

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO.52 OF 2020

CHRISTOPHER LETSON MGALLA PLAINTIFF

VERSUS

AMINA BAKARI KALIMANZIRA DEFENDANT

JUDGMENT

Date of the last Order: 20.10.2021

Date of Judgment: 29.10.2021

A.Z. MGEYEKWA, J

This suit was lodged before this court by CHRISTOPHER LETSON MGALLA, the Plaintiff against the AMINA BAKARI KALIMANZIRA, the Defendant Plaintiff is claiming against the Defendant for declaratory that he is the legal and recognized owner of Plot No.25 Block 52 Kariakoo area in Ilala Municipality.

The facts of the case can be deciphered from the pleadings and evidence on record go thus: the Plaintiff claims that on 01st April, 2010 one Rajabu Bakari Mhonya an Administrator of the Estate of the late Shekhe Abdallah Makawa (deceased) was the occupier of the disputed property. The Defendant is the administrator of the estate of Fatma Sulemain Kombo deceased and Fatma was the wife of Sheike Abdallah Makawa. According to the Plaintiff, the Rajabu Bakari Mhonya and the defendant in the capacity of administrators of estate agreed to sell the property in dispute to one Yusuph Shabani Matimbwa for a total of Tshs. 400,000,000/=. The defendant was to receive Tshs. 50,000,000/= from Yusuph Shabani Matimbwa as part of the share of the sale of the disputed property and after payment it was agreed that the defendant nor her heirs will raise any claim over the disputed plot.

Following the sale of the disputed property, Yusuph Shabani Matimbwa undertook necessary steps including transfer of the Right of Occupancy to his name, and on 27th March, 2012 the approval of disposition of the Right of Occupancy was granted. In 2013 the Plaintiff entered into an agreement with Mr. Yusuph Shabani Matimbwa for purchase of the disputed property and thereafter the Plaintiff took necessary steps to transfer the Right of Occupancy to his name. Since 2013, the Plaintiff occupied the disputed land

and became a registered owner of the suit property. The plaintiff started to develop the suit premises by obtaining a building permit. Then the defendant started to harass the Plaintiff claiming that she is the lawful owner of the suit premises. On 25th February, 2018 the Plaintiff received a letter from the Dar es Salam Regional Commissioner's Office with regard to the disputed land and the Plaintiff had to show his documents before the Regional Commissioner Office and they conducted an investigation and concluded that the Plaintiff is the lawful owner of the suit land.

The Defendant continued to harass the Plaintiff and she published him in a Newspapers. The Plaintiff claims that the publications have caused him shame, embarrassment, and great difficulty to him who now constantly has to defend himself to the public as the owner of the suit property.

In his Complaint, the Plaintiff prays for Judgment and Decree against the defendants jointly and severally for the following orders as follows:-

- (a) A declaration that the Plaintiff is the legal and registered owner of Plot No. 25, Block '52' Kariakoo Area in Ilala Municipality with Certificate of Occupancy Title number 90984 "the property in dispute".*

- (b) A perpetual injunction restraining the Defendant, her agents, and/or assignees from interfering in any manner with the Plaintiff peaceful possession, occupation, and development of the property in dispute.*
- (c) General damages for embarrassment, harassment, and hardship occasioned to the Plaintiff by the Defendant to be assessed by this Honourable Court.*
- (d) Costs of this suit; and*
- (e) Any other reliefs which this Honourable Court may deem just to grant in favour of the Plaintiff.*

On the other hand, the Defendants, in response to the Plaintiff's claims, have filed a Written Statement of Defence.

It is imperative at the outset to point out that, this matter has also gone through the hands of my brother; Hon. Maige, J and Hon. Hamza, Deputy Registrar who conducted the 1st Pre-Trial Conference and Mediation respectively. I thank my predecessors for keeping the records well and on track. I thus heard the testimonies of the witnesses for the parties and now

have to evaluate the evidence adduced by the witnesses to determine and decide on the aforementioned issues.

At all the material time, the Plaintiff enjoyed the legal service of Ms. Natasha Mkangara, learned Advocate, while the Defendant enjoyed the legal representation of Mr. Tesha, learned counsel.

When the pleadings were complete and after mediation proved futile, the court with the assistance of the parties framed the following two issues as follows:-

- 1) *Whether the Plaintiff is the lawful owner of Plot No.25 Block 52 Kariakoo area Ilala Municipality.*
- 2) *To what reliefs are the parties entitled.*

On 9th August, 2021, a hearing of the parties' evidence commenced whereby the Plaintiff called four witnesses, Christopher Letson Mgalla, the Plaintiff himself (PW1), Yusuph Shabani Matibwa (PW2), Rajab Bakari Mhonya (PW3), and Edgar Japhaet Msolla (PW4). Mr. Christopher Ltson Mgalla filed this dispute contesting ownership of Plot No.25, Block 52, Kariakoo area, Ilala Municipality at Dar es Salaam. He testified to the effect that in 2003 one Yusuph told him that he was selling Plot No. 25 Block 52.

