the defendant to pay the plaintiffs general damages at the tune of Tshs. 20,000,000/= for the suffering, torture, distress, shock, humiliation, embarrassment and disturbance which resulted from illegal demolition and eviction from the suit premise.

Needless to say, the amounts awarded shall attract interest at the court rate of 12% from the date of judgment to the date of full payment.

In the upshot, the plaintiffs' suit is found to have merit to the extent shown above. To that end, judgment is entered in favour of the Plaintiffs, with costs.

Dated at Dar es salaam this 13th day of April, 2018.



**P.M.KENTE,
JUDGE**