

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND CASE NO. 263 OF 2017**

**SUZAN RAPHIA LINJEWILE** (As Administratrix of the  
Estate of The Late REMIGIUS MAJANGARA LINJEWILE).....**PLAINTIFF**

**VERSUS**

**OMARI ABDALLAH HASSAN**.....**1<sup>ST</sup> DEFENDANT**  
**ALBERT DAWSON KIMARO**.....**2<sup>ND</sup> DEFENDANT**

Date of Last Order: 25.04.2022  
Date of Judgment: 31.05.2022

**JUDGMENT**

**V.L. MAKANI, J**

The plaintiff in this suit is SUZAN RAPHIA LINJEWILE suing as Administratrix of the Estate of her late husband namely Remigius Majangara Linjewile. She is praying for the following orders:

- 1. That this honourable court be pleased to declare that the defendants have trespassed into Plot No. 454 Block J Mbezi, Kinondoni, Dar es Salaam.*
- 2. That this honorable court be pleased to declare that Plot No. 454 Block J Mbezi, Kinondoni, Dar es Salaam is part of the estate of the late Remigius Majangara Linjewile.*

3. *That the defendants to give vacant possession from Plot No. 454 Block J Mbezi Kinondoni, Dar es Salaam.*
4. *The structures erected by the defendants on Plot No. 454 Block J Mbezi Kinondoni, Dar es Salaam be demolished at the defendants' own costs.*
5. *General damages.*
6. *Costs of this suit.*
7. *Any other relief(s) this honourable court deems fit to grant.*

In this suit the plaintiff was represented by Mr. Kambo, Advocate, while the 2<sup>nd</sup> defendant was represented by Mr. George Ngemela, Advocate. The first defendant did not enter appearance though he was duly served by way of publication, therefore the suit proceeded in his absence.

The framed issues were as follows:

- a) *Who is the lawful owner of Plot No. 454 Block J Mbezi Kinondoni, Dar es Salaam (the **suit land**).*
- b) *Whether the plaintiff's claim was filed out of time.*
- c) *Whether the defendants are trespassers to the suit land.*
- d) *To what reliefs are the parties entitled to?*

The plaintiff had three witnesses. The first witness was the plaintiff herself, **PW1**. She said her husband Remigius Majangara Linjewile died on 2006 and she was appointed the Administratrix of his estate as per **Exhibit P1**. She continued to say that her husband was the one who told her about the suit land and she has the Letter of Offer (**Exhibit P2**). According to her she went to the Land Office in order to know who had trespassed on the suit land and she was told it was Omari Abdallah Hassan and later they said Albert Kimaro. She said she was directed by the Land Office vide a letter (**Exhibit P3**) to present original documents regarding ownership of the suit land. **Exhibit P4** is a letter from the Commissioner for Lands Kinondoni Municipal stating that the original Letter of Offer of in the name of Remi Majangara Linjewile was found and the exercise of investigation was continuing. She said when she made a follow-up at the City Council, she was advised to come to court vide a letter **Exhibit P5**. She prayed for the court to order vacant possession as the suit land belongs to her husband and the trespassers be removed.

On cross-examination she said the suit land was among the properties in the estate of her husband and it was bought from the City Council. She said she has not distributed the properties of the estate to the

beneficiaries and when her husband was alive he did not tell her of any trespass and he never complained but when he died that is when she discovered of the trespass and that was in 2007. She said there was a building permit to his husband issued in 21/01/1994. She admitted that she has no report of investigation by the Land Office after they discovered that there were two letters of Offer on the suit land one to her husband and another to Omari Abdallah Hassan. She admitted that she was not aware of the Letter of Offer in the name of Omari Abdallah Hassan and which was granted before the one to her husband. She also admitted that since the issuance of the Letter of Offer to her husband in 1986 up to when he died there were no developments on the said suit land.

**PW2** was Charles Linjewile the son of the plaintiff. He testified that he was assisting his mother to make follow up at the Ministry of Lands and Kinondoni Municipal Council. He said they have paid Land Rent up 2016/2017. He said he was also informed that on the suit land there was another person and to get the suit land they have to go to court. On cross-examination **PW2** said Kinondoni Municipal Council refused to demolish the buildings on the plot.

**PW3** was Emmanuel Fumbuka Segeja, Land Officer at Kinondoni Municipal Council. He said the Letter of Offer **Exhibit P2** in respect of the suit land was issued to Remi Linjewile. He said he did not know Omari Abdallah Hassan and he did not know if there was another Letter of Offer in respect of this plot. He did not recognise the original Letter of Offer to the said Omari Abdallah Hassan and the receipts as appearing in the plaint. He insisted that the suit plot was owned by the late Remi Linjewile. On cross examination he retracted and admitted that there are two Letters of Offer and the one to Omari Abdallah Hassan was issued before that of Remi Linjewile. He said if the Letters of Offers were issued legally the priority goes to that Letter of Offer to Omari Abdallah Hassan. He admitted that according to the Letter of Offer if payment is not made within one month the said Letter of Offer ceases to exist.

