

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

LAND CASE NO. 11 OF 2019

SEIFU BAKARI KISINGA.....PLAINTIFF

VERSUS

**ABDULRAHMAN ALLY HAMISI.....1ST DEFENDANT
TEMEKE MUNICIPAL COUNCIL.....2ND DEFENDANT**

Date of Last Order: 14.02.2022

Date of Judgment: 31.05.2022

JUDGMENT

V.L. MAKANI, J

The plaintiff in this suit is SEIFU BAKARI KISINGA. He is praying for orders as follows:

- a. Declaratory order that he is the lawful owner of a house No. 318 on Plot No. 219 Likwati Street Temeke Municipality Dar es Salaam in which since 1970s lived therein (the suit house).*
- b. Declaratory order that the defendants are trespassers on the suit house.*
- c. The defendants order to pay the plaintiff compensation of TZS 600,000,000/= (Six Hundred Million) only for illegal demolition of the plaintiff's house built in 1970 on the suit area.*

d. General damages as the court may deem fit to grant.

e. Costs of the suit.

The plaintiff in this case was represented by Mr. Juma Nassoro, Advocate; while the 1st defendant had the services of Ms. Gladys Tesha, Advocate and the 2nd defendant was represented by Ms. S. Mvungi, State Attorney.

The issues that were framed were as follows:

- 1. Whether the plaintiff is the lawful owner of house No. 318 on Plot No. 219 Likwati Street, Temeke Municipality Dar es Salaam (the **suit property**).*
- 2. Whether the defendants are trespassers in the suit property.*
- 3. Whether the demolition of the suit property by the 2nd defendant was lawful.*
- 4. Whether the plaintiff is entitled to compensation of TZS 600,000,000/= and general damages as prayed.*
- 5. To what reliefs are the parties entitled to.*

The plaintiff was the first witness (**PW1**). He said he has been the owner of the suit property since 1970. He said he went to the City Council in 1974 because when he acquired the suit property it was a squatter area. He said the property was surveyed and it came to be known as Plot No. 219 House No. 318 Likwati Street, Temeke. He said

he was given a Letter of Offer by the City Council, but it was lost. He said he reported the loss to the police who issued a Police Loss Report (**Exhibit P1**). He said he was also making payments to Tanzania Revenue Authority (**TRA**) (**Exhibit P2** collectively). He went on to say that in 1976 he started construction and his neighbour in Plot No. 211 was Maulid Ally and then Kapela, all of who have passed away. He said in 2018 Temeke Municipal Council gave him a Notice of 7 days to demolish the house and the reason was that he has trespassed in Plot 211. The Notice of demolition was admitted as **Exhibit P3** and the plaintiff said when he received the Notice he decided to go to the Municipal Council and told them that he has been on the suit property for a long time and the notice of 7 days is very short time but the Municipal Council ignored him. He said it is not true that he trespassed in Plot 211 and that is why he is in court.

According to the plaintiff, the 1st defendant was the buyer of the house on Plot 211, but he also wanted his area because Plot 211 was for business. He said the 1st defendant wanted to change the said suit property from residential to business and there was a public notice to that effect (**Exhibit P4**). The plaintiff said that the defendants claim that the suit property Plot 219 is not in existence, but he claimed that

he pays annually for the said property. He prayed for the reliefs as was stated in the plaint.

On cross-examination he said he did not remember clearly when he was given the Letter of Offer, but it got lost in 2018 at the time he was sick and was on move. He said Plot No. 219 had the width of 14 metres in the front and 19 metres at the back but he could not remember the length. He said he did not report the loss to the Municipal Council as he was sick. He said he built a house on Plot No. 219 and there were containers therein. It was a residential house and a business house. He said the survey plan was there, but it got lost with the Letter of Offer.

