

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

LAND CASE NO. 450 OF 2016

ALEX MWITA MSAMA.....PLAINTIFF

VERSUS

**KINONDONI MUNICIPAL COUNCIL.....1ST DEFENDANT
THE COMMISSIONER FOR LANDS.....2ND DEFENDANT
THE ATTORNEY GENERAL.....3RD DEFENDANT**

Date of Last Submissions: 27.03.2020
Date of Judgment: 17.04.2020

JUDGMENT

V.L. MAKANI, J

The plaintiff, ALEX MWITA MSAMA, has filed this suit seeking for judgment and decree against the defendants jointly and severally as follows:

(a) Declaration that the plaintiff is the legal owner of all land described as Plot No. 234 Regent Estate Dar es Salaam.

In the alternative the plaintiff has prayed for:

(b) Payment of TZS 1,611,720,000 being special damages.

(c) General damages as may be assessed by the court.

(d) Interest at commercial rate of 22% from 15/06/2016 to the date of judgement.

(e) Interest of the decreed amount from the date of judgment at court rate of 7% until payment in full.

(f) Costs.

(g) Any other relief as the court may deem it fit and just to grant.

The defendants filed their written statements of defence (the 2nd and 3rd defendants jointly) and disputed all the claims by the plaintiff and prayed for the suit to be dismissed with costs.

At the trial the plaintiff was represented by Mr. Magusu Muguko, Advocate. The 1st defendant was represented by Mr. Mwambalawa, Solicitor and Mr. Kamihanda, State Attorney represented the 2nd and 3rd defendants.

The following were the agreed issues:

- 1. Whether the plaintiff is the lawful owner of Plot No. 234, CT No. 186152/60, Regent Estate, Dar es Salaam.*
- 2. Whether the disputed plot had been surrendered to the Government of Tanzania.*
- 3. Whether the plaintiff is entitled to compensation to the tune of TZS 1,116,720,000/=.*
- 4. Whether the plaintiff is entitled to special and general damages as claimed.*
- 5. To what reliefs are the parties entitled.*

The plaintiff's case was built on the evidence of the plaintiff only (**PW1**) who said he bought the property described as Plot No. 234

with CT. No. 186152/60, Regent Estate, Dar es Salaam (the **suit property**) from Benedicto Rweikiza Ijumba. He said before buying the suit property there were previous owners. He said the first owner was Gideon Chaghuza and then the Norwegian Agency for International Development, Mayasa Lumbe and lastly Benedicto Ijumba. The Sale Agreement between Mayasa Lumbe and Benedicto Ijumba was admitted as **Exhibit P1** and the Agreement between Benedicto Ijumba and the Plaintiff was admitted as **Exhibit P2**. The plaintiff said he has been living on the suit property with his family from 2016. He said he has never received any notice from the Government to vacate and he has not had any disturbances whatsoever, other than receiving water bills and notices for payment of land rent and taxes. He said he made some renovations after the purchase of the suit property and after he had confirmed from the Kinondoni Municipal Council and the neighbours that Benedicto Ijumba was the previous owner of the suit property. He said he wrote to the Municipal Council asking for Certificate of Title and Land Officers came for inspection of the suit property and he paid the initial taxes of TZS 9,000,000/=. He said he has never received the Certificate of Title for the suit property to date though he followed all the procedures. He said he was later informed that the suit property belonged to the Government.

The plaintiff further claimed that the Director of the Municipal Council initially told him everything was fine but was surprised to be told that the suit property had been surrendered to the Government. He said though the Director wrote to notify him of this fact, but he did not

receive the letter. The plaintiff told the court that he complained to the Minister for Lands about this issue and a meeting was convened and the Minister directed his Officers to look into the matter, but no good results have been received since then. He said to this date he has not been informed that the suit property belongs to the Government. He said after following up for a long time he decided to give a Notice of intention to sue the Government (**Exhibit P4**). He prayed the court to declare him the owner of the suit property because he legally bought the property with his money and the property has never been under the ownership of the Government. He said he wanted to live in peace with his family without any disturbances.

