

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 152 OF 2007

ZAHRA NURU PLAINTIFF

VERSUS

PAUL MUSHI (Suing As an Attorney of

SALIM ALLY) DEFENDANT

JUDGMENT

Date of the last Order: 02.12.2022

Date of Judgment: 13.12.2022

A.Z. MGEYEKWA, J

At the centre of controversy between Zahra Nuru, the Plaintiff, and Paul Mushi (suing as an Attorney of Salim Ally), the Defendant is Plot No. 800 located at Msasani Beach within Dar es Salaam Region. 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.

A brief genesis related to the case at hand, the Defendant lodged a suit before this Court on 19th June, 2007 against the Plaintiff, Commissioner for Land, and Attorney General. Before hearing of the case on 13th November, 2007, the counsel for the Defendant prayed to withdraw the suit liberty to refile a fresh suit. The Court granted his prayer and marked the suit withdrawn with liberty to refile. The Counter Claim remained intact, hence the Commissioner for Land and Attorney General were not parties to the Counter Claim, therefore, and they were discharged.

Hon. Mziray, J (as he then was) proceeded with hearing the Counter Claim and declared the Plaintiff a lawful owner of the suit land. The matter was taken to the Court of Appeal of Tanzania whereas the decision in Civil Appeal No. 221 of 2019 was determined on a point of law that the set of assessors changed which consequently vitiated the entire proceedings, thus, the Court of Appeal of Tanzania nullified the proceedings, quashed the Judgment and set aside the orders arising therefrom and ordered a retrial.

The facts of the case can be deciphered from the pleadings and evidence on record go thus: the Plaintiff is the lawful owner of Plot No. 800 Msasani Beach in the City of Dar es Salaam by virtue of a Letter of Offer dated 9th May, 1988 and a Certificate of Title No. 57320 dated 11th April, 2005. The

Plaintiff claims that the ownership of the suit land was affirmed through a letter dated 17th September, 2004, and the same was copied to the Defendant who disrespectfully ignored it and continued to trespass into the suit land. According to the Counter Claim, on 15th November, 1989, the first Defendant fraudulently obtained an offer on the Plaintiff's plot which, however, was subsequently revoked by the President of the United Republic of Tanzania.

The Plaintiff further claimed that she has suffered damages by way of loss of income from the plot mesne profit at the rate of Tshs. 5,000,000/= per month. In the Counter Claim, the Plaintiff claimed that she has been barred by the Defendant to develop the suit land which is located in prime Ares of the City of Dar es Salaam and could accommodate both residential and commercial structures capable of generating income of not less than Tshs. 5,000,000/=.

In the Amended Counter Claim, the Plaintiff prays for Judgment and Decree against the Defendant as follows: -

- a) *A declaration that the 1st Defendant is the lawful owner and registered owner of the suit property*

- b) *.Permanent Injunction restraining the Defendant his agents' workmen, employees, or any other person from doing anything on plot No. 800.*
- c) *Payment of mesne profit at the rate of Tshs, 5,000,000/= per month from January, 1990 to the date of the Judgment.*
- d) *Payment of interest at the rate of 30% in item (c) above from the due date to the date of full and final payment.*
- e) *Payment of interest at the court's rate on item (c) above from the date of judgment to the date of full and final payment.*
- f) *Costs of the suit*
- g) *Any other order or reliefs this Honourable Court may deem fit and just to grant.*

In response to the Counter Claim, the Defendant filed an Amended Written Defence to the Amended Counter Claim. The Defendants disputed all the claims and urged this court to dismiss the entire Counter Claim with costs.

During the hearing of the case before this Court, the Plaintiff was enlisted by Mr. Majura Magafu and Ashiru Lugwisa, Advocates while the Defendant enjoyed the legal service of Mr. Samson Mbamba, learned counsel. During the Final Pre-trial Conference, two issues were framed by this Court as follows: -

1) Who is the lawful owner of the suit land.

2) To what reliefs are the parties entitled to.

In what seemed to be a highly contested trial, the Plaintiff's case was founded on Zahra Nuru, who testified as PW1, and Adelifida Kamilosi testified as PW2. The Defendant called one witness; Paul Mushi who testified as DW1, and Adelifida Kamilosi a Land Officer from the Commissioner for Land was called by the Defendant to produce documents.

