

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

**LAND CASE NO. 132 OF 2018**

**HAMZA SALUM KAMBI**

(AS ADMINISTRATOR OF THE ESTATE OF THE LATE SALUM KAMBI).....**PLAINTIFF**

**VERSUS**

**THE COMMISSIONER FOR LANDS.....1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL .....2<sup>ND</sup> DEFENDANT**

Date of Last Submissions: 03.08.2020  
Date of Judgment: 28.09.2020

**JUDGMENT**

**V.L. MAKANI, J**

HAMZA SALUM KAMBI has filed this suit as the Administrator of the Estate of his late father Salum Kambi. He is praying for judgment and decree against the defendants as follows:

- 1. A declaration that the plaintiff is a lawful owner of the suit property located at Plots No. 45 and 49 Block A Pugu Mwakanga within Ilala Municipality and the act of the 1<sup>st</sup> defendant to require the plaintiff to submit the right of occupancy in respect of Title No. 148327 and 157284 respectively for revocation is null and void.*
- 2. An order of this honourable court requiring the 1<sup>st</sup> defendant not to continue with the revocation process.*
- 3. Costs of this suit.*
- 4. Any other relief(s) this honourable court deems just and proper to grant.*

The matter proceeded ex-parte against the defendants who failed to file their Written Statements of Defence by virtue of Order VIII Rule 14(1) of the Civil Procedure Code, CAP 33 RE 2002 as was amended by GN.381 of 2019.

The plaintiff's case was built on the evidence of three witnesses; the plaintiff himself Hamza Salum Kambi (**PW1**), Ally Simon Mkumbi (**PW2**) and Kassim Katundu (**PW3**). The plaintiff was represented by Mr. Bakari Juma and Peter Joseph Lyimo from Future Mark Attorneys. According to the pleadings the main issues for determination were:

- a) whether the plaintiff by virtue of him being an administrator was the lawful owner of Plots No. 45 and 49, Block A, Pugu Mwakanga, Ilala Municipality Dar es Salaam.*
- b) Whether the intended revocation of the Certificates of Title which was under process by the 1<sup>st</sup> defendant was proper and justifiable.*
- c) Whether the 1<sup>st</sup> defendant followed proper procedures of revocation according to the law.*
- d) To what reliefs are the parties entitled to.*

In his testimony as **PW1** the plaintiff said he is the administrator of the estate of his father, the late Salum Kambi, who died in 1988 leaving 7 children. He said his late brother Abasi Salum Kambi was the initial administrator, but he unfortunately died on 15/04/2016 as per the Death Certificate (**Exhibit P1**). He said he was appointed as an administrator to take over from his late brother by Temeke Primary

Court on 29/06/2017 and was given a letter of appointment (**Exhibit P2**). He said his father Salum Kambi had a house and a garage in Temeke and a farm in Pugu. The farm was bought from Asha and Zabibu Mbaruku. He said the piece of land is no longer a farm as it has been surveyed and there was established new plots namely, Plots Nos. 45,47,48 and 49 Block A, Pugu Mwakanga with Certificate of Titles Nos. 148327, 147622, 148336 and 157284 (**Exhibits P3, P4, P5 and P6**). He said when they wanted to develop these plots there arose a dispute with small scale business people who claimed that the area belonged to them. He said the Office of the Regional Commissioner Dar es Salaam intervened and wanted him to present documents which he did, and after checking the documents the Regional Commissioner was of the view that he was the lawful owner and wrote a letter to that effect (**Exhibit P7**).