On cross-examination the plaintiff admitted that he did not conduct any official search before purchase of the suit property from Benedicto Ijumba. He also said that Benedicto Ijumba told him that the suit property had a Certificate of Title and it was surrendered to the Government, but he never bothered to follow it up because the one who sold the suit property to him (Mayasa Lumbe) was his friend. He said though the process of sale is not complete he did not sue the seller Benedicto Ijumba because the seller is his friend and he had trust in him. He also said he has no proof that the Commissioner for Lands or the Municipal Council received the Agreements between the initial seller Gideon Chaghuza and the Norwegian Agency for International Development, Mayasa Lumbe, Benedicto Ijumba and the plaintiff.

As for **Exhibit C1** (a letter from Kinondoni Municipal Council dated 22/07/2016 to the plaintiff) which the court made a discovery under section 176 of the Evidence Act CAP 6 RE 2002, the plaintiff stated that he had not received it though it was addressed to him and the said address is correct. He said the letter states that the suit property has to remain under the ownership of the Government and that he should not do anything to the said property.

The 1st defendant had only one witness Emmanuel Fumbuka Segeja (**DW1**), a Land Officer at Kinondoni Municipal Council. He said according to the records the initial owner of the suit property was Gideon Chaghuza who was allocated the property in 1971. He said in 1977 Gideon Chaghuza transferred the Title to the Norwegian Agency for International Development who in turn after finishing their projects returned the suit property to the Government of Tanzania. He said according to records in 2014 they received an application for transfer of Title of the suit property to the plaintiff and when the application was in process it came to be known that the suit property was under the name of the Government of Tanzania. He said their office informed the plaintiff that transfer process could not proceed because the suit property was already surrendered to the Government. He said they have never received any complaints save for the current case which he is a witness. He said when a suit is under the Government of Tanzania it means it is under the care of the Commissioner for Lands who has the authority to allocate it to someone else.

On cross-examination DW1 stated that during the transfer process by the plaintiff he paid initial fees but at a certain stage he was told that the suit property belonged to the Government. He said they advised the plaintiff to go back to the person who sold him the suit property to recover his money. In re-examination the witnesses reiterated that the suit property is still under use by the Government it has not been allocated to someone else.

DW2 was Helen Phillip Land Officer from the office of the Commissioner for lands who testified on behalf of the 2nd and 3rd defendants. She said the suit property was initially allocated to Gideon Chaghuza in 01/07/1971. She said the suit property is now under the ownership of His Excellency the President. She said Gideon Chaghuza sold the suit property to the Norwegian Agency for International Development which surrendered the plot to the Government by way of a Deed of Surrender (**Exhibit D1**). He said the Commissioner for Lands wrote to the Attorney General explaining the history of the suit property from Gideon Chaghuza to the Norwegian Agency for International Development and back to the Government (**Exhibit D2**). On cross-examination DW2 confirmed that the suit property had a Certificate of Title No. 186152/60 and since surrender on 14/05/1979 the suit property is under the name of His Excellency the President. On clarification, the witness informed the court that the Certificate of Title is under the custody of the Registrar of Titles.

In his final submissions Mr. Magusu Mugoka tackling the framed issues stated that the suit property belonged to the plaintiff because

he has been using it for a long time, that is, for about 8 years without being harassed by anybody. He said the claim by the 1st defendant who accepted the documents for processing Certificate of Title and thereafter turning around and claiming that the suit property belonged to the government is unacceptable as he legally bought the suit property from Benedicto Ijumba. He submitted that for 42 years, that is, since 1978 the Government has not been using the suit property. He therefore asserted that the suit property belonged to the plaintiff herein. As to whether the suit property was surrendered to the Government, Mr. Mugoka said the limit for recovery of land is 12 year according to the Law of Limitation Act and hence the plaintiff is the legal owner of the suit property as surrender has not been effected since 1978. Mr. Mugoka stated that since the defendants failed to justify how the suit property is owned by the Government then the plaintiff is entitled to all the prayers in the plaint be granted with costs.