The Plaintiff tendered a total of six exhibits namely; a Letter of Offer dated 9th March, 1988 and a payment Exchequer (Exh.P1 collectively), a copy of Title Deed, Title No. 57320 Plot No. 800 Block Msasani Beach (Exh.P3). Payments receipts (Exh.P4 collectively), a letter titled; Plot No. 800 Beach Dar es Salaam City dated 7th September, 2004 (Exh.P5), and land rent payments receipts (Exh.P6).

On their side, the Defendants tendered 1 exhibit namely; a Letter of Offer dated 15th November, 1989 and advanced payment documents dated 16th November, 1989 (Exh.D1 collectively), and a Power of Attorney was admitted and marked as Judicial Notice No.1.

The Land Officer produced seven documents in accordance with section 148 of the *Evidence Act, Cap.6 [R.E 2019]* as follows:-

1. *A letter dated 11.10.1993 from the Commissioner for Land concerning Plot No. 800 Msasani Beach.*
2. *A letter dated 24.03.1999 written by Land Officer City Commissioner to Salim Ally "open space" in front of Plot No. 800 Msasani Beach.*
3. *A letter dated 10.03.1994, from the Commissioner for Land to the Land Officer of the City concerning Plots No. 795, 798, and 800 Msasani Beach Dar es Salaam.*
4. *A letter dated 19.01.2001 from the Ag. Commissioner for Land to Salim Ally concerning Plot No. 800 Msasani Beach.*
5. *A letter dated 07.09.2004 from the Commissioner for Land to the Director of the Kinondoni Municipality.*
6. *A letter dated 31.10,2002 from the Commissioner for Land to the Director of the Kinondoni Municipality concerning Plot No. 800 Msasani Beach.*
7. *A letter from Salim Ally dated 30.09.2004 addressed to Commissioner for Land concerning Plot No. 800 Msasani Beach.*

Zahra Nuru (PW1) testified to the effect that she is the lawful owner of the suit land. PW1 stated that in 1988, the Ministry for Land and Human Settlement allocated the said suit land to her. PW1 testified that the suit land is surveyed. To substantiate her testimony she tendered an original Letter of

Offer dated 9th May, 1988 (Exh.P1) and Certificate of Title (Exh.P3). PW1 went on to testify that from the time when she was granted the Letter of Offer, she always paid land rent as per the requirement stated under the Letter of Offer. To substantiate her testimony she tendered the land rents receipt and payments receipt (Exh.P2 and Exh.P4 respectively).

PW2, Adelina Kamilosi is working with the Commissioner for Land. She testified that as per their record, Plot No. 800 Msasani Beach was allocated to Zahra Nuru in 1988 and they issued a Letter of Offer (ExhP1). PW2 testified later in 1993, they received complaints from Salim Ally that Commissioner for Land allocated the same plot to him and he had a Letter Offer which was issued in 1989. PW2 testified that the plot in dispute was once allocated to Ahmad Mohamed Abdallah in 1988, then the Ministry for Land conducted a site inspection or investigation in 2005.

PW2 continued to testify that they allocated the suit land first to Zahra Nuru in 1988 and they prepared a Certificate of Occupancy (Exh.P3). She testified that PW1 paid land rent. PW2 testified that Msasani Village and Msasani Beach are two distinct plots. PW2 testified all other ownership after 1988 issued to Zahara Nuru are graft ownership because they were issued over the ownership which existed.

During cross-examination, PW2 testified that years back there were some contradictions in allocating the suit land allocation. PW2 testified that there was a double allocation but the first priority goes to the one who developed the suit land. PW2 testified that Plot No. 800 and 199 were surrounded by a wall but there was no any development, inside the fence there was nothing. PW2 testified that Plot No. 800 was issued to three different people. She admitted that the Commissioner for Land caused confusion regarding the allocation of Plot No. 800 Msasani Beach.

When PW2 was re-examined, testified that the Ministry for Land recognize Zahra Nuri as the lawful owner of Plot No. 800 Msasani Beach and they registered a Certificate of Title in her name. PW2 testified that their final report (Exh.P5) was prepared in 2005 and Zahra Nuru was declared a lawful owner of the suit land.

On his side, DW1 testified that he has a Power of Attorney to represent Salim Ally. To substantiate his testimony he tendered a Power of Attorney (Judicial Notice 1). DW1 testified to the effect that the Plot No. 88 of Msasani Beach along Bagamoyo road belongs to Salim Ally. To support his testimony he tendered an original Letter of Offer dated 15th July, 1989 and copies of receipts and advanced payment documents dated 16th November, 1989 the

same were admitted as exhibit D1 collectively. The Defendant went on to testify that the Commissioner for Land issued a letter informing Salim Ally that there is a green belt. To substantiate his testimony referred this Court to the letter dated 11th March, 2011 produced by the Land Officer. DW1 continued to state that in 1996, the area was free for usage. To support his testimony he referred this Court to a letter dated 24th March, 1996 stating that the area is free from any restriction.