The plaintiff went on saying that when the family wanted to develop the area, they were not able to do so because they received letters to stop development of the plots. He said he wrote a letter to the Prime Minister to explain the situation who in turn wrote to Ilala Municipal Council for them to explain what is on the ground (**Exhibit P8**). The plaintiff said when they were waiting for the Municipal Council to give explanations they received letters from the Commissioner for Lands in respect of Plots No. 45,47 and 49 that he was supposed to return the Certificates of Titles for these plots for purposes of revocation (the letters are collectively **Exhibit P9**). According to the plaintiff the reasons for the revocation as assigned by the Commissioner was that the plots were not in the list of

properties of the estate of the late Salum Kambi. He said in his opinion this reason had no merit because by so doing their right would be lost. He then instituted this suit against the Commissioner to secure their right in respect of Plots Nos. 45 and 49 (the **suit plots**). He prayed the court to declare him the rightful owner of the suit plots; and for the Commissioner to be stopped from revoking the Titles which are family property.

On clarification to the court, the plaintiff said there is no letter in respect of revocation of Plot No. 48. He said on the suit plots there are small scale business people who have erected "*vibanda*". There are no permanent houses in the area and on one side there is a football pitch.

**PW2** Ally Simon Mkumbi said he has been in Pugu area since 1951. He said he knew Salum Kambi as his neighbour since they were little kids. He said they later became relatives as one of Kambi's brother married his sister. He said he knew that the late Salum Kambi had a house and a garage in Temeke and had a farm in Pugu. He said problems began when the aunty of Kambi's children (the plaintiff and the others) known as Ndela started selling the property claiming that the property belonged to their father and not Salum Kambi. She sold about 3 acres to Amadori but the remaining part was sold later. He said the plaintiff was in abroad but when he came back, he started following up and when the CCM office in the area discovered this they gave Amadori another piece of land and the area became a football pitch and/or a meeting place.

He said the plaintiff and his sisters found a document in their father's belongings that showed that he had by then purchased the land for 200/= when they showed him the document he was then able to show them the boundaries which were in the East-Mwauhe, West-Forogo Rajabu, North - Bette and South - the Highway from Dar es Salaam to Kisarawe. He said he was interviewed by the Regional Commissioner Dar es Salaam about the said plots and after the interview the Regional Commissioner was convinced that the suit plots belonged to the plaintiff and his family. In the public rally in Pugu the Regional Commissioner asked the people if anyone had documents in respect of the suit plots to bring them forward for scrutiny and he gave them a week only. He said only the plaintiff and his brothers had documents and they presented them to the Regional Commissioner. He said he was informed by the Regional Commissioner after checking the documents that the suit plots belonged to the plaintiff and his brothers. He further clarified that the plaintiff's Aunty one Ndela who is now deceased sold pieces of the farm land save for a small part which was not in dispute.

**PW3** said he came to court just to give evidence on the death of Salum Kambi and Abasi Kambi and the takeover by the plaintiff as the current administrator of the estate of their father Salum Kambi. He said he knew the family as their neighbour. He said he did not know anything about the properties of the family.

In the final submissions Mr. Lyimo answered the first issue in the affirmative as the Certificate of Titles issued bears the name of the plaintiff. He submitted that according to the case of **Amina Maulid & 2 Others vs. Ramadhani Juma, Civil appeal No. 35 of 2019 (CAT-Mwanza)** (unreported) proof of ownership of a registered land is through a Certificate of Title and since the certificates of title by the plaintiff were not illegally/unlawfully obtained for that matter he submitted that the plaintiff was the lawful owner of the suit plots as an administrator of the estate of his late further.

As for the second issue Mr. Lyimo submitted that the reasons which were advanced by the 1<sup>st</sup> defendant to justify the revocation of the Right of Occupancy of Plots No. 45 and 47 according to **Exhibit P9** were not strong. He said the fact that these plots were not in the Probate Form No. 1 as among the properties of the late Salum Kambi was not a good cause as provided for under section 45(2) of the Land Act CAP 113 RE 2019 and there was no breach of any condition in the right of occupancy as stipulated in section 45(1) of the Land Act. He thus concluded that the revocation was not justifiable.

