

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 113 OF 2018

OMARY RAJABU IBRAHIM.....PLAINTIFF

VERSUS

MANA COMPANY LIMITED.....1ST DEFENDANT

VIJAY MANILAL ASWALA (as administratix

Of the estate of Pushpa Manilal Aswala).....2ND DEFENDANT

COMMISSIONER FOR LANDS.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

JUDGMENT

I. MAIGE, J

The suit at hand has been instituted on 4th June 2018. It pertains to ownership a piece of land which has been described in paragraph 3 of the Plaintiff as a land "*located at Tegeta, opposite Tegeta By Night, Kinondoni Dar Es Salaam*". From the plaintiff and the testimony it is suggestive that, until 1992 the **suit property** was still unsurveyed and unregistered. It was not until in 2000 when the same was registered in the name of the second defendant and subsequently conveyed to the first defendant without the

knowledge of the plaintiff. The plaintiff claims that, the same has been registered as Plots number 1,3 and 4 Block "H" Tegeta Dar Es Salaam with Certificate of Title No. 51079.

In this suit, the plaintiff in essence has pursued an action for recovery of possession of the **suit property** and he is praying for the following reliefs:-

- 1. A declaratory order that the Plaintiff is the lawful owner of the suit property.*
- 2. A declaratory order that the issuance and grant of Certificate of Title of the Right of Occupancy of the suit land to the 2nd Defendant was illegal and thus null and void ab initio.*
- 3. An order for revocation of the Right of Occupancy of the suit property granted to the 2nd Defendant*
- 4. An order nullifying illegal transfer of the suit land from the 2nd defendant to the 1st Defendant.*
- 5. An order for the 1st, 2nd, 3rd and 4th Defendants jointly and severally to pay the Plaintiff TZS 100,000,000/= being compensation for unfair interference of the Plaintiff's quite enjoyment of his land and develop the same.*
- 6. Eviction order.*

The plaintiff traces title on the **suit property** from the original owner Ally Mohamed Abdallah who owned it customarily. He claimed to have purchased

it on 15th April 1973 (exhibit **P1**). He has been in use of the same for agricultural activities and subsequently construction of commercial premises (exhibit **P3**). Upon fencing the **suit property** with a wall, he made a request to the third defendant to have the same surveyed. He claims further that, in 2008 as he was awaiting for the outcome of his request, he realized that, his neighbor, the predecessor of the second defendant in title, had placed some beacons on the suit property. He thus drugged him to the Ward Tribunal for Kunduchi vide Case No. 309/2008 where he came out victoriously as per exhibit **P4**.

As he was in the process of executing the decree at the District Land and Housing Tribunal as per the Eviction Order in exhibit **P5**, he faced a resistance from the first defendant, by way of objection proceeding. She was asserting ownership of the **suit property** and was faulting the **trial tribunal** for making a decision affecting her interest in total curtailment of her right to be heard. The objection, it would seem, was sustained and the plaintiff was advised to initiate a fresh suit and hence the instant suit (Exhibit **P7**).

The plaintiff, it is suggestive, discovered of there being a certificate of title on the **suit property** in the name of the first defendant when the same was tendered in objectional proceeding. He is thus blaming the third defendant for allocating the **suit property** secretly while he had an application for survey and allocation of the same from the plaintiff in his file. He is also blaming the same for doing so without him being paid any compensation.

In her defense, the first defendant denies that, the plaintiff has ever been the owner of the **suit property**. Instead, she claims to be the registered owner of the **suit property** as per the certificate of title in exhibit **D3** having validly purchased it from the second defendant's predecessor in title as per exhibit **D4**. Commenting on the relevancy of the sale agreement which upon trial was exhibited as exhibit **P1**, the first defendant averred, in paragraph 4 of her written statement of defense as follows:-

The 1st Defendant states that even the purported sale agreement does not describe location of the land purchased by the Plaintiff to be the land in dispute thereof.

Remarking on more or a similar issue, the third and fourth defendants in paragraph 4 of their written statement of defense pleaded as follows:-

The 3^d and 4th Defendants further avers that the plaintiff has not demonstrated clearly if the disputed land is the one and the same that is now owned by the 1st Defendant.

On top of that, the first defendant doubted the maintainability of the suit, by way of a notice of preliminary objection pleaded in paragraph (a) of her written statement of defense, for being time barred. Upon hearing of the rival submissions, I declined to determine it for reason of being founded on a mixed points of law and facts, with a note that, it would be framed into issue to be considered in the final judgment. Therefore, on 10th February 2021 when the matter came for final PTC, the following issues were framed and recorded for determination:-

- 1. Whether the suit is not time barred?*
- 2. What is the suit property?*
- 3. Whether the suit property belongs to the Plaintiff?*
- 4. Whether the defendant is the bonafide purchaser for value without notice?*
- 5. To what reliefs are the parties entitled to?*

In the conduct of this matter, the plaintiff was duly represented by advocate Zuku. The first defendant was fended by advocate Rajabu Mrindoko while Adelaida, learned State Attorney, represented the third and fourth defendants. For unknown reasons, the second defendant neither filed a

written statement of defense nor entered appearance despite being duly served. As a result, the suit against him proceeded *ex parte*.

