

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 80 OF 2019
AFRO AID DEVELOPMENT CONSULTANTS (T) LIMITED.....PLAINTIFF
VERSUS

THE COMMISSIONER FOR LANDS.....1ST DEFENDANT
THE REGISTRAR OF TITLES.....2ND DEFENDANT
KINONDONI MUNICIPAL COUNCIL.....3RD DEFENDANT
THE ATTORNEY GENERAL.....4TH DEFENDANT
ABUBAKAR ZUBEIR MBWAN.....5TH DEFENDANT

JUDGMENT

Date of the last Order: 05.08.2022

Date of Judgment: 17.08.2022

A.Z. MGEYEKWA, J

At the centre of controversy between Afro Aid and Development Consultants (T) Limited, the Plaintiff and the Commissioner for Title, The Registrar of Titles, Kinondoni Municipal Council, Attorney General, and Abubakary Zuber Mbwana, the Defendants is a Plot No. 341 located at Mbezi Area within Dar

es Salaam Region, registered by Title No. 176046. The bone of contention is on the ownership and revocation of the suit landed property concerning Plot No. 341 located at Mbezi Area within Dar es Salaam Region.

In the Plaint, the Plaintiff prays for Judgment and Decree against the defendants as follows: -

1. A declaration that the Plaintiff is the legal owner of the suit Plot No. 314 Mbezi Beach Area in Kinondoni Municipality and the act of the Defendants in granting the same to the Fifth Defendant is illegal.
2. A declaration that the Fifth Defendant has trespassed to the plot belonging to the Plaintiff and is therefore liable to pay damages;
3. That the Plaintiff is entitled to compensation from the Defendants for loss of use of the suit plot and trespass by the Fifth Defendant to the tune of Tshs. 1,000,000,000/=.
4. Costs to be provided for.
5. Any other reliefs as the Honourable Court may deem fit to grant in the circumstances.

In response to the Plaint, on 2nd August, 2019 the 1st, 2nd, and 4th Defendants filed a joint Written Statement of Defence and the 3rd Defendant filed a Written Statement of Defence and on 5th August, 2019, the 5th Defendants

filed a joint Written Statement of Defence. Defendants disputed all the claims and urged this court to dismiss the entire suit with costs.

It is imperative at the outset to point out that, this matter has also gone through the hands of my sister Hon. Opiyo, J, Mango, J, Mansoor, J and Mkapa, J (as he then was). I thank my predecessor for keeping the records well and on track. I thus gathered and recorded the Plaintiff and Defendants' case and now I have to evaluate the evidence adduced by the witnesses to determine and decide on the matter in controversy.

At all the material time, the Plaintiff was represented by Mr. Fraterine Munale and Mr. Roman Masumbuko Advocates while the 1st, 2nd, 3rd, and 4th Defendants were represented by Ms. Lucy Kimaro and Mr. Thomas, Mhushi, learned State Attorneys and the 5th Defendant had the legal service of Mr. Saulo Kusakalah, learned Advocate. During the Final Pre-trial Conference, the following issues were framed by this Court: -

- 1) Whether the Plaintiff was legally granted the right of occupancy of Plot No. 314 Mbezi Beach in 1983.
- 2) If yes, whether the Right of Occupancy granted to the Plaintiff was properly revoked.

- 3) Whether the 5th Defendant was legally granted the Right of Occupancy on Plot No. 341, Mbezi Beach in 2018.
- 4) To what reliefs are the parties entitled to.

In what seemed to be a highly contested trial, the Plaintiff called two witnesses and the Defendants summoned three witnesses. The Plaintiff's case was founded on Joseph Temba, who testified as PW1, and Eliadius Tesha (PW2). The 1st, 2nd, 3rd, and 4th Defendants' called two witnesses; Hellen Philip who testified as DW1, and Seleman Abdul Dewji who testified as DW2. The 5th Defendant had one witness, Tabu Kawambwa who had the Power of Attorney of Abubakary Zuber Mbwaba was the third witness (DW3).