As regards as to whether the 1<sup>st</sup> defendant followed proper procedures laid down by the law in revoking the plaintiff's right of occupancy. Mr. Lyimo submitted that the 1<sup>st</sup> defendant did not follow proper procedures because before revocation he had to make sure if the breach could be remedied before embarking on revocation as per section 47(1) of the Land Act. He said if the breach could be remedied according to section 47(2) of the Land Act then no further action

would be taken but if the breach was not remedied then the 1<sup>st</sup> defendant could have proceeded in accordance with section 48 of the Land Act. According to Mr. Lyimo the 1<sup>st</sup> defendant did not give the notice of 90 days as provided by the law but gave only 15 days according to **Exhibit 9** which is contrary to section 48(2) of the Land Act. He emphasized that no proper procedure of revocation was undertaken by the 1<sup>st</sup> defendant.

As for the last issue Mr. Lyimo submitted that the plaintiff is entitled to all the reliefs which have been pleaded in the plaint.

Having narrated the evidence by the parties and the summary facts herein, and having gone through the final submissions by Counsel, I will now endeavour to consider the issues as raised and I will be guided by the principle that the burden of proof in such matters lies with the plaintiff according to section 111 of the Law of Evidence Act CAP 6 RE 2019. The determination of this matter will be confined to Plots No. 45 and 49 Block "A", Pugu Mwakanga, within Ilala Municipality with Certificates of Title No. 148327 and 157284 respectively as pleaded in the plaint and the reliefs sought.

According to Section 2 of the Land Registration Act CAP 334 RE 2019 the word "owner" means:

*"in relation to any estate or interests the person for the time being in whose name that estate or interest is registered."*

This position was replicated in the case of **Salum Mateyo Vs. Mohamed Mateyo (1987) TLR 111**. This means, any presentation

of a registered interest in land is a prima facie evidence that the person so registered is the lawful owner of the said land. The position was reiterated in the case cited by Mr. Lyimo of **Amina Maulid Ambali & 2 Others vs Ramadhani Juma** (supra) where the Court of Appeal stated:

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

This judgment cited the book of **Conveyancing and Disposition of Land in Tanzania** by Dr. R.W Tenga and Dr. S.J. Mramba Law Africa Dar es Salaam, 2017 at page 330 where it was said:

*"...the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transaction that confer, affect or terminate that ownership or interest. Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title."*

In the present case **Exhibits P3** and **P6** are Certificates of Title No. 148327 and 157284 for Plots 45 and 48 Block A, Pugu Mwakanga, Ilala Municipality. These certificates are in the name of the plaintiff as the legal person representative of Salum Kambi (deceased). There is nothing which has been presented to state otherwise except for the letters of intended revocation which in my view does not in any way displace the plaintiff from ownership of the said suit plots since it was a mere intention. In any case, the plaintiff placed the matter before the Regional Commissioner who according to **PW2** came to the field



and asked in a rally for anyone who had queries about the suit plots to come out with proof but no one did so except the plaintiff and his family and this was confirmed by the office of the Regional Commissioner through "*Katibu Tawala Mkoa*" in **Exhibit P7**. The evidence of PW2 also corroborates that the Regional Commissioner visited the area about the dispute in relation to the suit plots and that these plots belong to the plaintiff's family. Since the area was surveyed and there are Certificates of Title and the same have not been revoked this is proof that Plots No 45 and 49 with Certificate of Titles No. 148327 and 157284 belong to the plaintiff as the Administrator of the estate of the late Salum Kambi and this is prima facie proof of ownership of land by virtue of the case of **Amina Maulid Ambali & 2 Others vs Ramadhani Juma** (supra). The first issue is therefore answered in the affirmative.

