

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND CASE NO. 170 OF 2020

HASSAN RAMADHAN MKOMA.....PLAINTIFF

VERSUS

ZELDA OWARD.....1st DEFENDANT

JOSEPH BYARUGABA.....2nd DEFENDANT

JUDGMENT

10/06/21 & 19/08/2021

Masoud, J.

This is an ex-parte judgment against the defendant. It is in respect of a dispute on Plot No. 597 Block E Mbezi Area, Kinondoni Municipality, Dar es salaam. The plaintiff alleged that he is the lawful owner of the suit property. The property was allocated to him way back on 12/07/1992 by the then Dar as salaam City Council. He was issued with a letter of offer of a right of occupancy dated 12/07/1992. The offer was written *Hassan R. Mkoma* which referred to *Hassan Ramadhan Mkoma*, the plaintiff herein.

The plaintiff paid all relevant fees payable on acceptance of the said offer which was, in total, to the tune of TZS 2,620. The amount comprised fees for certificate of occupancy TZS 300/-; registration fees TZS 80/-; survey fee TZS 800 /-; deed plan fee TZS 600; and stamp duty on the certificate and duplicate TZS 80/-; and land rent for the period 1992/1993 TZS 760/-.

Consequent to the payment of the relevant fees, the plaintiff applied for a building permit in 1995 for erection of a single storey residential building on the suit plot. The application for the building permit was granted and the permit was, accordingly, issued to the plaintiff on 23/03/1995 and the plaintiff immediately thereafter commenced construction.

However, criminal proceedings were, at the instance of the defendants herein, launched against him on accusation that he was erecting a building on the suit plot without obtaining consent. The same were a subject of a criminal charge in Criminal Case No. 425 of 1996 at Resident Magistrate Court of Dar as salaam at Sokoine Drive. The matter was dismissed as the court was satisfied that it concerned an ownership

dispute which has to be resolved by the court that has jurisdiction to do so.

The DPP was aggrieved. An appeal was thus filed against the decision of the Resident Magistrate Court. The resulting appeal (i.e Republic vs Hassan Mkomwa Criminal Appeal No. 110 of 2004) was dismissed on 02/11/2005 as there was no notice of intention to appeal filed in accordance with the law.

The plaintiff alleged that he has been in the possession and occupation of the suit plot ever since it was allocated to him. Effective from February 2020, the first defendant started coming to the suit plot, disturbing the plaintiff, claiming to be the lawful owner of the same, and demanding vacant possession. The plaintiff alleged mental torture and anguish due to the defendants' acts and conducts; which have since denied the plaintiff peaceful enjoyment of possession of the suit plot. Further that the defendants' acts had frustrated the process of issuance of certificate of occupancy to the plaintiff.

Because of the alleged ownership, and grievances relating to the defendants' acts and conducts in relation to him, and the suit plot; the

plaintiff sought for the following reliefs, namely, declaration that the plaintiff is the lawful owner of the suit property; an order of permanent and perpetual injunction against the defendants retraining them, their workmen, servants, and or agents from entering the suit premises; general damages to the tune of TZS 50,000,000/-; costs of the suit be provided for; and any other relief that the court seems fit and just to grant.

As indicated earlier, the suit proceeded ex-parte against the defendants. This was because despite being served with summons by substituted service through publication in two widely circulating newspapers, Daily News of 01/03/2021, and Mwananchi of 27/02/2021, the defendants never appeared and never failed any written statement of defence. The suit was for such reason ordered to proceed ex-parte against the defendants.

For purposes of ex-parte hearing, the issues which were recorded by the court were, namely, whether the plaintiff is the rightful owner of the suit property; and to what relief is the plaintiff entitled. In a bid to have the above issues answered in his favour, the plaintiff had himself as the only witness. Examined by Mr Joseph Kipecha, learned counsel, the plaintiff

as PW.1 testified on how when and where he was offered the suit plot and complied with requirements for issuance of the certificate of right of occupancy as averted in the plaint.

He explained as to why he does not have the original of the letter of offer. He told the court that the original letter of offer was taken to the identification bureau in relation to the earlier cases, but it was never returned to him ever since. In that respect, a certified copy of the offer was tendered and admitted in evidence as Exhibit P.1. The witness took the court through the contents of the exhibit as it related to the matter and the suit plot.

He told the court how he fulfilled the conditions set out in Exhibit P.1 as to payment of requisite fees set out also in the plaint and summarised herein above. In support of his testimony, he tendered exchequer receipts No. 465434 and No. 514866 in respect of the sum of TZS 1780/- and TZS 840/- respectively. They were respectively admitted as Exhibit P.2 collectively. Expounding on these Exhibits he told the court that payments were effected on 13/7/1992 just a day after getting the letter of offer.