The second witness was Jamal Bakari Kisinga (**PW2**). He said he knew Plot 219 since 1970 and the owner is the plaintiff who is his brother. He said he used to supervise construction in the said plot, and this was in 1970. He said the construction was fast and in the same year there was a brick house of 6 rooms. The front of the house was facing East and there was a road, and the neighbouring plot was Plot No. 211 belonging to Maulid. He said currently Plot 219 has no house as it was demolished in 2018 though it was not in the road

reserve. He said the house on Plot No. 219 was not in the road reserve as in front there was Likwati Road, and in the south another road known as Lushoto and in the 1970s the plot in the south boarded an open space where children played football. He said the plaintiff's house was L-shaped and during the time he was supervising construction there were no buildings around. He said Plot 211 was owned by Abdulrahman Ally Hamisi (the 1st defendant) and there was a Notice of Demolition that the plaintiff has trespassed in his land. The notice was by the Municipal Council and it went through the Local leader and it was passed on to the plaintiff after 4 days. He said the demolition was conducted at night.

On cross examination **PW2** said ownership started when the plaintiff was allocated the plot. He said he was told by his brother of the demolition because he could not come as he was sick. He said the Notice was affixed on the wall of the demolished house. **PW2** admitted that for a person to own a piece of land he has to have a Certificate of Title or a Letter of Offer. But he said the Letter of Offer granted to the plaintiff, got lost before the dispute arose. He confirmed in re-examination that the Letter of Offer to his brother was by the City Council.

PW3 was Rafii Saidi Mpendu. He said he was resident of Wailes Street in Temeke and his neighbour was the plaintiff. He said he was in the area in 1968 and Mr Seifu came to the area in 1970 and another neighbour was Maulid Ally. He said the house was not in the road reserve. He said Plot 211 was in the project by the City Council and the plaintiff got his plot adjacent to this plot. He said the project by the City Council was from 1968 and Plot 219 was surveyed later, and they started building in 1970. He said Plot 219 was not in the project. He said there has not been any dispute between the plaintiff and Maulid Ally, Kapella or Kapella's children who owned Plot 211. But, he said, when the plot was sold to the 1st defendant that was when problems started. He said there was no dispute by the City Council when he was building his house in 1970 and there was no problem either with the Municipal Council until in 2018 when there was demolition.

On cross examination he admitted that he did not participate in the allocation of Plot 219. He said he did not know anything about the project but he only saw buildings, but he knew Plot 211 was under the project and Plot 219 came in later. **PW3** further said the house

was in the middle of Likwati, Kaye and Lushoto roads but all these roads did not touch Plot 219. He said the neighbours were the ones who encroached the road reserve and not the property of the plaintiff. In re-examination he pointed out that the houses that were built on the road reserve were the ones that were supposed to be demolished to pave way for road construction and not Plot No. 219. He clarified to the court that the project plots have beacons including that of the plaintiff has beacons.

PW4 was Benjamin Alex a private surveyor. He said in Block H in Temeke there are plots which were under the project and others which were not. He said the project plots were allocated in the 60s. He said Plot 219 was outside the project and the current status is that it has been revoked. He said the plot was revoked because they were complaints by the owners. He said in the 60s the City Council did demarcation and the owners were legally on Plot 219. He said when the Municipal Council did their demarcation, they joined Plot 219 with another and Plot 211 was born. He said this was wrong because the owners in Plot 219 were still in existence and they were paying rent all along. He said Plot 219 was legally demarcated and the owner has a right, but the only missing thing is beacons. He said when the two

plots were joined the plaintiffs was not present and was not consulted. In cross-examination **PW4** said that he was not the Surveyor for Plot No. 219 and the source of his knowledge was through history and that is why he came to know that Plot 219 was not in the project and there was a mistake in the demarcation of Plot 219 which was joined and became only one Plot 211. He admitted during clarification that currently Plot No. 219 has been revoked and it has been replaced by Plot No. 211.

The 1st defendant was the first defence witness (**DW1**). He said he is the owner of Plot 211 Block H Temeke Municipal Dar es Salaam. He said he bought the plot from the late Maulid Ally as administrator of the estate of one Juma Ally in 2017. He said he was given a Letter of Offer and a copy of the plan. He then transferred ownership from the administrator to his name and he was given a Certificate of Occupancy (**Exhibit D1**). He said after purchase he then wanted to get a survey plan for purposes of construction, and he requested for beacons to be installed because there were no beacons by then. He said he received information from the Municipal Council by a letter (**Exhibit D2**) and he was showed boundaries and his neighbours. He said his neighbours to the North was Plot 212, West- Plot 201, East-

Road and to the south there was a building and a road. He said after receiving the letter there was demolition, which according to **DW1**, he was not involved. He said he has not received any notice or information from the plaintiff about the plot.