The Plaintiff conducted a search and it was revealed that Yusuph Matibwa was the owner. Then he proceeded to purchase the suit property and initiated the transfer of the right of occupancy to his name. To substantiate his testimony he tendered a certificate of title (Exh.P1). He applied for a building permit and after two years the Defendant started to disturb him. When the construction was ongoing he was summoned to attend a meeting at the Regional Commissioner's office via a letter (Exh. P2). The Plaintiff was required to explain how he acquired the suit landed property. He said that the Regional Commissioner's office conducted an investigation and confirmed that he was a lawful owner of Plot No. 25 Block 52. To prove his case he tendered a recognition letter issued by the Regional Commissioner's Office (Exh. P3). PW1 also complained that the Defendant has published him in a Newspaper, as a result, he was harassed and the Defendant's act affected his business.

The second Plaintiff testified to the effect that he was a previous owner of the suit landed property having purchased the same from one Rajab Bakari Mhonya (PW3). In his testimony, Rajab Bakari Mhonya testified that he was appointed as an administrator of the estate of the late Shekhe Abdallah Makawa and he informed PW2 that the Defendant was the administrator of

the estate of the late Fatma the wife of Shekhe Abdallah. Therefore the Defendant was also included in the sale agreement (Exh.P4) whereas all parties signed the sale agreement and the Defendant was paid Tshs. 50,000,000/=. Another Plaintiff's witness was Edgar Japhet Msolla he testified to the effect that he was working with the Regional Commissioner's Office and remembered that they received a complaint from the Defendant therefore all parties were summoned to appear to the Regional Commissioner's Office. PW4 stated that apart from the PW1 documents which he presented to the Regional Commissioner's Office, they conducted an investigation and confirmed that the Defendant entered into a sale agreement of the suit landed property with PW2 and PW3. PW4 stated that they concluded that the suit landed property belongs to the Plaintiff.

The Defendants called six witnesses; Amina Bakari Kalimanzira, who testified as **DW1**. Hussein Selemani (DW2), Shabani Salum who testified as DW3, Maneno Iddy Hassan who testified as DW4, Hashim Juma (DW5) and Mr. Peter Karumba who testified as DW2 and the 4th Defendant had one witness, Mr. Gilbert Thomas MMASI, who testified as DW3. The 1st Defendant vehemently contests the Plaintiff's averments. She started narrating the background of the case which I am not going to reproduce

herein. DW1 consistently testified to the effect that she was forced to sign the sale agreement in front of a lawyer and other unknown people and one of them was holding a pistol gun threatening her to sign the sale agreement. After the scaring incident, DW1 testified that he challenged the validity of Exh. P4 by instituting a caveat (Exh.D3) on 24th October, 2011 in relation to the suit landed property against PW3. DW1 also testified that she lodged a case at the Primary Court against PW3 but the case was struck out for being accompanied by a defective affidavit.

DW1 did not end there he lodged his complaints at the Regional Commissioner's Office and the PCCB. To substantiate her testimony she tendered a letter (Exh. D4), but her efforts were unfruitful. DW1 admitted that she reported the matter to the media and newspaper which lead to the suit at hand. Other Defence witnesses testified to the effect that the suit landed property belonged to the late Sheikh Abdallah, he bought it in the 1980s. DW4 testified that he was informed that all tenants were required to vacate the suit landed property because it was demolished. The 1st Defendant lodged a case at the Primary Court of Kariakoo. To substantiate his claims DW2 tendered a copy of the judgment (Exh.D9). DW4 testified that Fatma was collecting tenants' rents and after her death, Amina Bakari as an

administrator of the estate of the late Fatma took over and was collecting tenants' rents. The 1st Defendant urged this court to find that the sale was unlawful.

It is noteworthy to point out at this stage that the parties had on 05th October, 2021 agreed to make written final submissions for purpose of assisting the Court to determine the matter in controversy. The court blessed the agreement and proceeded to schedule the submission dates. Cheerful the order was compiled and honored by all parties.

Before determining the issues so framed, I will first address the law on the burden of proof in civil cases. The burden lies with the person who instituted the suit. Section 110 (1) of the Law of Evidence Act, Cap. 6 [R.E 2019], places the burden of proof on the party asserting that party 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”*.

Likewise, in the case of **Anthony M. Masanga vs. Penina (Mama Mgesi) & Lucia (Mama Anna)**, Civil Appeal No. 118 of 2014 (CAT) (unreported), the court held that:-

“ The party with legal burden also bears the evidential burden on the balance of probabilities. In the present case, the plaintiff has that duty to prove the case to the standard required in civil cases of the balance of probabilities”.

