

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

LAND APPEAL NO. 143 OF 2018

(Arising from Ilala District Land and Housing Tribunal at Ilala
in Land Application No. 67 of 2012 (Hon. M. Mgulambwa, Chairman)).

SAMSON RYUBA.....APPELLANT

VERSUS

EDWIN KARANI MARKO.....RESPONDENT

Date of Last Order: 20.01.2019
Date of Judgment: 09.03.2020

JUDGEMENT

V.L. MAKANI, J

The appeal before this court is by SAMSON RYUBA. He is appealing against the decision of the District Land and Housing Tribunal Ilala (the Tribunal) in Land Application No. 67 of 2012 (Hon. M. Mgulambwa, Chairman).

At the Tribunal the respondent was granted ownership of Plot No. 1319 Block A Kinyerezi Ilala Municipal in Dar es Salaam under Letter of Offer of a Right of Occupancy No. AR/ILA/KIN/A/146/3/SM (the **suit land**). The appellant was declared a trespasser and he was ordered to demolish all the structures he had built in the suit land. He was also condemned to pay general damages to the tune of TZS 5,000,000/=.

The appellant was aggrieved with this decision of the Tribunal and has filed this appeal with the following grounds:

- 1. That the learned Tribunal Chairperson erred in fact and law by her failure to construe the evidence and in holding that the respondent did not trespass into the applicants land and that the respondent is the lawful owner of the land in dispute.*
- 2. That the learned chairperson erred in fact and in law by ordering the respondent to pay costs of the suit to the applicant, where as from the evidence it was found that the respondent did not trespass to the applicants Plot No. 13219 Block A at Kinyerezi area was a miscarriage of justice for Tribunal Chairperson to order payment t of costs of the suit to the undeserving person, the applicant (the respondent).*
- 3. That the learned chairperson erred in law and has misdirected herself in failure to find that the applicant has sued a wrong person hence costs should have been paid to the respondent by the applicant.*
- 4. That the Tribunal deliberately ignored the evidence adduced by the defence witnesses and that the court expert witness one Mucky from Ilala Municipal Council. Hence occasioned failure of dispensing justice.*

With leave of the court the appeal was argued by way of written submissions. The submissins by the appellant were drawn and filed by Mr. Marwa Kittigwa, Advocate from Carmel Attorneys; and those by the respondent were drawn and filed by Mr. Living Kimaro, Advocate of LRK Law Chambers.

In his main submissions and rejoinder Mr. Kittigwa arguing the 1st ground of appeal said the Certificate of Title which was exhibited as

Exhibit P2 ought to have come from the Registrar of Titles and that **PW3** is a Land Officer not a Registrar of Title or authorised Land Officer, so he could not have verified the genuineness of the ownership of the suit land. Mr. Kittigwa continued to state that there was valuation that was conducted and compensation schedule presented as **Exhibit P6** but it is not stated when the valuation of the suit land was conducted and when the appellant invaded the suit land. He further said that it is not indicated in the judgment if the assessors gave their opinion, it is only mentioned in the judgment which he argued was wrong according to the case of **Emmanuel Christopher Lukumai vs. Juma Omari Mrisho, Civil Appeal No. 21 of 2013 (CAT-DSM)**(unreported).

As regards the second ground he said he has been on the suit land since 1999 and the respondent alleged to acquire the land in 2006 and so he argued the appellant was in the suit land before the respondent being allocated the piece of land, and so he was not supposed to pay costs to a person who has not been on the suit land or have been developing the same.

As for the third and fourth grounds which were argued together, Mr. Kittigwa submitted that through evidence the appellant is not a trespasser and that the respondent admitted that the appellant's house was not on his suit land and so he was not liable to demolition or payment of costs as ordered by the Tribunal. He prayed for the appeal to be allowed with costs and the judgment and decree of the Tribunal be set aside.

Responding to the submissions, Mr. Living, on the first ground submitted that there was produced Letter of Offer and Certificate of Title which was admitted as **Exhibit P1** and **P2** respectively without objection. He said the witness **PW3** who was the Land Officer of Ilala Municipal Council is the custodian of the land records pertaining to the Municipal. He pointed out that the Registrar of Titles does not allocate land, but his principal duty is to register estates of land and the court ought to take judicial notice of the signature of the Commissioner for Lands. As for valuation Mr. Living said the appellant is not supposed to challenge the valuation report as it was admitted in evidence. He said the appellant had an opportunity of doing so during cross-examination at the Tribunal and not at this stage. As for the assessor's opinion Mr. Living said this is a new issue which was not pleaded in the Memorandum of Appeal. But he said the Chairman concurred with the opinion of the assessors and said so in the judgment, Mr. Living therefore assumed the opinion of the assessors was on record. He also distinguished the case of **Emmanuel Christopher Lukumai** (supra).