The Plaintiff tendered a total of eight (8) Exhibits namely; Letter of Offer dated 26/08/1986 (Exh.P1), a CRDB Bank receipt of payment dated 23rd Marc, 2016 (Exh.P2), Letter of Application for Original Copy concerning Plot No. 341 Mbezi Beach dated 12th March, 2018 with Ref. No. AA/341/MB (Exh.P3), Letter of statutory Notice of Intention to sue dated 02 March, 2019 with Ref. No. LD/93216/78 (Exh.P4), a Letter of Official Search dated 28th November, 2018 (Exh.P5), a Notice of intention to sue dated 14th January, 2019 with Reference No. ROM/ADC/KMC/1/19 (Exh.P6), a Letter dated 5th

December, 2019 (Exh.P7) and a Letter of Notice of Cancellation Plots 340 LD No: 86624 and No. 341 LD No: 93216 Mbezi Beach (Exh.P7).

On their side, the Defendants tendered four (4) Exhibits namely; a Letter of Offer dated 22nd August, 1983 with Ref. No. D/KN/A/14138/5/MHCN (Exh.D1), a Letter of Cancellation of Possession on Plot No. 341 Mbezi Beach area in the City of Dar es Salaam dated 30th November, 2017 with Ref. No. LD/93216 (Exh.D2), a Certificate of Occupancy, Title No. 176046 dated 27th July, 2018 (Exh.P3) and a Building Permit dated 16th April, 2019 (Exh. P4) and a Form No. 19 Application for the right to own land was admitted and marked as ID.

Joseph Temba (PW1) introduced himself as a Managing Director of Afro Aid Development Consultants (T) Ltd since 1984. PW 1 testified that he is the owner of Plot No. 341, Mbezi Beach Area which he bought in 1986. He testified that they submitted the Sale Agreement and letter of offer to Dar es Salaam City Council for issuing a new letter of offer, unfortunately, the original offer and sale of agreement were lost. To substantiate his testimony, he tendered a letter of offer, a loss report, and an Affidavit of Loss (Exh. P1 collectively). PW1 testified that they wrote a letter to the Ministry for Land requesting the original Certificate of Title.

The first witness went on to testify that they developed the suit land which was a swamp area by building permanent materials, they constructed a concrete block fence and placed 2 containers to reserve building materials. PW1 testified that they paid land rents from the year 1986 to 2018 and obtained exchequer receipts. To substantiate his testimony, he tendered payment receipts which were admitted as exhibit P2 collectively. He said that they constructed a one-floor building in the adjacent Plot No. 340. To substantiate his submission, he tendered letters dated 22nd June, 2018 (Exh. P3 collectively).

PW1 continued to testify that they did not receive any reply from Kinondoni Municipality, thus, they applied to the Ministry for Lands for a Title Deed but they were told that the Ministry for Land cannot issue them a CT since the previous owner Emmanuel A. Jonas ownership was not revoked. PW1 said that their offers were a nullity and the Ministry for Land also revoked the ownership A. Jonas. He testified that thereafter the plot was ready for allocation to any other person. PW1 testified that later he conducted a search and noted that the suit land was allocated to the 5th Defendant. To substantiate his testimony, he tendered a letter to the Ministry for Land dated

2nd March, 2019 and a search report dated 25th November, 2018 which was admitted as exhibit D5.

PW1 did not end there, he testified that after finding out that the 5th Defendant was allocated the suit land, they decided to write a Notice of Intention to sue the Municipal Council dated 14th January, 2019 which was admitted and marked as exhibit P6 collectively. He testified that the Ministry for Land wanted to allocate Afro Aid another premium are; Plot No. 406 Block No. 1 at Kigamboni, Pemba Mnazi area near the ocean but after visiting the said plot they realized that plot was far from the beach was not developed.