Disposal of this matter will follow the sequence of the issues framed at the commencement of the proceedings. In the first issue, the Court is called upon to determine *whether the Plaintiff is the lawful owner of Plot No.25 Block 52, Kariakoo area, Ilala Municipality at Dar es Salaam.*

From the above position of the law, the Plaintiff is the one who filed this suit before this Court. He is the one who is required to show that he was the lawful owner of the disputed land. In proving the first issue, the Plaintiff's witness, PW2 testified to the effect that he entered into a sale agreement (Exh.P4) with the Defendant and PW3 in respect to *Plot No.25 Block 52,*

Kariakoo area, Ilala Municipality at Dar es Salaam. All of them signed the sale agreement, the same proved that PW2 bought the said landed property from the 1st Defendant.

The Plaintiff to prove his ownership testified to the effect that he bought the suit landed property from PW2 and imitated a search with the Ministry of Land and Human Settlement. PW1 found that PW2, the seller was the registered owner. Thereafter, the Plaintiff initiated the transfer of ownership from PW2's name to his name. Thereafter, PW1 obtained a Certificate of Right of Occupancy (Exh.P1). At the Regional Commissioner's Office, the Plaintiff was required to prove if he is the lawful owner of the suit landed property and he tendered his documents including Certificate of Title, a letter from the Commissioner's Office which reveals that after investigation they noted that the Plaintiff is the lawful owner of the suit landed property.

The Plaintiff in establishing its case tendered the agreements entered between the Rajabu Bakari Mhonya and Amina Bakari Kalimanzira (Defendant) and the Certificate of Title was in the name of Rajabu Bakari Mhonya as an administrator of the estate of Shekhe Adallah Makawa, deceased (Exh.P1) dated 06th June, 2011. The Sale of Agreement was entered on dated 05th October, 2011. The Land Officer (PW4) testified to the

effect that he received a complaint from the Defendant regarding the disputed land and summoned all parties to address him on the matter.

On the Defendant's side, DW1 tendered Exhibits D1, D2, copies of Judgment of Kariakoo Primary Court related to administration of the estate. The Defendant also wrote a letter to the Director of Criminal Investigation dated 27th June, 2019 (Exh.D4), the Defendant is claiming that the probate was forged. Her dispute is based on the administration of the estate of Rajabu Bakari. Most of her documents tendered in court aim to prove that the Defendant applied for administration of the estate of the late Fatuma Selemani, and she was appointed to administer the said administration of the estate of the late Fatuma Selemani.

The Defendant also tendered a caveat (Exh. D3) dated 10th October, 2011, claiming an interest in Title No. 90984. She wanted a caveat to be entered against the estate registered in the name of Rajabu Bakari Mhonya as an administrator of the late Sheikh Abdallah Makawa. The Defendant tendered land rent payment receipts (Exh.D8) for the years 2018/2019, 2019/2020, 2020/2021. However, the same does not prove that she is the lawful owner since the sale agreement is still valid and transfers were effected to the Plaintiff.

The Defendants' testimonies in relation to the administration of an estate do not vitiate the Plaintiff's ownership over the suit property. I am saying so because the first owner of the suit landed property was Rajab Bakari, who transferred his ownership to PW2 and the Defendant did not manage to stop Rajabu Bakari to transfer ownership. As a result, the evidence on records reveals that the Certificate of Title was transferred to the Plaintiff's name.

Additionally, it is indisputable fact that the Defendant signed the Sale Agreement and affixed her passport size and the Advocate signed to have witnessed the agreement. The Defendant did not deny signing the Sale Agreement. This alone suffices to prove that the 1st Defendant concede with the said terms and conditions of the contract and one of the conditions as stated in paragraph 5 reads:-

5. Kwamba baada ya mpokeaji kupokea pesa hizo shilingi milioni Hamsini (50,000,000/=) basi yeye pamoja na warithi wote hawatakuwa na malalamiko yoyote tena dhidi ya mtoaji au mmliki mpya wa kiwanja hicho na makabiliano ya kiwanja kwa mnunuzi yatafanywa mara baada ya kupokea cheki hiyo.

The Defendant was aware that by signing the said documents, the landed property was transferred and there is no evidence to show that the title was transferred back to her name.

Moreover, the Defendant testified to the effect that she signed the Sale Agreement under threat or without free consent. The Defendant testified to the effect that they threatened her with a gun to sign the said document. However, the Defendant did not establish how she was forced to sign the Sale Agreement. The allegations were not proved, therefore, this court cannot rely on mere allegations without proof. The Defendant claimed that she was forced to sign the Sale Agreement but there is no any Police Report which shows that she filed a complaint.