On cross examination he said he did not bring the Letter of Offer in the name of Maulid Ally to court or the Sale Agreement. He said when the officers of the Municipal were installing the beacons, he was present. He said he had no information if there were any disputes on boundaries between the plaintiff and Juma Ally who sold him the plot. He admitted that he applied for change of use of the plot (**Exhibit P4**). He said the notice was for change from residential to commercial. He said he was not responsible with the demolition but after the demolition he fenced the plot with corrugated iron. He said according to **Exhibit D1** (the Certificate of Title), the plot measures 712 square meters.

On re-examination he said when he bought the plot, he was given a Letter of Offer and a Survey Plan and he also did a search before the purchase which reflected that Juma Ally was the administrator. He said he became aware that the building by the plaintiff was in his plot after the report by the Municipal Council on the boundaries. He said

there is no relationship between the application for change of use of land and the demolition.

DW2 was Salum Ally Urembo a Land Surveyor with Temeke Municipal Council. He said the dispute in respect of Plot 211 was in respect of boundaries and **Exhibit D2** was the letter by the Municipal Council reporting on the said the boundaries. He said he signed the letter to the owner of Plot 211 who wanted to know his boundaries and the said **Exhibit D2** explained in detail about the boundaries. He said in the south of Plot 211 there was a building which extended to the said Plot 211 and coordinates and GPS were used to establish the boundaries according to the Survey Plan (**Exhibit D3**) from the Ministry. He said Block H starts from Plots 32 to Plot 221. He said Plot 219 is not reflected in **Exhibit D3**. It is only Plot 211 which is on **Exhibit D3**.

On Cross examination he confirmed that the issue of boundaries was raised by the 1st defendant and during the boundaries exercise the neighbours were notified. He said he participated in the said exercise and there was a building which was partly in Plot 211 and partly in the road. He said demolition was after the boundaries exercise and

he never participated in the demolition because he is not responsible with demolition or issuance of any kind of notice.

DW3 was Edmund Alphonse Ndekulu an Architect with Temeke Municipal Council. He said he knew the suit plot because they were informed that there was a building extending to the suit plot and the road. This information was from the Surveyor. He said upon visiting the site they found a building which was built on the road in at least 11 meters, while the road was about 15 meters. He said they informed their superiors, and a notice for 7 days from 13/12/2018 to 20/12/2018 was issued. He said the owner of the building did not demolish the building, but the Municipal Council did the demolition to pave way for social activities, that is, to clear the road for use by the community.

On cross examination he said **Exhibit P3** is the notice, and it was addressed to the plaintiff. The notice showed that the plaintiff was a trespasser, and the building was demolished in the morning of 05:00hrs. He said **Exhibit P3** showed that the Local Government Leader one Ashura Sulemani received the notice for onward transmission to the plaintiff and she said the plaintiff received the

notice on 15/12/2018. On re-examination he said that they did not receive any complaints from the plaintiff after the demolition. He accordingly prayed for the plaint to be dismissed.

After the evidence by the parties the court visited the site in dispute and thereafter parties filed their final submissions.

Mr. Nassoro filed final submissions on behalf of the plaintiff. As regards the first issue he said that the evidence by the plaintiff, **PW2** and **PW3** were to the effect that the plaintiff was the lawful owner of the suit property and he has been on the said plot for more than 40 years. He said the Letter of Offer to the plaintiff was unfortunately lost and there is **Exhibit P1** which is the loss report. He said the plaintiff have been paying property tax to the Urban Authorities (Rating) Act CAP 289 and Local Government Finance Act CAP 290 as evidenced by **Exhibit P2**. He said since **Exhibit P2** is a government document, and it recognizes the existence of the suit property and none of the defendants disputed the validity of the contents of the said **Exhibit P2** then it stands to prove the plaintiff's ownership of the suit plot. He said there was an argument that **Exhibit P2** showed