The first witness went on to testify that a second alternative was a plot located 60 km from the coast. PW1 said that they were not pleased with the second offer and asked them why they want to allocate the said plots to them instead of allocating the same to the 5th Defendant. According to PW1 testimony they were told that they cannot go back to the President to inform him that they wrongly allocated the suit property to the 5th Defendant. PW1 testified that the issuing of Plot No. 314 to Abubakar Zubeir Mbwana was illegal. H urged this Court to declare that Afro Aid Development consultants are lawful owners of the suit land, the Court to decide the suit in their favour

with costs, and order the Defendants to pay compensation in a tune of Tshs. 1,000,000,000/= for disturbing their development.

Elladius Tesha (PW2), introduced himself as an Operational Manager working with the Plaintiff for 16 years. He testified that he is duty bound to coordinate and supervise operational activities such as to pay the Government levies and building fees. He testified that the owner of the suit land is Afro Aid Development Consultant. He testified that they developed the suit land. PW2 identified the land rent receipt (Exh. P2) and stated that they paid the last land rent on 23rd March, 2018. He testified that the Company has a letter of offer that was lost and they are yet to secure the Certificate of Title. PW2 identified the letter of offer (Exh. P1). PW2 testified that they have constructed a double-story building and a block fence which requires one to enter through Plot No. 340.

The second witness went on to testify that the two plots are connected and they placed two containers in the suit land which were used to place building materials. He said that they could not develop the suit land because they did not obtain the Certificate of Title from the respective Ministry. PW2 testified to the effect that the Government required them to develop the Plot back in 2008 but they could not proceed with developing the suit land because the

neighbours nuance rendered the suit land a swamp area and they raised their complaints through a letter dated 13th November, 2006 to the Ministry. To substantiate his testimony, PW2 tendered a letter (Exh. P8) PW2 went on to testify that the Ministry verified that both plots were developed. He said that they used the Plots peacefully and paid land rents until 2018 until the invasion in Plot No. 341, hence they filed the instant suit. He testified that the trespasser broke the fence on Plot No. 340 and people are crossing through their plots. PW2 urged this Court to declare the Plaintiff the law owner and nullify the illegal rectification.

On the other hand, the 1st Defendant, Hellen Philip introduced herself as a Principal Land Officer. DW1 testified that she is familiar with the Plot No. 314 located at Mbezi Beach and it was surveyed that Emmanuel John failed to develop the suit land, therefore, they revoked the title in 2017, and thereafter, the same plot was allocated to Abubakar Zubeir. To substantiate her testimony, she tendered a letter of offer No. D/KN/A/A4138/5/MHKN dated 22nd August, 1983 (Exh. D1). Ms. Hellen went on to testify that Emmanuel John was notified via letter dated 30th November, 2017. To substantiate his testimony, he tendered a revocation letter dated 19th January, 2018, a revocation Form No. 4 of 1999 dated 18th January, 2018, and information in

regard to revocation dated 30th November, 2017 which were admitted and marked as exhibit D2 collectively.

DW1 testified that the Plot No. 314 Mbezi Beach belongs to Abubakary Zubeir and the procedure of acquisition was followed. PW2 testified that when one wants to buy a plot needs to obtain the permission to transfer from the owner to the buyer. She went on to testify that the application was supported by a document of transfer, sale of agreement, a notice of disposition, application for disposition transfer of the right of occupancy, Valuation Report, and proof of citizenship. DW1 testified that in their records they do not have such kind of application. Ms. Hellen urged this court to dismiss the Plaintiff's claims.

Selemani Abdul Dewji was the second defence witness. He testified that the employee of the District Council of Kinondoni and his duty is to supervise the inspection of the building within Kinondoni District. He testified that when one wants to develop his plot, he requires to obtain a building permit. DW2 testified that in order to get a Building Permit one must tender a Certificate of Occupancy, produce drawings and he must have paid land rent and obtain a receipt. DW2 testified that in their records; Afro Aid had never requested or applied for a building permit. DW2 testified that the drawings must be

submitted to their office in order to help them to supervise and inspect the ongoing construction. DW3 went on to testify that the failure of the Afro Aid Development Consultant (T) Ltd to obtain a building permit is fatal thus, they had to halt the construction procedure until the Plaintiff's complies with proper procedure.