As for the second ground Mr. Living said that according to the evidence the appellant occupies the adjacent plot and he might have been on his land since 1999 but according to the survey the suit plot belongs to the respondent and the appellant trespassed in 2011 and the sale agreement which shows that the appellant bought the suit land is dated 2016 when the land was already acquired by respondent.

As for the third and fourth grounds of appeal, Mr. Living admitted that the main house of the appellant is not in the respondent's plot and the respondent did not complain about that but for the business frames. He said in his Written Statement of Defence (paragraph 3) said he bought the plot where the main house was situated and his wife bought and built shops at the adjacent plot which is the suit land. He said it is not logical for his wife to have bought un-surveyed Plot in 2006 on an area which was already surveyed in 2002. He prayed for the appeal to be dismissed with costs for want of merit.

In determining this appeal, the main issue is whether this appeal has merit. I will consider the grounds of appeal generally.

In any registered land proof of ownership is by way of Certificate of Title and/or Letter of Offer. That person who is in possession of a Certificate of Title has a superior right over any other person. In the case of *Amina Maulid & 2 Others vs. Ramadhani Juma*, Civil Appeal No.35 of 2019 (CAT-Mwanza)(unreported) stated:

"In our considered view, when two persons have competing interest in a landed property, the person with a Certificate thereof will always be taken the lawful owner unless it is proved that the Certificate was not lawfully obtained."

According to section 2 of the Land Registration Act CAP 334 the owner of a registered land is the person for the time being in whose name that the estate or interest is registered.

In the present case and according to the submissions, the respondent tendered a Letter of Offer and a Certificate of Title which were admitted in evidence as **Exhibit P1** and **P2** respectively. Mr. Kittigwa is challenging the genuineness of the Certificate of Title (**Exhibit P2**). I am of a considered view that this challenge is baseless as it ought to have been raised at the Tribunal and not at this stage of the appeal. When the respondent was tendering the Certificate of Title as an exhibit there was no objection raised and the same was admitted. Challenging the genuineness of the exhibit now, at the stage of appeal is an afterthought and cannot be entertained.

Mr. Kittigwa also complained about the evidence by **PW3**. As correctly stated by Mr. Living, the duty of the Registrar of Titles is to register estates but the Authorized Land Officer who appeared as **PW3** was the representative of the Commissioner for Lands who is the custodian of land matters within the Municipality. In that respect the argument by Mr. Kittigwa that the Registrar of Titles ought to have verified the genuineness of the Certificate of Title is equally of no consequence. In the premise, the decision of the Chairman that the respondent is the lawful owner of the suit land cannot be faulted as **Exhibits P1** and **P2** are sufficient proof as to ownership according to the law and they were not objected to by the appellant in the course of trial.

The question that the appellant was on the land since 1999 and his wife bought the suit land in 2006 cannot stand as they have failed to

prove their allegations as it is settled law that he who alleges must prove.

As regards the assessors' opinion, the argument by Mr. Kittigwa has no merit. I have noted that the opinion by the assessors is in the Tribunal file. Mr. Kittigwa as an advocate and an officer of the court ought to have initiated a perusal of the Tribunal file before raising this argument. With this revelation, the case of **Emmanuel Christopher Lukumai** (supra) is therefore distinguishable to the present case as in the cited case no assessor's opinion was on the record or at all.

The other complaint by the appellant is payment of costs to the respondent. Indeed, in his initial application the respondent had prayed for compensation for denied enjoyment of his land from 07/10/2011 at TZS 20,000/= per day and general damages to the tune of TZS 7,000,000/= for disturbances and TZS 4,000,000/= for trespass. The claim for compensation in my view falls within the purview of special damages and these were not proved by the respondent as required by the law. That is why the Chairman did not bother to award any amount as regards this prayer. It is apparent that, there were disturbances which resulted in the trespass by the appellant, but I think the award of TZS 5,000,000/= is on the higher side. I am of the view that the award of general damages at TZS 3,000,000/= is justifiable, and I hold as such.

For the reasons advanced above, the appeal is hereby dismissed and the Tribunal's decision is upheld save for the award of damages which

has been reduced to **TZS 3,000,000/=**. The respondent will also have his costs.

It is so ordered.


V.L. MAKANI
JUDGE
09/03/2020