that the house in issue was located at Miburani Street, but he said this argument was from the bar and it lacks merit because the location of the surveyed plots is described by its plot and block and **Exhibit P2** recognises Plot No. 219 Block H which is enough evidence to prove the plaintiff's ownership of the house. He said streets and ward names are not part of land descriptions but are for government administrative levels. He said Miburani is a governmental/administrative area of the local government ownership according to the Local Government (District Authorities) Act CAP 287 RE 2009 and Local Government (Urban Authorities) Act CAP 282. Mr. Nassoro went on saying that **Exhibit D3** which is the Survey Map does not show that Plot No. 219 Block H, but all the witnesses have failed to say why the TRA and the Municipal Council (the 2nd defendant) recognised Plot 219 by collecting property tax on it.

On **Exhibit D3** Mr. Nassoro said the legality of said document is wanting in terms of section 17(1) (2) of the Land Survey Act CAP 324 RE 2019. He said the provision provides that any Survey Map has to be approved by the Chief Surveyor something which **Exhibit D3** is lacking. He said he did not understand why there was a Survey Map of 1998 while the area was declared a planned area in 1970 vide GN.

374 of 1989 under Town and Planning Drawing No. 1/606/680/1 which declared Temeke redevelopment area. This meant the area had already been surveyed prior to 1998.

Mr. Nassoro further said the evidence of **PW4** showed that there was amalgamation of Plot 219 and Plot 211 into one, he however, submitted that the amalgamation was done in contravention of the law, that is, the Town and Country Planning Ordinance CAP 378 and so the said amalgamation is null and void. He relied on the case of **Fatuma Awadhi Sai El Hindi vs. Salima Ali [1987] TLR 156** (CAT). He said the Town Country Planning Ordinance was still in force when **Exhibit D3** was prepared in 1998. However, the law was repealed by section 80 of the Urban Planning Act No. 8 of 2007 but this has no effect to **Exhibit D3** because the exhibit was prepared when the law was still in force. He said there was no evidence that showed there was redistribution which led to the amalgamation and the amalgamation was not gazetted as per the requirement of the law. Mr. Nassoro said the standard of proof in civil cases is balance of probabilities and he submitted that the plaintiff has proved the first issue as per the required standard and as such he is the lawful owner of the suit property.

As for the second issue Mr. Nassoro answered this issue in the affirmative. He said the defendants failed to show the boundary of Plot No. 211 Block H. He said the defendants alleged that the plaintiff had encroached into their plot, but the defendant did not, during hearing or visit in locus in quo, show the court the beacons of the 1st defendant' Plot No. 211 Block H to justify the demolition conducted because whoever wants a court to believe existence of a particular fact has a burden to prove the existence of that fact under section 112 of the Evidence Act CAP 6 RE 2019. He said in the absence of that evidence then the demolition was illegal and both defendants are trespassers onto the plaintiff's Plot 219 Block H. He went on saying that the good thing was that the plaintiff showed the beacons which kept the boundary between Plot 211 and Plot 219 Block H. He observed that the whole of the area fenced with corrugated iron was therefore outside Plot 211 and outside the alleged road.

Mr. Nassoro pointed out that the defendants have failed to show detailed field notes computations relating to the exercise accompanied by written report to the Director of Lands and survey as required by Regulation 21 of GN No 174 of 1959. He said **Exhibit D1**

does not show the boundaries. **Exhibit D2** and **D3** also does not show the width of the alleged encroached road and the boundary of the road alleged to have been encroached. He said without measurements and clear knowledge of the boundaries it is difficult to say the plaintiff owner of Plot No. 219 Block H encroached the road or Plot 211 Block H. He said the general rule is that in a suit the plaintiff has the burden to prove his case. But where a person alleges existence of a particular fact the burden of proof shifts on that person.

As for the third issue, Mr. Nassoro said since the first issue has been answered that the plaintiff is the lawful owner of the demolished house and the defendants are trespassers it is obvious that the demolition was illegal. He said it was illegal because the notice was for a very few days while the plaintiff has been living in the house for 40 years and it was in contravention of Regulation 139(4) of the Local Government (Urban Authorities) (Development Control) Regulations GN 242 of 2008 which gives right for the plaintiff to apply to court for an order that the notice be rescinded or varied. He said the demolition was done in the midnight and without the plaintiff's chance to exercise his rights to go to court. He said since the demolition was at night the exercise was inhuman.