Tabu Kawambwa, obtained a Power of Attorney and testified on behalf of Abubakary Zubeir Mbwana. He introduced himself as a relative of the 5th Defendant. DW3 testified that Plot No. 314 located at Mbezi Beach, is the property of Abubakary Zubeir Mbwana. He said that the 5th Defendant acquired the Plot after filing his application on 07th March, 2018. To substantiate his testimony, he tendered an Application Form which was admitted for identification purposes and marked as ID1. DW3 went on to testify that the 5th Defendant was issued with a Title Deed. To substantiate his testimony, he tendered a Certificate of Title No. 176046 which was admitted and marked as exhibit D3. The third defence witness continued to testify that the 5th Defendant obtained a building permit and drawing/to substantiate his submission DW3 tendered a building permit which was admitted and marked as exhibit D4.

DW3 did not there. He continued to testify that after obtaining a building permit within a month they started to place building stones and sand. He added that then they were informed that there was a complaint that there was another owner. DW3 in his testimony insisted that the suit land belongs to Abubakary Zubeir Mbwana and the Plaintiff has nothing to do with the said Plot. Ending his testimony in chief, DW3 urged this Court to find that Abubakary Zuber Mbwana is the lawful owner of the suit and dismiss the suit.

Having heard the testimonies of both parties and considering the final submission of Mr. Fraterine Munale, counsel for the Plaintiff, and Mr. Saulo Kusakalah, counsel for the 5th Defendants, 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. 6 [R.E. 2019] places the burden of proof on the party asserting 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 the determination of the present dispute between the parties. I choose to tackle and address the issues as they appear. The first issue is *whether the Plaintiff was legally granted the Right of Occupancy of Plot No. 341 Mbezi Beach in 1983*.

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; he bought the suit land from John, however, he testified that the sale of agreement was lost. PW1 testified further that they obtained a Letter of Offer. To substantiate his testimony, he tendered a copy of the Letter of Offer, a Lost Report, and an Affidavit of Loss (Exh. P1 collectively) which he relied upon as proof of ownership over the suit land.

The Letter of Offer shows that the same was issued on 26th August, 1986 concerning the Plot No. 341 located at Mbezi Beach and he tendered a Loss Report of Letter of Offer dated 12th August, 2018 in regard to Plot No. 341 located at Mbezi Beach, the Plaintiff alleged that the original Letter of Offer went missing on 28th February, 2015 accompanied by an Affidavit of Joseph Temba dated September, March, 2018. The Plaintiff tendered land rent receipts/exchequer receipts to prove that the Plaintiff was paying land rents starting from 1986, 1996, 1997, 2015, and 2020. However, there is no evidence that he paid the land rent for the remaining years.

The Plaintiff in his testimony wrote a letter to obtain a Certificate of Occupancy on 22nd June, 2018, however, his prayer was raised after the issuing of Certificate of Title on 176046 to the 5th Defendant. Therefore, in my view the Plaintiff's letter dated 22nd June, 2018 was an afterthought.

I have scrutinized the two Letters of Offer (Exh. P1) and noted that the exhibit did not contain all details such as place, and year when the Allocation Committee held its meeting and the agenda is blank while exhibit D1 contains all the details, the Allocation Committee was held on 22nd October, 1980 and it was the ninth agenda. In my view, between the Plaintiff and

Emmanuel John, the one who had a proper Letter of Offer in the eyes of the law was Emmanuel John.

Another controversy is when the Plaintiff alleged that he obtained the Letter of Offer in 1983. The Plaintiff did not bother to process the Right of Occupancy. It is worth noting that after obtaining a Letter of Offer, the Plaintiff was required to apply for a Certificate of Occupancy within six months. However, the Plaintiff did not do so, he delayed for approximately 35 years to remind the respective Institution to issue an original Letter of Offer. In my considered view, since the Letter of Offer is in the name of Emmanuel John, then the Plaintiff was required to prove to the contrary. The Plaintiff had the burden of proving his case on the balance of probabilities.

