

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 63 OF 2018

MOHAMED AKBAR PLAINTIFF

VERSUS

MARK DANHI BOMANI 1ST DEFENDANT

BAGAMOYO DISTRICT COUNCIL 2ND DEFENDANT

THE COMMISSIONER FOR LANDS 3RD DEFENDANT

THE HONORABLE ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

S.M. MAGHIMBI, J:

The suit beforehand was lodged by the plaintiff on the 24th day of May, 2018. In his plaint, the plaintiff's claim against the defendants jointly and severally is for the declaration that he is the legal owner of all land described as Farm No. 2342 and 2343 situated at Kerege, Bagamoyo District of Coast Region ("the suit property"). His claim of ownership was based on a letter of offer with reference No. BAG/6409/1 issued to the plaintiff on the 01st day of January 2004 on Farm No. 2343 and lawfully occupying Farm No. 2342.

The plaintiff further claimed that without any color of right nor any Notice or consultation with the plaintiff, the 2nd defendant resurveyed the plaintiff farm known as Farm No. 2343 together with Farm No. 2342 with Plan No. E764/64 and renamed it as Plot No. 270 and Plot No. 271 Kerege with plan

No. E764/255 and proceeded to issue offer letter with reference No. BAG/LD/166621 to the 1st defendant on 6th August 2013 and over plot No. 270 and Plot No. 271 on 12th September 2013. Subsequently on 17th October 2013, the 3rd defendant issued a certificate of Title No. 127628 over Plot No. 270 to the 1st defendant. He alleged that the whole transaction by the 1st defendant to the 2nd defendant was fraudulently bought from a fictitious person who impersonated himself as Mr. Mohamed Akber Manji and sold the plaintiff's pieces of land to the 1st defendant.

The plaintiff further claimed that on 06th May 2015, the 2nd defendant confirmed to him that the alleged Plot No. 270 and 271 granted to the 1st defendant with Plan No. E764/255 are on the farm No. 2343 and 2342 which belongs to the plaintiff with Plan No. E764/64 and demanded physical site verification by the plaintiff who dutifully complied with the directives but still the 2nd defendant failed, refused or neglected to initiate the procedure for revocation of the 1st defendants Title. He therefore prayed for judgment and decree against the defendants jointly and severally as follows:

1. Declaration that the Survey Plan No. E 764/255 over Plot No. 270 and Plot No. 271 is illegal, null and void.
2. Declaration that the grant of Right of Occupancy over Plot No. 270 with Certificate of Title No. 127628 Kerege Area to the 1st defendant is illegal, null and void.
3. Declaration that Offer letters with Reference No. BAG/LD/16621 on Plot No. 270 and BAG/LD/16622/14/WSN over Plot No. 271 are illegal, null and void

4. Declaration that the plaintiff is the legal owner of all land comprised in Farm No. 2343 and 2342 Kerege Area, Bagamoyo, Pwani Region
5. Payment of Tshs. 1,00,000,000/= being special damages for trespass.
6. Payment of General Damages as may be assessed by the Honourable Court.
7. Interest on item (5) above from the date of the judgement at a Commercial Rate of 22%
8. Interest on decretal amount form the date of the Judgment until payment in full
9. Cost
10. Any other relief as the court may deem it fit and just to grant

Hearing of the suit proceeded ex-parte of the defendants. In order to prove his case, the plaintiff called two witnesses, himself as PW2 and one Douglas Enock Nkomolo a police officer from Chalinze Police Station. The evidence of PW1 was on the allegations of the plaintiff that there is a person who impersonated himself as Mohamed Ikbar and sold the suit property to the 1st defendant. His investigation was however an equivalent of the finding of the Ward Tribunal sitting in Land matter because what he did was initially to interview Village Council leaders and neighbors of the disputed land who told him that the lawful owner is Mohamed Ikbal. He tendered a letter from the RPC Coast Region to the Commissioner for Land, which was admitted as EXP1. He also tendered a letter from the department of maps and survey to the RCO Coast Region on the issue of forgery which was admitted as EXP2.

PW1 claimed that the person who actually forged the documents and sold the disputed land to the 1st defendant was Mohamed Akbar Manji. He also tendered a letter from the National Elections Commission to the RCO explaining about a Voter's identification Card No. 47908043, the letter was admitted as EXP3 and the voters identification card alleged to have been forged was admitted as EXP4. He concluded that the investigation revealed that the lawful owner of the suit property was Mohamed Iqbal Haji and not Mohamed Iqbal Manji.

At this point I have posed to ask myself, if the investigation of PW1 revealed that the EXP4 was forged and that the so called Mohamed Iqbal Manji is an impersonation, why weren't there any steps taken against him by the police? I mean forgery is a serious offence which one would expect that the proper cause is taken against the culprit. Therefore when none was done it makes you wonder. I have also taken note of the fact the person who is alleged to impersonate himself as the vendor of the suit property has not been joined in the suit as the defendant. The reason why he is not one of the defendants has not been revealed to this court, however, I will leave this one at this point.

I will now turn to the plaintiff's (PW2) evidence. He opened his testimony by saying that in the plaint, his name reads Mohamed Akbar, but his real name is Mohamed Iqbal and that both are his names. However, he did not bring any documentary proof that his names are used interchangeably. At this point, out of shock I have posed to wonder, first and foremost this case itself is based on allegations of fraud (the plaintiff alleging that a person who is not a party to the suit, has impersonated him and sold the

land to the 1st defendant); then here is the plaintiff with all kinds of names and wanting the court to believe that all the above are his names. Had the plaintiff wanted the court to believe that he has several names, then he would have brought documentary evidences to show that he has several names used interchangeably. Since that was not done, we can not simply say that "Mohamed Akbar is also Mohamed Iqbal" who claims to be the plaintiff herein.

Further to the above, I have taken time to peruse through other exhibits. To begin with, Collective EXP5 is sale agreements between AbdulRazaq Shah and Mohamed Iqbal Haji Mohamed dated 19/04/2020 while the current plaintiff's name as per the pleadings is Mohamed Akbar. There is also EXP6 which is the minutes of Village Meeting to grant the land to Mohamed Iqbal Haji which is again contrary to the EXP7 and EXP8 which are Land Forms No. 21 addressed to Mohamed Akbar and received by Mohamed Iqbal Haji. All these exhibits have left me with confusion on whether the said Mohamed Akbar, the plaintiff herein, is the same Mohamed Iqbal Haji who is testifying before the court as PW2 and alleged to have been impersonated by a person who sold the land to the 1st defendant.

At this point, I find it safe to conclude that the court cannot be in a position to determine whether the plaintiff Mokamed Akbar is one and the same person as PW2 who testified in court in the name of Mohamed Iqbal. Furthermore, the documents that were tendered bear different names of the party to whom the land was granted to and the one acknowledging receipt of those document. Therefore it is difficult to rule out the possibility

that it is the PW2 who is impersonating the real plaintiff, Mohamed Akbar whose names appear on EXP7 and EXP8.

On those observations, I am hesitant to proceed to determine this case in favor of the plaintiff because his case is founded on allegations of forgery and impersonation while he has failed to show this court the real connection between Mohamed Akbar the plaintiff herein and the PW2, alleging to be the plaintiff but goes with the name Mohamed Iqbal Haji. The suit is therefore struck out.

Dated at Dar es Salaam this 14th day of December, 2020



S.M. MAGHIMBI

JUDGE