Mr. Mwambalasa the Solicitor for the 1st defendant submitted that the records are clear that the suit property is owned by the Government of the United Republic of Tanzania after the surrender by Norwegian Agency for International Development. He said the disputed land had never been transferred to Benedicto Ijumba (who purported to sell it to the plaintiff) and so the 1st defendant could not have transferred the said suit property to the plaintiff. He cited the case of **Frank Safari Mchuma vs. Sahibu Ally Shemdolwa [1998] TLR 278** which referred the case of **Hamis Sinahela vs. Asan Mbwele (1974) LRT 2**. Mr. Mwambalasa concluded by submitting that the plaintiff has failed to

prove his case and he prayed for the suit to be dismissed in its entirety with costs.

The submissions by the 2nd and 3rd defendants were by Mr. Kamihanda, State Attorney. He said the plaintiff has failed to prove how ownership of the suit property shifted from the person who bought the said suit property to him. He said the plaintiff accepted that the suit property was surrendered to the Government of Tanzania by the Norwegian Agency for International Development but he failed to prove whether or not the suit property was later on sold to some other people. He said the plaintiff ought to have conducted official search as per section 97 of the Land Registration Act CAP 334 to acquaint himself of the intended land he is about to purchase. He said failure to conduct a search is presumed that the plaintiff had notice of the suit property and he was willing to purchase the suit property as it was. In that respect, Mr. Kamihanda said the plaintiff cannot claim ownership of the suit property which at the time of purchase he had constructive knowledge of the same. Mr. Kamihanda also submitted that the plaintiff has failed to show how he arrived at TZS 1,611,720,000/= which he has claimed as special damages. He said for special damages to be awarded they must be pleaded and proved. And for the general damages claimed he said they were not proved and since there was a presumption of constructive knowledge of the suit property then he cannot claim any damages. To support all his arguments, Mr. Kamihanda relied on several cases to support his arguments including **Francis Itengeje vs. Kampuni ya Kusindika Mbegu za Mafuta Limited [1997] TLR 148, Zuberi Agustino vs. Ancient Mugabe [1992] TLR 137, Admiralty**

Commissioner vs. Susqehann (1950) All ER 392, Yusufu vs. Ahemed Abdulkadir [1987] TLR 169 and Abualy Alibai Aziz vs. Bhatia Brothers Limited, Misc. Civil Appeal No. 1 of 1999 (CAT-DSM) (unreported). He concluded that the plaintiff has failed to prove in his favour all the issues that were framed and he prayed for the suit to be dismissed in its entirety with costs.

Having elaborated what transpired in court I now turn to consider the framed issues.

I will consider the first and second issues together. The first issue for consideration is whether the plaintiff is the lawful owner suit property; and the second issue is whether the disputed plot had been surrendered to the Government of Tanzania.

It is trite law that ownership of landed property in a surveyed/planned area is proved by Certificate of Title or the least Letter of Offer. Section 2 of the Land Registration Act defines owner as follows:

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

In the case of **Salum Mateyo vs. Mohamed Mateyo [1987] TLR 111** this court held that proof of ownership is by one whose name is registered. The onus of proof of ownership lies on the plaintiff who has alleged this fact. Echoing this principle, the Court of Appeal in **Godfrey Sayi vs Anna Siame as Legal Representative of the Late Mary Mndolwa Civil Appeal No. 114 of 2014**

(CAT)(unreported) firmly stated that:

" It is cherished principle of law that, generally, in civil cases, the burden of proof lies on the party who alleges anything in his favour. We are fortified in our view by the provision of section 110 and 111 of the Law of Evidence Act [Cap. 6 R.E. 2002] which among other things states:-

110. Whoever desire any court to give judgment as to any legal right or liability depend on existence of facts which he asserts must prove that those facts exist.

111. The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side."

Also see the case of **Heritage Ali Insurance Co. Limited vs Cobweb Security Limited, Commercial Case Non 86 of 2002 (HC Commercial Division – DSM)** (unreported).