The conditions after obtaining a Letter of Offer are well articulated in the Letter of Offer. The said conditions are; building to be in permanent materials whereas a) plans to be submitted to the City Council within six months from the commencement of Right, b) building to begin within six months after approval of plan, c) building to be completed within thirty-six months from commencement and the occupier must pay further fees. To mention a few.

In the case at hand, the evidence reveals that the Plaintiff has not met the conditions stated in the Letter of Offer and the Plaintiff has not tendered any documents to prove his ownership of the suit land.

In the case of **Salum Mateyo v Mohamed Mateyo** [1987] TLR 111 this court held that:-

“... proof of ownership is by one whose name is registered. In most instances, proof of ownership of land is by Letter of Offer or Certificate of Title and the onus of proof of ownership lies on that party (in this suit the plaintiff) who has alleged this fact.”

The Plaintiff apart from the purported Letter of Offer he did not tender a Certificate of Title. Thus, there is no any proof that the suit plot is registered in the name of the Plaintiff.

It is a fundamental principle of law under Section 110 (1) (2) and 112 V of the Law of Evidence Act, Cap. 6 [R.E 2019] that whoever desires a court to give judgment in his/her favour he/she must prove that those: facts exist. In the case of **Abdul Karim Haji v Raymond Nchimbi Alois & Another**, Civil Appeal No. 99 of 2004 (unreported) the Court of Appeal held that:-

"... it is an elementary principle that he who alleges is the one responsible to prove his allegations."

Similarly, in the case of **Anthony M. Masanga v Penina (Mania Mgesi) & Lucia (Mama Anna)**, Civil Appeal No. 118 of 2014 (CAT) (unreported) where it was further held that:-

"The party with legal burden also bears the evidential burden on the balance of probabilities."

The proof of ownership of landed property in a surveyed / planned area is proved by a Certificate of Title or the least Letter of Offer is well articulated under section 2 of the Land Registration Act, Cap. 334. Section 2 of the Land Registration Act, Cap 334 [R.E 2019] read:-

"the person for the time being in whose name that estate or interest is registered".

According to above-cited provision, a *prima facie* proof of ownership of registered land is its registration and in this matter the Certificate of Title. As the plaintiff did not have the said Certificate of Title then he cannot prove that the suit land is duly registered and is owned by the plaintiff. The Certificate of Title in the name of the plaintiff would have been substantial proof that the

title had passed from the so-called John to the Plaintiff. It is worth noting that a Police Loss Report and affidavit of loss are mere documents, the same is not cogent documents to prove ownership of land. Therefore, the first issue is answered in negative.

The second issue is *if the first issue is answered in affirmative, whether the Right of Occupancy granted to the Plaintiff was properly revoked*. This issue will not take much time for the Court to determine since the Plaintiff h has failed to establish his ownership over Plot No. 341 located at Mbezi Beach. Following the findings of the first issue, I am going to address in a nutshell if Plot No. 341 located at Mbezi Beach was properly been revoked.

In determining this issue, I will be guided by section 45 of the Land Act, Cap. 113 [R.E 2019] which provides 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 occupant." [Emphasis added].

Applying the above provisions of law, it is clear that pursuant to section 45 (1) 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 conditions is that the party has not developed the suit property. The evidence of DW1 and documentary evidence (Exh. D2) reveals that the Minister for Land issued a revocation letter on 30th November, 2017 to Emmanuel John in respect to Plot No. 341 located at Mbezi Beach with Dar es Salaam Region and he was restricted to proceed with developing the said plot.