DW1 went on to testify that Hamudi Abdallah was allocated a Plot situated in Msasni Village, Zahra Nuru was allocated Plot No. 800 along the Indian Ocean and Salim Ally was allocated Plot No. 800 Msasani along Bagamoyo road. suit land. DW1 testified that Zahra Nuru did not alert the Defendant raised any complaints. DW1 testified that the letter (Exh.P5) is uncertain. Because the location of the suit land was not stated. DW1 went on to state that the Deed of Title was issued on 3rd May, 2005 while the payment was made in 1985, thus the Title was fatal because PW1 made her payment before the issuance of the Title. DW1 further testified that the Defendant has developed the suit land.

After the trial, the Advocates were allowed to address the Court by way of written submissions. All learned Advocates complied with the court order. I

take this opportunity to thank them for their well-researched submissions, their submissions have been material in the preparation of this Judgment.

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. I am going to determine whether the Plaintiff was able to prove his claim on the balance of probabilities to warrant this Court to decide in his favour. My starting point would be to give an exposition of the law relating to pleadings. The plaintiff is duty-bound to prove his case. This is in accordance with section 110 of the Evidence Act, Cap.6, [R.E. 2019] which provides that:

"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 **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."

See also the cases of **Charles Richard Kombe v Evarani Mtungi and Two Others**, Civil Appeal No. 38 of 2012; and **Barclays Bank (T) Limited v Jacob Muro**, Civil Appeal No. 357 of 2019 (both unreported).

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 *who the lawful owner of the suit land*.

The analyses of this issue reveal 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, both parties tendered a Letter of Offer to prove their ownership. I have scrutinized the evidence and documentary evidence such as the Letter of Offer issued in 1988 (Exh.P1) and the Letter of Offer

issued in 1989 (Exh.D1) both are related to Plot No. 800 Msasani Beach, and noted that the Letter of Offer of the suit land was first allocated to the Zahra Nuru on 9th May, 1988. It is indisputable fact that the main issue of controversy is that DW1 also obtained a Letter of Offer on the same Plot. However, DW1 obtained the Letter of Offer on 15th November, 1989 after the issuance of the Letter of Offer to PW1.

Additionally, the Plaintiff proved that she obtained a Certificate of Title on 5th May, 2005 with respect to Plot No. 800 Msasani Beach in Dar es salaam City with 1336 square meters as per exhibit P3. While DW1 has not obtained any Title. The Plaintiff also testified to effect that she was paying land rents and as per exhibit P6, reveals that she paid land rents from 2005 to 2016.

I understand that the Defendant's counsel in his final submission banked a lot on the fact that there was a letter dated 10th March, 1994 issued by the Commissioner for Land to the Land Officer of the City of Dar es salaam regarding plots 795, 798, and 800. For ease of reference, I reproduce the said letter hereunder:-

Idara ya Ardhi,

S.L.P. 9230,

DAR ES SALAAM.

KUMB. TEMP LD/13958/6/ISC,

10.3.1994

Afisa Ardhi (Jiji),

S.L.P 9084,

DAR ES SALAAM.

YAH. VIWANJA NA. 795, 798 NA 800 MSASANI BEACH DAR ES SALAAM

Tafadhali rejea barua yako yenye Kumb. Na. DCC/LD/32590/30 ya tarehe 27.1.1994 ihusuyo utata uliojitokeza juu ya viwanja vilivyotajwa hapo juu.

Baada ya uchunguzi wa kina na pia kutembelea maeneo husika imebainika kwamba karibu nambari zote za viwanja hivi zimetumika mara mbili au Zaidi na kumilikishwa kwa watu tofauti na kwenye maeneo tofauti yafuatayo: -

- 1. Eneo lililopakana na Bahari ya Hindi (Msasani Village).*
- 2. Eneo lilipakana na Msasani Village Kitalu D (katika Registered survey plan No. 22564).*
- 3. Eneo linalopakana na Old Bagamoyo Road (katika Registered Survey Plan No. 26450).*

Kumbukumbu zetu zinaonyesha kwamba viwanja katika eneo hili vilimilikiwa kama ifuatavyo: -

Kiwanja Na. 795 Msasani Beach kilimilikishwa kwa ndugu Zami Njaa c/o CCM Office Msasani, Dar es Salaam kwa barua ya toleo Kumb. Na. LD/132524/3/BM ya tarehe 28.04.1988. kiwanja Na. 800 Msasani Beach kilimilikishwa kwa Ndugu Zahra Nuru was S.L.P. 1422 Dar es Salaam kwa barua ya toleo Kumb. Na. LD/132740/1/PJC ya tarehe 09.05.1988.