As for the second issue whether the intended revocation of the Certificates of Title which was under process by the 1<sup>st</sup> defendant was proper and justifiable, I am in agreement with Mr. Lyimo that the reason provided by the 1<sup>st</sup> defendant for the revocation and the process for revocation was not proper according to the law. The president is entitled to revoke a right of occupancy upon good cause according to section 45(2) of the Land Act CAP 113 RE 2019. And section 45 (2A) of the Land Act defines "*good cause*" to include the following:

- (a) *there has been an attempted disposition of a right of occupancy to a non-citizen contrary to this Act and any other law governing dispositions of a right of occupancy to a noncitizen;*

- (b) the land the subject of the right of been abandon for not less than two years;*
- (c) where the right of occupancy is of land of an area of not less than five hundred hectares, not less than eighty per centum of that area of land has been unused for the purpose for which the right of occupancy was granted for not less than five years;*
- (d) there has been a disposition or an attempt at a disposition which does not comply with the provision of this Act;*
- (e) there has been a breach of a condition contained or implied in a certificate of occupancy;*
- (f) there has been a breach of any regulation made under this Act;*
- (g) where there is contravention of section 120 A or 120B.*

The reason that was stated by the 1<sup>st</sup> defendant in his letter **Exhibit 9** was that the said suit plots are not listed in Probate Form 1 as such not the property of the late Salum Kambi. This reason is not among the reasons listed above, or otherwise, the 1<sup>st</sup> defendant has not stated whether the said reason fall within the ambit of the reasons listed above. The 1<sup>st</sup> defendant has not even said that there is a breach of any condition stated in the Certificates of Title. On the other hand, **Exhibit P9** states that the basis of the letter is the investigation by the Regional Commissioner, however, it was the same Regional Commissioner who conducted a rally and a letter from his office by *Katibu Tawala Mkoa* (**Exhibit P7**) declared the plaintiff's family as owners of the said suit plots after thorough investigation and failure

by the other parties claiming the suit land to present any documents pertaining to ownership of the said suit plots. It is not clear which investigation and by which Regional Commissioner the 1<sup>st</sup> defendant was referring to, but it surpasses the normal mind that the same office would do an investigation and give different results. In any case, the evidence for the plaintiff is well linked to show the query by the Regional Commissioner, the investigation and the result thereof and it has not been controverted. In the circumstances, we can state with certainty that there was no good cause and/or justifiable for the intended revocation. The second issue is thus answered in the negative.

As for the third issue, the process for revocation is stipulated under section 47 of the Land Act. According to the said provision, there has to be an initial satisfaction by the 1<sup>st</sup> defendant that there is a breach and that the breach, can be remedied. If a party agrees to the breach he is required to remedy the said breach. If the party fails to remedy the breach, then further action on revocation proceeds. And revocation cannot take place until there is a notice of 90 days after the failure by the party to remedy the breach (section 48(2) of the Land Act). According to the records this step has not been taken by the 1<sup>st</sup> defendant as the plaintiff has not been told to make any remedy of the alleged breach and no notice thereof has been given to him, as such the revocation process at its initial stage was not proper. What is on record is **Exhibit P9** which does not qualify as a notice for remedy for breach or rather a notice for revocation after failure to remedy breach. In that respect as stated hereinabove, the

third issue is also answered in the negative, that the 1<sup>st</sup> defendant has not followed proper procedures for revocation of the suit plots.

The last issue is the reliefs the parties are entitled to. For the reasons I have endeavoured to address hereinabove, the plaintiff is granted reliefs as I hereby order as follows that:

1. The plaintiff by virtue of being an administrator of the estate of Salum Kambi is the lawful owner of the suit property located at Plots No. 45 and 49 Block "A", Pugu Mwakanga, within Ilala Municipality with Certificates of Title No. 148327 and 157284 respectively.
2. That the revocation process by the 1<sup>st</sup> defendant should stop forthwith as it is contrary to the law, and the call by the 1<sup>st</sup> defendant for the submission of Certificates of Title Nos.148327 and 157284 is null and void.
3. The plaintiff is entitled to costs of this suit.

It is so ordered.



*V.L. Makani*  
**V.L. MAKANI**  
**JUDGE**  
**28/09/2020**