

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO.162 OF 2019

RAMADHANI MWINYIMVUA (Suing by SAID

SULTAN ABDALLAH Decree of Power of Attorney) PLAINTIFF

VERSUS

LIBERTY NELSON MOSHA 1ST DEFENDANT

THE COMMISSIONER FOR LANDS 2ND DEFENDANT

THE ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

Date of the last Order: 23.09.2021

Date of Judgment: 30.09.2021

A.Z. MGEYEKWA, J

The facts giving rise to this suit are very simple and not difficult to comprehend. One Said Sultani Abdallah was suing on behalf of Ramadhani Mwinyimvua, a Donee of Power of Attorney. The Special of Attorney was tendered in court and admitted as Exhibit P1. The facts, as

can be deciphered from the pleadings and evidence on record go thus: sometime in 1997, one Ramadhani Mwinyimvua acquired land in respect to Plot No.448 Block 'C' Tegeta, Dar es Salaam from the defendant National Microfinance Bank; a commercial bank operating in Tanzania. A letter of offer dated Ref. No. LD/174704/1/MM dated 29th November, 1995 and Title Deed No. 47051 dated 3rd November, 1997 was granted ownership of Plot No. 448 Block 'C' Tegeta, Dar es Salaam for a term of 99 years commencing from 1st October, 1995.

The certificate of Title was tendered in court and admitted as Exh. P4. It happened that at the expiry of the said six months, the said Chipi Edmund Cassian failed to repay the loan. The defendant bank thus resorted to its rights under the mortgage; to have the security sold to recover the loan money and interest thereon.

The Plaintiff went on to develop the land by erecting a wall surrounding the plot and also built a servant quarter on the plot and he had a caretaker who lived there to date. The Plaintiff, after the development, sometimes in 2016 one Alex Msama started to claim ownership of the suit premises it is when the Plaintiff visited the Ministry for Land in Dar es Salaam to inquire about the status of the suit plot and was informed that the right of occupancy was revoked and the same is registered in the name of Liberty Nelson Mosha who started to develop the suit plot. The Plaintiff issued

several times and repeated demands to the Defendants without success.

This suit was filed by the Plaintiff on 11th December, 2019 claiming for the following orders:-

- a) *A declaration that revocation of the plaintiff's title over Plot No. 448 Block "C" Tegeta Dar es Salaam and grant of the same to the 1st Defendant is null and void.*
- b) *A declaration that the Plaintiff is the rightful owner of Plot No. 448 Block 'C' Tegeta, Dar es Salaam and the 1st Defendant is a trespasser thereof.*
- c) *Permanent injunction restraining the Defendants by themselves, workmen, assignees, contractors, agents or any other person working on that behalf from trespassing or in any way interfering with the plaintiff's lawful occupation of Plot No. 448 Block 'C' Tegeta Dar es Salaam.*
- d) *General damages to be assessed by the Court.*
- e) *Costs be provided for*

Before the trial of the suit commenced the following issues were agreed by the parties and drawn by the court; namely:

1. *Who is the lawful owner of the suit property*
2. *Whether the revocation of the Certificate of Title No. 47051 Plot No. Plot No.448 Block 'C' Tegeta, Dar es Salaam was lawful, and*

3. To what reliefs are the parties entitled.

The plaintiff fielded one witness and tendered a total of six exhibits. The 1st defendant fielded one witness and tendered six exhibits. The 1st Defendant fielded one witness and tendered two exhibits namely; Certificate of Occupancy (Exh.D1), Notice of Revocation (Exh.D2). The 2nd Defendant fielded one witness and tendered three exhibits, namely; Notice of Revocation (Exh.D3), a revocation letter (Exh.D4) and a copy of GN. 458 (Exh.D5).

