

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

**LAND CASE NO. 303 OF 2016**

**JOVENT CLAVERY RUSHAKA ..... PLAINTIFF**

**DEVOTA YIPYANA MPONZI ..... PLAINTIFF**

**VERSUS**

**BIBIANA CHACHA ..... DEFENDANT**

**JUDGMENT.**

**S.M. MAGHIMBI, J:**

The plaintiffs and the defendant are in a battle over ownership of a piece of land which is now known as Plots No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 situated at Mbuyuni Area within Ilala Municipality of Dar-es-salaam. From the gathered facts, the parties appear to have purchased the suitland at different times from the same person one Wilson Kapela who is now deceased. The plaintiffs claim to have bought and in peaceful occupation of the suitland measuring 8.5 acres from the year 2003 until 15<sup>th</sup> day of July, 2016 when the defendant is alleged to have trespassed therein. On her part, the defendant claims to own only 5.5 acres out of the 8.5 claimed by the plaintiff. She traces her ownership from a purchase of the suitland from the late Wilson Kapela on the 20<sup>th</sup> day of July, 1999.

Following the defendant's alleged trespasses in 2016; the plaintiffs filed the current suit and a subsequent amended plaint on 21/05/2019 praying for judgment and decree against the defendant as follows:

- a) A declaration that the plaintiffs are lawful owners of the property in Plots No. 1,2,3,4,5,6,7,8,9,10 and 11 all Block "T" situated at Mbuyuni Ilala Municipality.
- b) A declaration that the Defendant is a trespasser on plots of land described in paragraph 3 of the plaint.
- c) A permanent injunction restraining the Defendant from further trespass on the plaintiffs land described in paragraph 3 of the plaint.
- d) General damages to be assessed by the court.
- e) Costs of the suit.

In her Written Statement of Defence to the amended plaint, the defendant denied the allegations of trespass making a prayer that the plaintiffs' claim be dismissed with costs.

Upon conclusion of the pleadings and other preliminaries pursuant to Order VIII of the Civil Procedure Code, Cap. 33 R.E 2002 (as amended), the following issues were deliberated and agreed to be framed for determination of this suit:

- i. Who is the lawful owner of the disputed properties?
- ii. Whether the Defendant has trespassed over the disputed properties.
- iii. To what reliefs are the parties entitled to.

In order to prove their case, the plaintiffs paraded four witnesses while the defendant paraded three witnesses. Beginning with the first issue of the

ownership of the disputed property, according to the evidence of PW1, the alleged trespass by the defendant came to his knowledge on the 15/07/2016 when he was called by his neighbor Daudi Musa Kapela (PW2) that his farm has been invaded. That PW2 also told him that there was lady who came with about 7 people with her and arrested the shambaboy and took him to the local government authority.

On the history of his ownership to the disputed property, PW1 testified that he bought the suitland from Wilson Kapela in the year 2003. He tendered EXP1 which is the sale agreement between him and the late Kapela, an agreement which content do not contain the year that the sale was executed. There is however date 26/01/2003 where the 1<sup>st</sup> plaintiff signed the agreement.

PW1 further testified to have surveyed the land and produced 11 pieces of land registered in Certificates of Titles collectively tendered as EXP3. His testimony was corroborated by that of PW2, Daudi Kapela who is the elder brother to the vendor, Wilson Kapela. PW2's testimony was that the land was sold to the plaintiffs in the year 2002 and that he was there when his brother was selling the land. He testified further that after he selling the piece of land, Wilson left and the owner of the disputed land remained Mr. Rushaka (PW1).

PW2 also testified that he saw the transaction but he was not made part of the said sale. PW2 denied to have any knowledge of the transaction between his brother and the defendant and that he only knew of the defendant in the year 2016 when the dispute arose.