Due to the danger imposed by Covid-19, parties were directed to produce the substances of the evidence in support of their cases by way of affidavit of proof. This is in accordance with the provision of Order XIX Rules 1 of the CPC. Each of the parties was however afforded an opportunity to object production of any document and cross examine the deponents of the affidavits.

The plaintiff relied on five witnesses in advance of his case with him testifying as **PW1**. Other witnesses were; IBRAHIM SALIM RAJABU (PW2), JONATHAN GIBSON KAWISHE (PW3), MICHAEL BATHOLOMEO LEMA (PW4) and GODFREY JOSEPH MURO (PW5).

The first defendant on her part, produced two witnesses including her managing director one NABAHAN SALIM KADARE who testified as DW2. Another witness was LAZARO MATHIAS who represented himself as the neighbor to the first defendant. He testified as DW1. The third and fourth

defendants called one witness HELLEN PHILIP, a land officer working with the third defendant. He testified as DW3.

After closure of the trial, parties were directed to address the Court generally on the merit or otherwise of the case by way of written submissions. They were to file the same on or before 30th April 2021. The first defendant through her counsel Rajabu Mrindoko filed the same and so are the third and four respondents through their counsel Adelaida. For the reason better known to himself, the counsel for the plaintiff did not. Addressing the Court generally being an option, non-filing of the same by the plaintiff and his counsel cannot prevent the Court from determining the matter on merit.

Ordinarily I was expected to start with the first issue which questions the maintainability of the suit for being time barred. Nonetheless, since the subject matter of the dispute is the **suit property**, the first issue cannot be determined without ascertaining if what the plaintiff is claiming ownership on is really the **suit property**.

In his submissions, Mr. Mrindoko has addressed the issue. Miss Adelaida did not. In his submissions, Mr. Mrindoko contended that, the facts both in

pleadings and evidence do not describe what the **suit property** is. In the
plaint, submits the counsel, the **suit property** was generally described as a
land located at Tegeta, opposite Tegeta by Night, Kinondoni while in
documentary evidence in exhibit **P6** and the oral testimony of PW1 on cross
examination, the same is described as 332.05 square meter out of the
property which is now described as Plots Nos. 1,3 and 4 Block "H" Tegeta
Area. He submits therefore that, the suit at hand does not meet the
mandatory requirement under Order VI Rule 3 of the Civil Procedure Code,
Cap. 33, R.E., 2019 which provides as follows:-

"Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and, in case such property can be identified by a title number under the Land Registration Act, the Plaintiff shall specify such title number"

In the final result, the counsel urged the Court to dismiss the suit with costs.

I have taken time to study the pleadings and the evidence adduced in relation to the second issue. I am, with respect, in agreement with Mr. Mrindoko that, reading from the Plaintiff and the evidence adduced, one cannot establish what is the **suit property**. For instance, while the **suit**

property is in paragraph 3 of the Plaint, described as a property located at Tegeta opposite Tegeta by Night, in Kinondoni, in the sale agreement in exhibit **P7**, the same has just been described as "shamba langu" and in exhibit **P2**," eneo lake katika kijiji cha Tegeta. In the decision of the ward tribunal in exhibit **P4**, it has been described as "*eneo lake ambalo mlalamikiwa alilipima na kuweka jiwe*". Besides, in the eviction order (exhibit **P5**), the first defendant's predecessor in title was ordered "to *vacate and hand over possession of the premises described in the schedule hereto*". Conversely, in the schedule to the eviction order, the **suit property** was described in the following words:-

"To evict and remove all sheets and other materials which are on the premises of the decree holder at Tegeta."

As that is not enough, in the statutory notice to sue in exhibit P6, paragraph 6 thereof, the suit property is described as 332.058 squire meters out of 1593 squire meters in exhibit D3. The same claim was made in the oral evidence of PW1 on cross examination.

Under Order VI rule 3 of the CPC, the plaintiff is bound, where the subject matter of the dispute is an immovable property, to give description of the

property sufficient to identify it. The requirement under the respective provision is mandatory. Offending the requirement may lead to unnecessary confusions and chaos in the society as properties of persons not privies in the decree can wrongly be attached in an attempt to define the unclear subject matter of the dispute. This Court cannot assume such a risk.

In view of the foregoing discussions therefore, I entertain no doubt that the suit before me is incompetently. It is accordingly struck out with costs. It is so ordered.



I. MAIGE

JUDGE

07/05/2021

Date 07/05/2021

Coram: Hon. S.H. Simfukwe - DR.

For the Plaintiff: Present in person

For the 1st Defendant: Ms. Raheli Sambulo advocate holding brief for Rajab
Mrindoko advocate

For the 2nd Defendant: Absent

For the 3rd Defendant }
For the 4th Defendant } Ms. Adelaida Ernest State Attorney

RMA: Bukuku

COURT: Judgment delivered this 07th day of May, 2021.




S.H. Simfukwe
DEPUTY REGISTRAR
07/05/2021