As for the fourth issue on whether the plaintiff is entitled to damages, Mr. Nassoro said indeed the plaintiff is entitled to damages for his house which was demolished in the midnight without a chance of the plaintiff to collect his belongings therefrom. He said the plaintiff is old and sick and the demolition was actuated by the 1st defendant's request to the 2nd defendant to re-establish boundaries and therefore he is equally liable. He said the plaintiff as a matter of right has to be compensated by way of damages because of the removal of Plot No. 29 Block H and creating a street and naming it Lushoto Street under Regulation 57(1) of GN No. 242 of 2008 and leaving people who obstructed the road south of the plaintiff's plot. He concluded by praying that the plaintiff be granted damages and all orders prayed in the plaint.

Ms. Gladys Tesha filed final submissions on behalf of the 1st defendant. She submitted that the plaintiff alleged to be the owner of Plot 219 Block H Temeke, he was therefore supposed to prove this fact in terms of section 110(1) of the Evidence Act CAP 6 RE 2019. She said in most cases proof of registration of an interest in land is done by production of either a Letter of Offer or Certificate of Title

and the onus of proof lies on that party who has alleged this fact and, in this case, the plaintiff. She relied on section 2 of the Land Registration Act CAP 334 RE 2019 and the case of **KMM Saving & Credit Cooperative Society Limited vs. Pelese Yeleje Mhebo (as administratrix of John Shege Mataba & Others, Land Case No. 267 of 2015 (HC-Land Division)** (unreported). She said the rent receipts which were tendered as **Exhibit P2** are not sufficient to prove that a person owned a particular plot of land. Ms. Tesha relied on the case of **Hamisa Athumani vs. Halima Mohamed, Land Appeal NO. 28 of 2018 (HC-Tanga)** (unreported) where the court stated that evidence of paying land rents or being in possession of receipts showing that one paid land rent in respect of a certain plot is not evidence of ownership of that plot. She said the receipts that were tendered as **Exhibit P2** collectively did not describe Plot No.219 Block H, Likwati Street which the plaintiff said was the suit plot. The receipts reflected that Plot No. 219 was in Miburani Street and not Likwati Street. Ms. Tesha also pointed out that the Loss Report **Exhibit P1** was insufficient to prove ownership of Plot No. 219 Block H Temeke by the plaintiff. She further said that **Exhibit D3** which is the Map reveals that there is no Plot No. 219 Block H Likwati Street and **Exhibit P2** refers to another plot which is neither in Likwati Street

nor Block H. She said she believed that a reasonable person who has lost his letter of Offer would not have taken a Police Loss Report only, but he would have at least applied for another copy of the Letter of Offer from the issuing authority or even request an official search report/letter. She said the plaintiff did not lead any evidence to show any steps to acquire a new Letter of Offer. Ms. Tesha observed that the plaintiff failed to prove the existence, contents, and conditions of the Letter of Offer from which his proof of ownership depends.

As for the second issue whether the defendants are trespassers, Ms. Tesha started by defining trespass as quoted in the case of **Frank Safari Mchuma vs. Shaibu Ally Shemndolwa [1998] TLR 279** to mean unjustifiable intrusion by one person upon the land in possession of another. She went on further to cite the case of **Amina Majid Ambali & Others vs. Ramadhanai Juma, Civil Appeal No. 35 of 2019, Civil Appeal No. 35 of 2019 (CAT-Mwanza)** (unreported) where the Court of Appeal stated that when two persons have competing interest in a landed property, the person with a certificate will always be taken to be a lawful owner unless it is proved that the certificate was unlawfully obtained. She observed that section 40 of the Land Registration Act CAP 334 RE 2019 recognizes a

Certificate of Title to be admissible as evidence of several matters which are contained in it such as size of the plot, boundaries, location, ownership, term of occupancy and information pertaining to survey of the plot. She said the 1st defendant (**DW1**) testified that he acquired Plot 211, Block H Likwati Street through purchase from Maulid Ally and transferred ownership to himself and was issued a Certificate of Title **Exhibit D1** and there was re-demarcation of the boundaries **Exhibit D2**. He said **DW2** and **DW3** corroborated the evidence of re-demarcation of the boundaries in respect of Plot 211, Block H Likwati Street. Ms. Tesha said the fact that the Certificate of Title is in the name of the 1st defendant and it was obtained lawfully it follows that the 1st defendant cannot be a trespasser in terms of the case of **Amina Maulidi Ambali** (supra).