On his part, PW3 didn't have much to say apart from the fact that he was the local authority leader from 2004-2014 and that he knew the plaintiff as

the owner of the disputed land and denied knowledge of the defendant. PW4's evidence was that he knew the plaintiff as the person who came to the local authority, while PW4 was street chairman, to purchase land. Further that the plaintiffs were introduced to him by one Uwesu Omari Katundu who is now deceased. PW4 also testified to have witnessed and signed the sale agreement (EXP1).

On the other hand, the defendant claims that she and her late husband bought the land on 20/07/1999 at a price of Tshs. 800,000/-from the late Wilson Kapela, she tendered the sale agreement as EXD1. After buying the land they developed it and planted different crops including trees like palm trees, cashew trees, guava trees and pineapples. She also testified that in the land they bought they built a house which they used for keeping the farm equipment; the house was built in the year 2000.

Further that the purchase price was paid at the office of the Hamlet Chairman called Saidi Abdallah Likwembe (DW2). The boundaries identified by the defendant included Charles Masanja on the South, Daudi Musa Kapera (PW2) on the North, Wilson Musa Kapela had land on the West and on the East is the road.

At this point, it my finding that the evidence by both sides has undisputedly established that the land in dispute originally belonged to one Wilson Kapela who is now deceased. The defendant has successfully proved that she and her husband bought the land in the year 1999 (EXD1) while the plaintiff established to have purchased the land in the year 2003 (EXP1). The only question being whether the plaintiffs also purchased the defendant's piece of land sold by Wilson.

Since both parties purchased the suitland from the same person, the question is whether at the time of selling the suitland to the plaintiffs the vendor still had title over the land already sold to the defendant. As far as the evidence stands, the defendant bought the suitland before the plaintiff did. Even in her defence, the defendant testified to have been a neighbor of the vendor, a land which is presumable the one purchased by the plaintiff later on. Furthermore, on the 29/11/2019 when we visited the locus in quo, both parties showed the same piece of land, the only difference being that the defendant only showed and claims for a part of the disputed and not all of it. While the plaintiff claims to own an estimated 8.5 acres; the defendant only claims 5.5 acres out of the total 8.5 acres.

In his closing submissions, Mr. Joel correctly argued that the year that the parties purchased the suitland is of great importance. As for the plaintiff, he testified to have bought the suitland in the year 2003 while PW4 testified to have witnessed the said sale in 2002. Furthermore, the plaintiff's evidence that he bought the land in 2003 makes the defendant's purchase in 1999 valid as she bought the land before the plaintiffs. Since the evidence proved that the defendant bought a piece of land in 1999 from the same Wilson Kapela who sold the land to the defendant, it is hence evident that when the said Wilson was selling the land to the plaintiffs in 2003, he no longer had title to that piece of land that he had sold to the defendant. The sale was therefore a nullity.

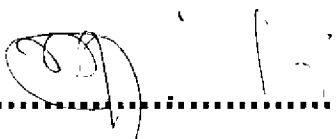
From the above evidence and analysis and on balance of probabilities, the defendant's evidence is more probable that she bought part of the piece of land before the same was sold to the plaintiffs hence the vendor had no title to the defendant's land to pass it to the plaintiff. The first issue is therefore answered in favour of the defendant. The defendant remains the

lawful owner of that piece of disputed land, the extent of the piece of land that was sold to the defendant and her husband by Wilson in the year 1999.

The answer to the first being in favour of the defendant, it automatically disposes the second issue, since the defendant is the owner of the disputed piece of land, then she has not trespassed therein. It hence follows that the part of EXP3 which are title deeds that fall within the piece of land belonging to the defendant are a nullity.

The last issue is on the reliefs that the parties are entitled to. Since both the first and second issues are answered in favor of the defendant, the plaintiffs' claims have not been proved. In her written statement of defence to the amended plaint, the defendant prayed for dismissal of the suit with costs. As stated earlier, since the first and second issues are decided in favor of the defendant, this suit is hereby dismissed with costs awarded to the defendant.

Dated at Dar es Salaam this 12<sup>th</sup> day of February, 2020



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**S.M. MAGHIMBI**

**JUDGE**