It is my considered view that as long as Defendant signed the Sale Agreement, means she was willing to sale her portion. Reading paragraph 8 of the Sale Agreement, parties agreed that all what is stated in the Sale Agreement are the decisions of the parties, the same means parties were bound by the said Sale Agreement. From the evidence on record, the Defendant was trying to prove that she took efforts to nullify the said Sale Agreement, however, her efforts taken to recover her shares in the disputed landed property proved futile.

The Defendant's Advocate in his final submission claimed that the entire case is on the validity of the Sale Agreement between PW3, PW2, and the Defendant. I am not in accord with the learned counsel for the Defendant since there is no any proof that the Defendant was forced to sign the contract and coercion or inducement. Coercion as stipulated under sections 15 and 16 of the Law of Contract Act. Cap. 345 [R.E 2019] was not proved. She did not deny that she was paid Tshs. 50,000,000/= and she admitted that she used the said money. She could have returned the money on the same day and lodged her claims at the Police Station on the same day or nearest day, but that was not done.

Based on the above analyses, the Plaintiff proved that he is the lawful owner of Plot No.25 Block 52, Kariakoo area, Ilala Municipality at Dar es Salaam by tendering an original Certificate of Right of Occupancy and Sale Agreement. The same proves that the Plaintiff is legally occupying the suit landed property. Therefore this issue is answered in the affirmative.

Addressing the last issue, to what relief the parties are entitled to. In determining this issue I am guided by the first issue which was decided in favour of the Plaintiff. The Plaintiff has proved that he was harassed and disturbed by the defendants.

Next for consideration is the quantum of compensation. The Plaintiff is claiming for total general damages for harassment and hardship occasioned to the Plaintiff by the Defendant. It is trite law that general damages need not be specifically pleaded, but are awarded at the discretion of the court. See the cases of **Cooper Motor Corpn Ltd v Moshi/Arusha Occupational Health Services** [1990] TLR 96, **Tanzania-China Friendship Textile Company Limited v our Lady of Usambara Sisters** [2006] TLR 70) and **Anthony Ngoo and Davis Antony Ncjoo v Kitanda Kimaro**, Civil Appeal No. 25 of 2014 (CAT-Arusha) (unreported), which was cited with approval in the case of **Deogratius Eugen Mallya © Deogratius Mallya & Another v Alex Alban Lerna & Another**, Civil Case No. 4 of 2019 (HCMoshi) (unreported), the Court of Appeal of Tanzania observed that:

"The fowls settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence on record able to justify the award. The judge has discretion in the award of general damages. However, the judge must assign a reason..."

Similarly, in the case of **Haji Associates Company (T) Ltd and Another v John Mkundwa** [1986] TLR 107 the court held that:-

“General damages are compensatory in nature as they are intended to take care of the plaintiffs’ loss of reputation as well as to act as a solatium for mental pain and suffering”. For the reasons stated above, the plaintiff, in this case, has failed to prove his case on the standard required by the law, that’s on the balance of probabilities.”

The Plaintiff claimed that the Defendant published him in the Newspaper and a copy of the said Newspaper was admitted for identification purposes. I have read the said piece of Newspaper and noted that the said Newspaper is not dated thus, it is difficult to ascertain when exactly the Plaintiff was harassed and how his reputation was damaged. Concerning the issue of reporting the matter to the Regional Commissioner, it was part of the Defendant's initiative to report her complaints to the Government Institution in order to find a solution to her problems. However, the Regional Commissioner’s investigation report revealed that the Plaintiff a lawful owner. Therefore, in determining whether the Plaintiff proved his claims of general damages, it is my respectful view, the Plaintiff did not prove his claims. Therefore, the general damages claims cannot be awarded,

The last prayer is about the costs of the suit. The award of costs is in the discretion of the court as provided for under Section 30 of the Civil Procedure

Code Cap.33 [R.E 2019]. It is a fact that the Plaintiff instituted the case because the Defendant had messed up, as a result, the Defendant acts necessitated the Plaintiff to incur costs in hiring an advocate, filing fees, transport et cetera and therefore I order the Plaintiff to pay the costs of the case.

In the upshot, I enter judgment for the Plaintiff and consequently declare and decree as follows:-

1. The Plaintiff is a lawful owner of Plot No. 25 Block 52 Kariakoo area in Ilala Municipality. With certificate of title number 90984.
2. Injunction is granted to restrain the Defendant, her agents and /or assignees from interfering in any manner with the Plaintiff peaceful possession, occupation and development of the property in dispute.
3. The Defendant should pay the Plaintiff costs of the suit.

Order accordingly.

DATED at Dar es Salaam this 29th October, 2021.



A.Z.MGEYEKWA

JUDGE

29.10.2021

Judgment delivered on 29th October, 2021 in the presence of Mr. Deogratius Tesha, learned counsel for the Defendant in the absence of the Plaintiff.




A.Z.MGEYEKWA

JUDGE

29.10.2021

Right to appeal full explained.