**DW1** was the 2<sup>nd</sup> defendant. He said he bought the suit land from Omari Abdallah Hassan in 1997 vide Sale Agreement (**Exhibit D1**). He said there is a Letter of Offer in the name of Omari Abdallah Hassan (**Exhibit D3**) and Transfer Form (**Exhibit P2**). He said they were advised not to proceed with the transfer until the issue of the Letters of Offers is resolved. He said since he has been in the suit

land no one has claimed the property until in 2017 when this case was filed. The witness also tendered receipts for land rent and property tax (**Exhibit D4**) and proof of payment of the Letter of Offer **Exhibit D5**. He said he had a Building Permit in the name of Omari Abdallah Hassan (**Exhibit D6**) and there was also inspection and a Notice to the Inspection (**Exhibit D7**) was issued to him. He pointed out further that he paid property tax (**Exhibit D8**). He said he has never seen the late Remi Linjewile or the plaintiff. He said the complaints to the Land Office was by the plaintiff after the death of his husband. He prayed for the case to be dismissed with costs.

On cross examination **DW1** said the late Remi Linjewile died in 2006 and the plaintiff discovered about the suit land in 2007 but he was surprised that she started to follow-up in 2016. He admitted that as of this date he has no Letter of Offer in his name but the Letter of Offer in his possession is in the name of Omari Abdallah Hassan. He admitted that the Letter of Offer and the Building Permits are all in the name of the Omari Abdallah Hassan and he could not transfer the suit land to his name because of the dispute.

**DW2** was Mohamed Mussa Mahinya. He said he retired from the Civil Service in 2017. He said he was a Technician of Buildings in the City Council and the Kinondoni Municipal Council. He said he was the one who inspected the suit land after finding the 2<sup>nd</sup> defendant who was building the fence and he told him to bring all the original documents pertaining to the suit land for inspection which he did. He said the 2<sup>nd</sup> defendant had a Letter of Offer and a building permit in the name of the 1<sup>st</sup> defendant and it showed that the suit land was bought by the 2<sup>nd</sup> defendant in 1997.

After the presentation of evidence by the parties, final submissions were filed by Counsel for the parties as was ordered by the court. The relevant part of the submissions will be pointed out in the course of analysing the evidence of the parties.

In determining this matter, I will be guided by the principle embodied in section 110 of the Evidence Act CAP 6 RE 2019 that whoever alleges must prove as asserted by Counsel for the parties. Section 110 of the of the Evidence Act reads:

*(i) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts he asserts must prove those facts exists.*

*(ii) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

In the case of **Anthony M. Masanga Vs. Penina Mama Mgesi & Lucia (Mama Anna) Civil Appeal No. 118 of 2014** (unreported) the Court of Appeal in underscoring this principle stated:

*".....Let's begin by re-emphasizing the ever cherished principle of law that generally, in civil cases the burden of proof lies on the party who alleges in his favour." '*

The plaintiff alleged that her husband was the owner of the suit land by virtue of the Letter of Offer (**Exhibit P2**). I have gone through the records and the evidence presented in court and indeed, the late Remigius Majangara Linjewile was granted a Letter of Offer for the suit land in **19/08/1986**. However, prior to this grant the 1<sup>st</sup> defendant, Omari Abdallah Hassan on **25/05/1985** was already in possession of a Letter of Offer (**Exhibit D3**) in respect of the same suit land.

It is apparent therefore that since there are two Letters of Offer in respect of the same plot of land, there is therefore a question of double allocation and where such is proved, then the right of occupancy granted earlier subsists. This was also confirmed by the



**PW3** the Land Officer that if there are two Letters of Offer on the same plot then the one issued earlier takes precedence. This principle was propounded by this court in the case of **Delefa Misungwi Vs. Milika James Land Appeal No. 32 OF 2021, (HC-Mwanza)** which quoted the case of **Hamisi Sinahela vs. Hassan Mbwele[1974] LRT 28**, in which it was held:

*"grant of a 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."*

(Also see: **Colonel Kashmir versus Naghinder Singh Mathur (1988) TLR 163**. I also subscribe to the case of **Ombeni Kimaro vs. Joseph Mishili t/a Catholic Charismatic Renewal, Civil Appeal No. 33 of 2017 (CAT-DSM)** (unreported) that was cited by Mr. Rwebangira.

Though the cases above cite right of occupancy, but Letters of Offer have the same right of ownership over a registered land. With the above analysis and the evidence at hand it means that the plaintiff as the administratrix of the estate of the late Remigius Majangara Linjeweke cannot be the owner of the suit land because the 1<sup>st</sup> defendant Omari Abdallah Hassan was the prior grantee of the Letter of Offer.