The gist of both sets of evidence; by the Plaintiff on the one hand and by the Defendants on the other is not disputed and is as narrated in the facts herein. The bone of contention is on ownership in respect to Plot No.448 Block 'C' Tegeta, Dar es Salaam. The 1st Defendant claims ownership over the suit land and tendered an original certificate of occupancy (Exh.D1). The Plaintiff obtained a building permit. To substantiate his submission he tendered a copy of the building permit (Exh.P2). DW1 claimed that the Plaintiff's claims are baseless because he lost his title deed in 2010. The 2nd Defendant claimed that the lawful owner of the suit premise is Liberty Nelson Mosha. He admitted that the first owner was Ramdahni Mwinyimvua but he did not fulfill the conditions in developing the suit plot as stipulated in the letter of offer. DW2 said that they followed the revocation procedure by satisfying themselves that the

suit plot was not developed. The revocation was published in the Gazette and Ramdhani was informed that they were verifying the status of the plot by taking photos.

The learned advocates for all parties were allowed to file their final submission, to sum up their respective cases which submissions they timeously filed. In his submissions, counsel for the Plaintiff, submits that the plaintiff is the lawful owner of the suit premises and the 1st Defendant is a trespasser. Mr. Liberty Nelson Mosha, the 1st Defendant submitted that he is the lawful owner since he was allocated the said plot by the Ministry of Land after the Ministry has allocated his previous Plot No. 625 Block 'F' located at Msasani to the American Embassy in Tanzania. He testified that he obtained the title deed in respect to Plot No.448 Block 'C' Tegeta, Dar es Salaam. The 1st Defendant claimed that the Plaintiff is not entitled to any relief (s) since he has failed to prove his ownership.

Mr. Stanely Mahenge, the learned State Attorney submitted that Plaintiff has failed to prove his case since the documentary evidence reveals that the 1st Defendant is the lawful owner of the suit plot. He went on to say that Plot No.448 Block 'C' Tegeta at Dar es Salaam was revoked in 2009 by the President of the United Republic of Tanzania following the Plaintiff failed to comply with the conditions and the same was granted to the 1st defendant.

Having heard the testimonies of both parties and considering the final submission of all learned counsel, I should state at the outset that, in the course of determining this case I will be guided by the principle set forth in civil litigation and which will guide this Court in the course of determining this suit. Section 110 of the Evidence Act Cap.33 [R.E 2019] places the burden of proof on the party making the assertion that partly desires a Court to believe him and pronounce judgment in his favour. Section 110 (1) of the Act provides as follows:-

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

Similarly, in the case of **Hemedi Said v Mohamedi Mbilu** (1984) TLR 113 it was held that *“he who alleged must prove the allegations”*.

From the foregoing, let me now confront the issues framed for determination of the present dispute between the parties. In addressing the first issue *who is the lawful owner of the suit plot*.

The analyses of this issue show that the parties herein lock horns on who is the lawful owner of the suit property. In a chronological account of the ownership of the property the Plaintiff presented; that the 2nd Defendant allocated the suit land, Plot No. 448 Block 'C' located at Tegeta,

Dar es Salam to Ramadhani Mwenyimvua in 1995 and issue a letter of offer with reference No. LD/1747041/1/MM dated 29th November, and Title Deed No. 47052 dated November, 1997. There is no dispute that the Plaintiff was the first owner of the suit plot and PW1 during cross examination admitted that the current owner of the suit plot is Liberty Nelson Mosha. What is disputed is that the revocation process whether it was legal or otherwise.

The evidence on record shows that the 2nd Defendant testified to the effect that the Plaintiff was reminded to develop his Plot No. 448 Block 'C' located at Tegeta, Dar es Salam. There is documentary evidence to support the 2nd Defendant submission whereas the Ministry for Land issued two letters to the Plaintiff; Notice of Revocation dated 6th September, 2006 the Plaintiff was given 90 days to develop the plot. Then on 23rd February, 2010 the Ministry for Land issued a revocation notification that Plot No. 448 Block 'C' located at Tegeta, Dar es Salam was revoked by the President of the United Republic of Tanzania. Apart from the two letters, the Ministry for Land published the revocation in the Gazette dated 11th May, 2013. Thereafter, in 2017 the Ministry allocate the suit plot to Liberty Nelson Mosha, the 1st Defendant.

With the above analysis it is clear that the lawful owner of the Plot No. 448 Block 'C' locate at Tegeta with Title Deed No. 47052 is Liberty Nelson Mosha.