As for the third issue whether the demolition by the 2nd defendant was lawful, Ms. Tesha said the 2nd defendant is a planning authority within its area by virtue of Section 7 of the Urban Planning Act, 2007 and is further empowered by section 28 of the said Act to control the use and development of land. She said section 62(2) read together with Item 8 of the First Schedule to the Local Government (Urban Authorities) Act CAP 288 RE 2019 empowers the 2nd defendant to

demolish any building or structure that in its opinion is dangerous or unfit for occupation for structural or sanitary reasons or which constitutes nuisance. She said in execution of these powers an enforcement notice has to be issued as per section 74 of the Urban Planning Act, 2007 and the mode of service of the notice is either by post or delivery at the person's residence or place of business or by affixation on the residence (section 116 of the Urban Planning Act). She said **DW3** testified that after receiving the report from the surveyors they visited the site and found that the plaintiff's building has trespassed on the road by 11 meters and on the other hand the plaintiff testified that he was issued with a notice of 7 days from the 2nd defendant as per **Exhibit P3**. She said the wording of the notice is clear that there was contravention of the law which cited (*umevunja sheria iliyotajwa hapo juu*) but she was of the view that the plaintiff confused the reasons for affixation stated in the notice to be the reason for demolition, but the plaintiff and **PW2** confirmed that the notice was received. She said as per the evidence by **DW2** and **DW3** the 2nd defendant had valid reasons to demolish the building which was trespassing in Lushoto road thus causing nuisance to the public and endangering the lives of occupants of the building. In short, she

said the notice was issued and received hence the demolition was lawful.

As to the compensation of TZS 600,000,000/= that was claimed by the plaintiff, Ms. Tesha said that the only amount proved was TZS 190,750/= which was the amount in respect of the receipts that were tendered as **Exhibit P2**.

As for the last issue, what reliefs are the parties entitled to. Ms. Tesha said the plaintiff is not the lawful owner of the suit property and therefore the defendants are not trespassers therein. She said the plaintiff is entitled to TZS 190,750/= as explained above, and general damages are to be assessed by the court. She prayed for the suit to be dismissed with costs as the plaintiff failed to establish his claim against the defendants.

Final submissions on behalf of the 2nd defendant were filed by Shughudu Mvungi, State Attorney. As for the first issue she said the onus of proof of the claim is by the plaintiff as per section 110(1) of the Evidence Act. She said the only proof by the plaintiff of ownership of the suit property was land rent receipts (**Exhibit P2**) which are

not sufficient as per the case of **Hamisa Athumani vs. Halima Mohamed** (supra). Ms. Mvungi further said the plaintiff claimed he lost his Letter of Offer but he did not take any initiatives, apart from the Loss Report to the police which is not sufficient, she said the plaintiff did not even make efforts to acquire a new Letter of Offer or value his property to get a Certificate of Occupancy from the 2nd defendant which is the issuing authority. The plaintiff did not even make a search of the property. She said the plaintiff has failed to prove ownership of the suit property.

As for the second issue, Ms. Mvungi said the 1st defendant cannot be a trespasser as he presented a Certificate of Title as **Exhibit D1** that he is the owner of the suit property. Similarly, the 2nd defendant cannot be a trespasser to the suit property as the demolition was lawful.

Ms. Mvungi said as for the third issue whether the demolition was lawful she said the plaintiff and **PW2** said they received notice of intention to demolish the property by the 2nd defendant who have authority to do so. She said according to the evidence the plaintiff's building extended partly to Plot 211 and partly to the road and in any

case **Exhibit D3** showed that there was no Plot 219 as alleged by the plaintiff. She relied on Regulation 139(2) of the Local Government (Urban Authorities (Development Control) Regulations, 2008.