In his evidence before this court the Plaintiff did not have the Certificate of Title in respect of the suit property. He said he was in the process of transferring the suit property from Benedicto Ijumba the seller of the said plot. He only presented the Sale Agreements **Exhibits P1** and **P2**. At the same time during cross-examination he admitted that Benedicto Ijumba did not give him the Certificate of Title in respect of the said suit property and the said Benedicto Ijumba had intimated to him that the Norwegian Agency for International Development had surrendered the said Certificate of Title. So, in essence the plaintiff failed to prove and confirm to the court that indeed, title had passed from the first owner Gedion Chaghuza to Norwegian Agency for International Development, then Mayasa

Lunge, Benedicto Ijumba and ultimately to himself. The evidence by the defence witnesses **DW1** and **DW2** supported by **Exhibit D1** the Surrender Deed and **Exhibit D2**, the letter by the Commissioner for Lands to the Attorney General, were clear reflections that the Certificate of Title was not under ownership of the plaintiff but in the name of His Excellency the President of the United Republic of Tanzania. Further, the plaintiff, in the course of following up the Certificate of Title was duly informed by the 1st Defendant that there was a surrender and the property is now under the ownership of His Excellency the President and that he should not make further follow-ups of the said suit property (**Exhibit C1**). And according to the testimony of the plaintiff admitted that at one time Benedicto Ijumba told him that the suit property was surrendered to the Government. Indeed, the plaintiff may have entered into a Sale Agreement with one Benedicto Ijumba but unfortunately, and as explained above, the plaintiff failed to show how title passed from the initial owner to Benedicto Ijumba and subsequently himself. The plaintiff admitted that the initial owner of the suit property was Gideon Chaghuza and then to the Norwegian Agency for International Development which testimony has been collaborated by the evidence of DW1 and DW2. However, the plaintiff has failed completely to show how the suit property passed from the Norwegian Agency for International Development to Mayasa Lunge and then to Benedicto Ijumba. There was no document which actually showed there was transfer of the suit property as narrated by the plaintiff and there was no witness who corroborated the evidence of the plaintiff. In the case of **Farah**

Mohamed Said vs. Fatuma Abdallah [1992] TLR 205 it was stated:

"Who does not have legal title to land cannot pass good title over the same to another..."

In this present case it is apparent that Mayasa Lunge did not have good title over the suit property and therefore title could not have passed from her to Benedicto Ijumba and eventually to the plaintiff. On the other hand, one cannot claim ownership while knowing that the suit property has been surrendered to the Government. DW2 made it clear that the Certificate of Title is in the custody of the Registrar of Titles and there is nothing on record to show that the suit has been allocated to anybody.

Mr. Maguko in his submissions claimed that the plaintiff had been on the suit property without disturbance for the 8 years he has been there. This assertion does not change ownership to the plaintiff especially when the suit property is a registered property. And further still, since the plaintiff had instituted this case, prudence has it that the Commissioner for Lands could not have made any decision before the conclusion of the pending case.

From the above explanations, it is therefore an obvious fact that the suit property was surrendered to the Government. I consequently hold that the plaintiff is not the owner of the suit property and I further hold that the said suit property is in the name and use by His Excellency the President of the United Republic of Tanzania.

The third issue was whether the plaintiff is entitled to compensation to the tune of TZS 1,116,720,000/=. Compensation is a pecuniary remedy that is awarded to an individual who has sustained an injury in order to replace the loss caused by the said injury. It is apparent from the evidence on record that the alleged loss by the plaintiff of TZS 1,116,760/= was self-generated. This results from the manner in which the plaintiff himself entered into purchase of the suit property. Practically, the plaintiff as a purchaser had an obligation to have knowledge of the nature of the property, he is buying from Benedicto Ijumba. That is, the plaintiff was bound by the principle of "buyer beware" (*caveat emptor*) which assumes that buyers will inspect and otherwise ensure that they are confident with the integrity of the product or land before completing a transaction. In fact, a buyer of landed property where a house is situated is supposed to make a search, make on-site inspections of the property and make enquiries if there are any existing disputes over the property, boundaries, right of way, maintenance of roads and the like. It was therefore the duty of the plaintiff to make enquiries and search before proceeding with the sale between himself and the said Benedicto Ijumba so as to satisfy himself of the transaction. The plaintiff merely stated that he perused the file at the Municipal Council and asked the neighbours around the suit property, and further that Benedicto Ijumba (the seller) was the son of his Bishop he therefore totally trusted him. In my view, this was not enough due diligence, and, in any case, it was not official considering that there was such a substantial amount at stake. If the plaintiff had gone into trouble to

know in detail what he was buying he would have known that the suit property was surrendered and was in the name of His Excellency the President and definitely he would have desisted from buying the said suit property.