I choose to tackle the first and second issues in a combined fashion since these grounds are intertwined. These issues intend to ascertain if *the revocation of the Certificate of Title No. 47051 Plot No. Plot No.448 Block 'C' Tegeta, Dar es Salaam was lawful and whether the Defendant has fulfilled all procedure in revoking the Plaintiff's ownership over the Plot No. Plot No.448 Block 'C' Tegeta.* In determining these issues I will be guided by section 45 of the Land Act, Cap.113 [R.E 2019] which provide that:-

" 45 (1) Upon any breach arising from any condition subject to which any right of occupancy has been granted, the right of occupancy shall become liable to be revoked by the President.

(2) The President shall not revoke a right of occupancy save for the good cause.

(2A) In subsection (2) "good cause" shall include the following

(e) there has been a breach of a condition contained or implied in a certificate of occupancy." [Emphasis added].

Applying the above provisions of law, pursuant to section 45 (1) and (2A) of the Land Act, Cap.113 [R.E 2019], His Excellency President of the United Republic of Tanzania is empowered to revoke the right of occupancy in a situation where the owner breaches a condition contained in the right of occupancy among the condition is that the party has not developed the suit property. The Plaintiff in his evidence did not tender any documentary evidence to prove that Plot No. 448 Block 'C' located at Tegeta was developed prior to revocation of the right of occupancy.

The evidence reveals that the Commissioner for Land notified the Plaintiff, its intention to revoke the title deed; the first reminder was issued to Plaintiff On 6th September, 2006 and the Plaintiff was given 90 days to develop the suit plot. Section 48 (2), (3) and 49 (1) of the Land Act, Cap, 113 [R.E 2019] provides that:-

"48 (2) A notice of revocation shall, subject to the provisions of this section, take effect ninety days after it has been served on the occupier.

(3) As soon as a notice of revocation has come into effect, the Commissioner shall recommend to the President to revoke the right of occupancy."

Based on the above provision of law, the notification was issued to the Plaintiff, however, he did not comply with the Commissioner for Land order

and did not take any initiative to make a close follow-up to rescue the situation.

In 2009, the Commissioner for Land informed Ramadhani Mwinyimvua that his right of occupancy on Plot No.448 Block 'C' Tegeta was revoked. The revocation was made pursuant to section 49 of the Land Act, Cap.113 [R.E 2019] which provides that:-

49(3) As soon as a notice of revocation has come into effect, the Commissioner shall recommend to the President to revoke the right of occupancy."

The revocation letter was addressed to Ramadhani Mwinyimvua Box 5299, the address which was written in the letter of offer dated 29th November, 1995, as long as there was no change of address the same means the Plaintiff was well informed about the revocation.

Again, in 2013 the Ministry for Land, Housing and Settlement/ Commissioner for Land published the revocation in respect to ownership of Plot No.448 Block 'C' Tegeta in the Government Gazette dated 11th May, 2013. Consequently, I have no any reason to find that the revocation was improper since it is proved that the revocation was effected long time ago in 2009, before issuing the Title Deed to Liberty Mosha in 2017. Therefore, it is my considered view that the Plaintiff has breached the condition contained in the certificate of occupancy, he has failed to

develop the suit land, and as a result, the Ministry for Land had to revoke the Plaintiff's ownership over Plot No.448 Block 'C' Tegeta. These two issues are answered in affirmative.

On the last issue, to what reliefs are the parties entitled. Having analysed the two issues in length, I fully subscribe to the submissions made by Mr. Stanley Mahenge, learned State Attorney, and Mr. Ukowng'a, learned counsel for the 1st Defendant that the Plaintiff has failed to establish his case and therefore he is not entitled to any compensation or reliefs. Therefore, I proceed to dismiss the suit with no order as to the costs.

Order accordingly.

Dated at Dar es Salaam this date 30th September, 2021.




A.Z.MGEYEKWA
JUDGE
30.09.2021

Judgment delivered on 30th September, 2021 in the presence of Mr. Sylvester Korosso, learned counsel holding brief for Mr. Wilson Ogunde for the Plaintiff, Mr. Godfrey Ukwong'a, learned counsel for the 1st Defendant and Stanley Mahenge, learned counsel for the 2nd and 3rd Defendants.




A.Z.MGEYEKWA
JUDGE
30.09.2021

Right to appeal fully explained.