Kiwanja Na. 800 Msasani Beach kilimilikishwa kwa Ndugu Hamud Hamad Abdallah wa S.L.P 5764, Dar es Salaam kwa barua ya toleo Kumb. Na. D/KN/A/29974/2 ya tarehe 10.06.1988. taarifa zinaonyesha kwa kiwanja hicho hatimaye kilibadilishwa kuwa kiwanja Na. 1 Kitalu 'D' Low Density Msasani Village.

Kiwanja Na. 795 Msasani Beach awali kilimilikishwa kwa Ndugu Whihole Mundebe wa S.L.P. 2669. Dar es Salaam, ambaye baadaye alimwachia Ndugu Alexander Seka Odemba wa S.L.P 9082, Dar es Salaam, na ambaye alimilikishwa kwa barua ya toleo Kumb. Na. DCC/LD/325900/19/TMM ya tarehe 25.02.1993.

❖ *Kiwanja Na. 800 Msasani Beach katika eneo hili kilimilikishwa kwa Ndugu Salim Ally wa S.L.P. 5669, Dar es Salaam, kwa barua ya toleo Na. DSM/LD/33938/1/TMM ya tarehe 15.11.1989. Milki ya kiwanja hiki pamoja na vingine katika eneo hili imefutwa kwa sababu pamekusudiwa kuwa "Bustani ya Halmashauri ya jiji"*

Nakala Kwa:

*Ndugu Zami Njaa
c/o CCM Office,
Msasani,
Dar es Salaam.*

*Ndugu Ally Momba,
c/o CCM Office,
Msasani,
Dar es Salaam*

*Ndugu Zahra Nuru,
S.L.P. 1422,
Dar es Salaam*

*Ndugu Clement Odemba,
S.L.P. 9121,
Dar es Salaam*

*Ndugu Salim Ally,
S.L.P. 5669,
Dar es Salaam*

Apart from the above letter, the Commissioner for Land issued another letter to the Defendant dated 24th March, 1999 which was produced by the Land Officer in court allowing the Defendant to develop the suit land. There was

another letter dated 31st October, 2002 addressed to the Director of Municipality concerning Plot No. 800 Msasani Beach Dar es Salaam stating that the City Council issued a Plot to Salim Ally and the application in obtaining a CT of Plot No. 800 Msasani Beach was addressed to the office of the City Council.

All correspondence were related to Plot No. 800 Msasani, the same office the Commissioner for Land issued a letter tendered by PW1 from the Commissioner for Land addressed to the Municipal Director (Exh.P5) and copied to Zahra Nuru, Hamud Abdallah, and Salim Ally informing the parties that the lawful owner of Plot No. 800 Msasani Beach is Zuhura Nuru. PW2 in her testimony also confirmed that the Zuhura Nuru is the current legal owner of Plot No. 800 Msasani Beach. For ease of reference reproduce the said letter hereunder:-

Idara ya Ardhi,

S.L.P 9230,

DAR ES SALAAM,

Kumb. Na. LD/132740/48/FK

07/09/2004

Mkurugenzi wa Manispaa,

Manispaa ya Kinondoni,

S.L.P 31902,

DAR ES SALAAM

YAH: KIWANJA NA. 800 MSASANI BEACH

JIJINI DAR ES SALAAM.

Tafadhali husika na kichwa cha habari hapo juu na rejea barua yetu yenye Kumb. Na. LD/164662/37 ya tarehe 16/01/2004 iliyokutaka kutuletea taarifa ya mmiliki wa kiwanja kilichotajwa hapo juu.

Imethibitika sasa kwa mujibu wa kumbukumbu zilizopo hapa Wizarani kuwa mmiliki halali wa kiwanja hiki ni Ndugu ZAHRA NURU wa S.L.P 1422 Dar es Salaam. Alimilikishwa kwa barua ya toleo Na. LD/13240/1/PCJ ya tarehe 09/05/1988 na sasa tuko katika hatua za kumuandalia hati.