On 18th January, 2018 the Hon. Minister for Land signed a revocation Form No. 32 and made it clear that His Excellency President of the United Republic of Tanzania revoked the Right of Occupancy registered under the Plot No. 341 located at Mbezi Beach with Dar es Salaam Region for a good cause since the occupier failed to comply with the conditions stipulated under the Letter of Offer. Thereafter, in 2017 the Ministry for Land allocated Plot No.

341 situated at Mbezi Beach in Dar es Salaam Region to Abubakary Zubeir Mbwana, the 5th Defendant.

For the aforesaid above findings and analysis, it is crystal clear that Plot No. 341 located at Mbezi Beach within Dar es Salaam Region was legally revoked. Therefore, the second issue is answered in favour of the Defendants.

Next for consideration is the third issue; whether the 5th Defendant was legally granted the Right of Occupancy of Plot No. 341 Mbezi Beach in 1983. On his side, DW1 testified to the effect that the Ministry for Land issued a first Letter of Offer to one Emmanuel John. To substantiate her testimony DW1 tendered a Letter of Offer dated 22nd August, 1983 which was issued to Emmanuel John (Exh. D1). DW1 testified to the effect that the current lawful owner of Plot No. 341 located at Mbezi Beach is Abubakary Zubeir Mbwana. DW3 in his testimony tendered several documents to prove that the 5th Defendant's is the lawful owner of Plot No. 341 located at Mbezi Beach within Dar es Salaam Region. DW3 tendered an Application Form dated 07th March, 2018 for identification purpose, the same is a public document. DW3 also tendered a Certificate of Title No. 176046 dated 27th July, 2018. The Defendants proved that the 5th Defendant is the lawful owner

of the suit land their evidence is supported by a Certificate of Title which is in the name of Abubakary Zebeir Mbwana altogether are substantial proof that Abubakary Zebeir Mbwana is the lawful owner of the suit land.

In the alternative, considering the final submission of Mr. Roman that the 5th Defendant Power of Attorney was not admitted in court as an exhibit thus the same cannot be considered by this court. In my view, and guided by the cited case of **Total Tanzania Ltd v Sanwel Mgonja**, Civil Appeal No. 70 of 2018 CAT at Dar es Salaam I am in accord with Mr. Roman that DW3 was supposed to tender the Power of Attorney to form part of his evidence since the said annexure attached to the plaint is not evidence. The 5th Defendant was in a position to call DW3 to testify in court without obtaining the Power of Attorney save for the documentary tendered in court. For that reason, I cannot rely on DW3 evidence, thus, the DW3 evidence is expunged from the court record.

After expungement of the evidence of DW3 from the record, examining closely the remaining evidence on record, the same does not change the legal requirement of the Plaintiff to prove his case. The evidence on record does not prove that the Plaintiff is the lawful owner of the suit land. Therefore, the first issue which is answered in negative suffice to prove that the Plaintiff

has failed to prove his ownership of the suit land as pointed out earlier. In other words, the Plaintiff case had no legs to stand on.

On the last issue, to what reliefs are the parties entitled to. Having analyzed the three issues in length, I fully subscribe to the submissions made by Defendants' witnesses and Mr. Saulo, counsel for the 5th Defendants in his final submission that the Plaintiff has failed to establish his case and thus he is not entitled to any compensation or reliefs.

In the upshot, I proceed to dismiss the suit and based on the fact that the Defendants have prosecuted this case to its finality, certainly, they have incurred costs in this endeavour. These are costs involved in the suit which the Plaintiff must shoulder and I find no sufficient reason why the Defendants should be deprived of the same. Therefore, I find and hold that the Plaintiff to bear the costs of this suit.

Order accordingly.

Dated at Dar es Salaam this date 17th August, 2022.




A.Z. MGEYEKWA
JUDGE
17.08.2022

Judgment delivered on 17th August, 2022 via video conferencing whereas Mr. Fraterine Munale, learned counsel for the Plaintiff and Mr. Saulo Kusakalah, learned counsel for the 5th Defendant were remotely present




A.Z. MGEYEKWA
JUDGE
17.08.2022

Right to appeal fully explained.