He told the court how he applied for and obtained the building permit. He also told the court that the original document evidencing the permit was along with the letter of offer taken by the identification bureau in the earlier cases. He told the court that the same was still yet to be returned to him. Upon his request, the copy of the said building permit was admitted in evidence as Exhibit P.3.

With reference to the exhibit P.3, the court was shown that it was issued way back on 23/03/1995 in respect of building of a single storey building on the suit plot. The court was also told that the construction commenced immediately thereafter. However, as the plaintiff was roofing the building, he was served with a stop order from the Council demanding him to stop the construction and to report to the Council. Having reported to the Council, he was served with a summons which was accompanied with a charge sheet consisting of two charges. One, building a house without having a building permit. And two, failure to comply with demolition notice.

The charge was instituted in the Resident Magistrate Court of Dar as salaam at Sokoine Drive as Criminal Case No. 425 of 1996. He told the court that the criminal proceedings were essentially initiated by the first

defendant. He told the court that the matter was dismissed and the parties were advised to launch a land matter as the dispute was on the ownership. The copy of the judgment was tendered and admitted in evidence as Exhibit P.4. Highlighting on Exhibit P.4, PW.1 told the court that the first defendant had complained that the suit property belonged to her through a power of attorney donated to her by the second defendant.

In his further testimony, PW.1 told the court that as the first defendant was aggrieved, an appeal was preferred against the decision of the Resident Magistrate Court. This was Criminal Appeal No. 110 of 2004 which was eventually dismissed for reasons pleaded in the plaint. The copy of the judgment as per Manento JK was thus admitted in evidence as Exhibit P.5.

PW.1 insisted that he has all a long been in the possession of the suit plot which is also being guarded by his watchman. It was only last year that the first defendant once again started to pass by over the suit premise causing disturbances. The plaintiff, finally, called upon the court to grant the reliefs sought in the plaint and declare him the lawful owner of the suit plot.

The question is whether the evidence adduced by the plaintiff which is not contested by the defendants answers the issues set out herein above in the favour of the plaintiff. Recapitulating on the plaintiff's evidence, it is clear that the evidence consists of his oral testimony which is consistent with the pleading, and exhibits P.1, P.2, P.3, P.4 and P.5 which support the oral testimony and the allegations made in the plaint.

Of particular significance is Exhibit P.1 which is the document evidencing allocation of the suit plot (Plot No. 597 Block 'E' Mbezi, Kinondoni, Dar es Salaam, to the plaintiff on 12/07/1992, Exhibit P.2 evidencing payment of relevant fees to the tune of TZS 2,620/- as itemized in Exhibit P.1, and hence acceptance of the offer, and Exhibit P.3 which evidences that the plaintiff obtained building permit (No. 27590) way bank on 23/03/1995 for a single storey residential house on the suit plot as alleged in the plaint. As shown in the Exhibit P.3, the permit was given in accordance with approved plan No. 125/94.

As earlier shown the defendants were served through publication in two widely circulating newspapers. They neither appeared nor filed any written statement of defence. The plaintiff's averments in his plaint as is

his evidence were all not controverted in any way. My holding in respect of the latter finding is in line with the holding of the Court of Appeal of Tanzania in **Mathias Erasto Manga v M/S Simon Group (T) Limited** Civil Appeal No. 43 of 2013 Arusha (unreported) relating to allegation and evidence put forth by the plaintiff not being controverted.

I was however conscious that the plaintiff is not exonerated from the obligation of proving his case on the balance of probability, a standard required in civil litigations. Considering the evidence as summarised above, I am satisfied that the plaintiff discharged his obligation of proving his case on the balance of probability as is required by the law

The evidence shows that the suit plot was allocated to the plaintiff. The plaintiff paid the relevant Fees for issuance of the title deed in respect of the suit plot and immediately thereafter initiated processes for developing the suit plot. Firstly, by seeking and obtaining the building permit. And secondly, by starting the construction immediately after obtaining the building permit. There were, seemingly, complaints from the defendants herein which triggered the criminal proceedings against the plaintiff in respect of allegation of erecting a building without having a building permit and failure to comply with the demolition notice. The

accusations against the plaintiff were not established. The defendants who were involved in those proceedings never appeared to controvert the plaintiff's case as already shown.

In the light of the foregoing, I am inclined to find in the favour of the plaintiff and hence grant judgment and decree against the defendant as prayed by the plaintiff in the plaint.

In the end, the suit succeeds in all prayers set out in the plaint. Accordingly, judgment is hereby entered against the defendants. In the circumstances, I will not make any order as to costs

Dated at Dar es Salaam this 19th day of August 2021.

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B. S. Masoud
Judge