It is also the law that in situations where there are competing interests on the same subject matter, the Principle of Priority comes into play. The principle carries the maxim "*he who is earlier in time is stronger in law*". This means the first in time prevails over the others. In other words, if rights are created in favour of two persons at different times, the one who has the advantage in time should have advantage in law. (See: **The Law Articles of India: Civil Laws, Doctrine of Priority in Property Law by Pallavi Ghorpade** also the case of **Sara Ngonyani vs. Joyce Philbert Hyera, Land Appeal No. 167 of 2016** (unreported). As it has been stated above, the 1<sup>st</sup> defendant was granted his Letter of Offer prior to that of the late Remigius Majangara Linjewele hence he remains to be the owner of the suit land.

Further, according to paragraph 6 of the said Letter of Offer, if the fees which have been reflected in the letter are not paid within 30 days, then the offer lapses and the plot is disposed as the committee deems fit without any further reference to the holder of the Letter. In the present case, there is no proof on record that the late Remigius Majangara Linjewele paid the required fees which is condition

precedent before the grant of the Letter of Offer. But on the other hand, **Exhibit D4** shows that the 1<sup>st</sup> defendant paid the requisite fees on 30/09/1985 within the 30 days as provided in the Letter of Offer. This corroborates further that the 1<sup>st</sup> defendant is the owner of the suit land because on the balance, the evidence leans in favour of the defendants.

In his final submissions Mr. Kambo on behalf of the plaintiff was of the view that the documents tendered by the plaintiff **Exhibits P2 to P5** proved that the Letter of Offer was genuine. However, as established above, genuineness of the Letter of Offer was not the main issue but what is to be considered is who was the first grantee of the suit land. In any case the said exhibits did not confer ownership to the plaintiff, but as said above, **Exhibit D3** conferred ownership to the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant was in possession and tendered the said exhibits in court by virtue of the Sale Agreement **Exhibit D1**. And despite that the matter proceeded ex-parte against the 1<sup>st</sup> defendant but the documentation establishes ownership in his favour. As for issue of transfer of the property to the 2<sup>nd</sup> defendant, I agree with Mr. Rwebangira who averred in his final submissions that the transfer process of the suit land in the name of the 2<sup>nd</sup> defendant

could not have proceeded with this ongoing case. And the 2<sup>nd</sup> defendant tendered the Transfer Form (**Exhibit P2**) to prove that the process was ongoing but was stalled awaiting the outcome of this case. Mr. Kambo argued that the 2<sup>nd</sup> defendant if genuine ought to have done the transfer even before the death of the late Remigius Majangara Linjewe, but with due respect, transfer of property has no limit of time and since there were no problems, it is thus assumed that the 2<sup>nd</sup> defendant did not find it necessary to speed up the said transfer at the time. In the totality, I hold that the 1<sup>st</sup> defendant remains the owner of the suit land. The 2<sup>nd</sup> defendant may wish to continue with the process of transfer after the conclusion of this case.

The second issue is whether the plaintiff's claim was filed out of time. According to Mr. Rwebangira in his final submissions, the issue of time has two limbs. He said the late Remigius Majangara Linjewe was allegedly granted the Letter of Offer on 19/08/1986 but there is no proof that he accepted the said offer or made any developments therein until he died on 05/07/2006. He said at the time he was allocated the land to the time of his death it is 20 years and since he had not taken any possession or claimed the suit land then his right of claim expired. In other words, if the late Remigius Majangara

of the considered view that the cause of action was triggered by the knowledge of the plaintiff that the suit property was in occupation by someone else upon her appointment as administratrix. In that regard, I am satisfied that the suit was filed within time.

The issue that the defendants are trespassers is straight forward. Having established that the plaintiff and/or his late husband are not the owners of the suit land then the defendants cannot be trespassers in their own land.

As to what are the parties entitled to? The plaintiff has claimed general damages to be awarded by the court. The court discretionarily awards general damages after taking into consideration all relevant factors of the case (see the case of **Cooper Motor Corporation Limited vs. Moshi Arusha Occupational Health Services [1990] TLR 96**). In the present instance, it is apparent that the injury/loss on the plaintiff (if any) in this whole transaction was not activated by the defendants thus I do not find it necessary to award any damages to the plaintiff and I hold as such.

For the reasons I have endeavoured to address, the plaintiff has failed to prove the case to the standards of law required of balance of probabilities. And according to the case of **Hemed Said vs. Mohamedi Mbilu [1984] TLR 113** both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win. And in this case, it is evident that the evidence by the plaintiff has not outweighed that of the defendants despite that the matter proceeded ex-parte against the 1<sup>st</sup> defendant.

In the result, the plaintiff is not entitled to the reliefs prayed in the plaint or at all. Subsequently, the suit is hereby dismissed with costs.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**31/05/2022**