The plaintiff in his evidence told the court that he did not conduct any official search despite that he had the reference of the suit property. On the other hand, the plaintiff admitted that Benedicto Ijumba did not have the Certificate of Title and he had told him that the suit property was surrendered to the Government. This information alone, would have struck a note to the plaintiff that ownership of the suit property by his friend Benedicto Ijumba was questionable and he would have taken precautions. With this self-inflicted injury the court therefore cannot award any compensation to the plaintiff.

In any case, the plaintiff did not give evidence as to why and how he arrived at the claim of TZS 1,116,720,000/=. Unfortunately, there were no documents presented in court and the plaintiff was not led to prove the basis of this amount. The mere mention of the said amount does not validate the award of compensation. It is settled principle of law that compensation has to be substantiated by evidence; the court cannot be left speculating. Subsequently, in the absence of concrete proof, it is not safe for the court to award any compensation bearing in mind the substantial amount claimed by the plaintiff.

The plaintiff also claimed special and general damages. The particulars of the damages were pleaded in paragraph 14 (a) and (b) of the plaint as follows:

"Paragraph 14:

(a) Special damages:

(i) the plaintiff has purchased the premises for Tshs. 400,000,000/= and the value of the premises is now Tshs. 1,600,000,000/=

(ii) the plaintiff has paid the 1st defendant a total of Tshs. 11,720,000/= stamp duty fee.

(b) General damages

The plaintiff has suffered general damages as may be assess by the court."

According to **Black's Law Dictionary**, 8th edition at p. 419 "special damages" is defined as:

"Damages that are alleged to have been sustained in the circumstances of a particular wrong. To be awardable, special damages must be specifically claimed and proved."

"General damages" are also defined in the dictionary at p. 417 as:

"Damages that the law presumes follow from the type of wrong complained of. General damages do not need to be specifically claimed."

In **Masolele General Agencies vs. African Inland Church Tanzania [1994] TLR 192**, the Court of Appeal of Tanzania, held –

"Once a claim for a specific item is made that claim must be strictly proved, else there would be no difference between a specific claim and a general one..."

In the case of **Cooper Motor Corporation Limited vs. Moshi Arusha Occupational Health Services [1990] TLR 96**, the Court of Appeal of Tanzania held:

“General damages need not be specifically pleaded; they may be asked for by a mere statement or prayer or claim”

According to the evidence on record it is clear that the plaintiff has not proved the special damages claimed. As it was in the case with compensation, the plaintiff was not led to prove the said special damages. The plaintiff merely stated in his testimony that he paid TZS 400,000,000/= for the suit property but there was no corroborative evidence that indeed, the said amount was paid by the plaintiff to the seller one Benedicto Ijumba and that the seller duly received the said amount. The Sale Agreement presented does not prove that the plaintiff made payment to the seller and there was no acknowledgement of receipt of the said money from the said seller. There is no proof on record either that the suit property is now valued at TZS 1,600,000,000/= and that the plaintiff paid stamp duty to the tune of TZS. 11,720,000/=. As a result, and in consequences of the forgoing, I hold that the Plaintiff has failed to prove to the requisite standards that he suffered any special damages as such he is not entitled to the special damages claimed.

The plaintiff has also claimed general damages to be awarded by the court. The court discretionarily awards general damages after taking into consideration all relevant factors of the case. In the present instance, as stated hereinabove, it is apparent that the injury/loss on the plaintiff in this whole transaction was self-imposed and thus I do

not find it necessary to award any damages to the plaintiff and I hold as such.

The final issue is to what reliefs are the parties entitled to? For the reasons I have endeavoured to address, the plaintiff has failed to prove the case to the standards required. Accordingly, the plaintiff is not entitled to the reliefs prayed in the plaint or at all. Subsequently, the suit is without merit and it is hereby dismissed with costs.

It is so ordered.


V.L. MAKANI
JUDGE
17/04/2020