Tunapenda kukufahamisha kuwa huyo ndio mmiliki halali na kwamba milki nyingine zote zilizotolewa kwa kiwanja hiki baada ya hiyo sio halali. Naambatanisha nakala yake ya barua ya toleo pamoja na stakabadhi za malipo yake kwa ajili ya kumbukumbu zako.

F. Kanuti

Kny: KAMISHNA WA ARDHI

Nakala:

*Zahra Nuru,
S.L.P 1422
DAR ES SALAAM.*

*Hamud Abdallah,
S.L.P 5964,
DAR ES SALAAM.*

*Salim Ally,
S.L.P 77815,
DAR ES SALAAM.*

From the above excerpt it is clear that the Commissioner for Land resolved the dispute between Zahra Nuru, Hamud Abdallah and Salim Ally. After the findings and conclusion made by the Commissioner for Land, he proceeded to issue a Certificate of Title in 2005 (Exh.P3). 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. It reads:-

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

According to the above-cited provision, a *prima facie* proof of ownership of registered land is its registration and in this matter the Certificate of Title. In the case of **Jane Kimaro v Vicky Adili (Administrator of the Estate of the late Adili Daniel Mande)**, Civil Appeal No. 2012 among other things, the Court observed that:-

"Ownership of land starts in whose name that estate or interest is registered."

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.”

Similarly in the case of **Amerali & Sons Ltd v The Director Mwanza City Council**, Land Appeal No. 146 of 2016 when the Court referred the case of **Hamis Sinahela v Hassan Mbwele** [1974] LRT 28, it held that:-

“A grant of right of occupancy over a piece of land when a prior right of occupancy over the same piece of land still subsists is irregular, accordingly the prior grantee of a right of occupancy is entitled to the land.”

PW1 complied with all the procedures in obtaining the suit land which is why the Commissioner for Land issued a Certificate of Title had it been that she did not pay all land rents, then the authority could have decided not to issue the CT. In the case of **Amina Maulid & 2 Others v Ramadhan Juma**, Civil Appeal No. 35 of 2019 (CAT) at Mwanza where it was among other things held that:-

“....a person with a certificate thereof will always be taken the lawful owner unless it is proved that the certificate was not lawfully obtained.”

Based on the above analysis it is clear that the person holding a Title Deed cannot be easily be impeached. Be it as it may be, the bottom line is the Commissioner for Land offered first the suit land to the Plaintiff this makes her with a better title over the Defendant and later PW1 obtained a CT. Therefore I hold that Zahra Nuru is the lawful owner of Plot No. 800 Msasani Beach at Dar es Salaam.

On his side, DW1 did not tender any Title Deed to prove his ownership and he did not prove if he made any developments in the suit land he did not tender a building permit or request the Court to visit *locus in quo*.

Next for consideration is the last issue, *to what reliefs are the parties entitled to*. Having analyzed the above issues in length, I fully subscribe to the submissions made by Plaintiff, PW2, and the counsels for the Plaintiff that the Plaintiff is the lawful owner of Plot No. 800 Msasani Beach. The Plaintiff asked for seven prayers, like mesne profit, interest incurring therefrom in my view the prayers iii), iv) and v) crumble because PW1 claims are not substantiated with any material evidence, hence I decline to grant them. For the aforesaid reasons, I grant the first and second prayers in the Counter Claim as follows:-

1. *The Plaintiff is the lawful owner of Plot No. 800 Msasani Beach.*

2. The Defendant is permanently restrained the Defendant, his agents, workmen, or employees from interfering with the suit land.

3. No order as to costs.

Order accordingly.

DATED at Dar es Salaam this 13th December, 2022.

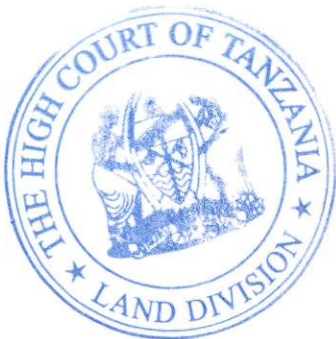


A.Z.MGEYEKWA

JUDGE

13.12.2022

Ruling delivered on 13th December, 2022 in the presence of Mr.Ashiru, Lugwisa, counsel for the Plaintiff, Mr. Samson Mbamba, and Edwin Urassa, counsels for the Defendant.



A.Z.MGEYEKWA

JUDGE

13.12.2022

Right to appeal fully explained.