Ms. Mvungi said the plaintiff is not entitled to TZS 600,000,000/= as compensation as he failed to prove and substantiate the loss and the illegal demolition as claimed. In conclusion she said that the plaintiff's claim of ownership of Plot 219 has not been proved as required by the law as the said plot is not existing or not known as per the map. She said the plaintiff has also failed to prove the other claims as per the issues that were raised. She said according to the case of **Hemed Said vs. Mohamed Mbilu [1984] 113** the person whose evidence is heavier than the other must win, and in this case the plaintiff's evidence has no weight compared to the defendants'. She prayed for the plaintiff's claim to be dismissed with costs.

Having narrated the evidence by the parties herein, and having gone through the final submissions by Counsel, I will now endeavour to consider the issues agreed upon and in so doing I will be guided by the principle that whoever desires a court to give judgment in his/her favour, has to prove that those facts exist. This is under the sections

110 (1) (2) and 112 of the Law of Evidence Act CAP 6 2019. In the case of **Abdul Karim Haji vs. 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.”

Also, in the case of **Anthony M. Masanga vs. Penina (Mama 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.

In the present case therefore, the burden of proof at the required standard of balance of probabilities is upon the plaintiff to prove that he is the owner of the suit property and that the defendants herein are trespassers. What this court is to decide upon is whether the burden of proof has been sufficiently discharged.

At the hearing of the suit, the plaintiff alleged to be the owner of the suit property and according to Section 2 of the Land Registration Act CAP 334 R.E 2019 the term owner has been defined to mean:

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

The above legal position was illustrated in **Salum Mateyo vs. Mohamed Mateyo (1987) TLR 111** where the court held:

"This means, any presentation of a registered interest in land is prima facie evidence that the person so registered is the lawful owner of the said land."

Also, the Court of Appeal in **Amina Maulid Ambali & 812 Others vs. Ramadhani Juma Civil Appeal No 35 of 2019 (CAT Mwanza)** (unreported) observed:

"In our considered view, when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be a lawful owner unless it is proved that the certificate was not lawfully obtained."

The plaintiff in proving that he was owner of the said suit property said his Letter of Offer which was granted to him in 1974 was lost and he presented a Loss Report (**Exhibit P1**). The allegation of loss as per **Exhibit P1** does not substantiate that the plaintiff had the said Letter of Offer and the plaintiff does not have anything else to prove that he had the Letter of Offer. The court expected that the plaintiff would have had at least a copy of the Letter of Offer or he should have, as intimated by Counsel for the defendants, initiated an

application to have a copy from the authority following the said loss. And as said, it beats logic why the plaintiff remained silent without taking any action to get a copy of the said Letter of Offer.

Further, as stated in **Exhibit D3** the said suit property is not featured in the in the Map and this was corroborated by the evidence of **DW2** and **DW3** that the suit property was not in existence. The 1st defendant tendered in court **Exhibit D1** the Certificate of Title of Plot 211 Block H in his name of which its existence and ownership has not been questioned hence proved. Now, since the prima facie proof of ownership of land in a surveyed area is a Certificate of Title and it is the 1st defendant who has the Certificate of Title in respect of the suit property, then it is obvious that the plaintiff has failed to prove the existence of the said suit property (Plot 219 Block H) and ownership thereof.

Mr. Nassoro also dwelt a lot on the fact that the plaintiff paid land rent and property tax, so he was known to be owner of the suit property. However, payment of land rent and property taxes is not proof of ownership of the suit property. And in any case it cannot override the fact that the 1st defendant is in possession of a Certificate

of Title to said plot. I subscribe to the case cited of **Hamisa Athumani** (supra) it was held that:

"... it should be noted that evidence of paying land rents or possession of receipts showing that one paid land rents in respect of a certain plot is not evidence of ownership of that plot"

Mr. Nassoro said **Exhibit D2** and **D3** did not show the width of the alleged encroached road and the boundary of the road alleged to have been encroached according to the law. But I wish to state that these exhibits were tendered, without objection from the plaintiff, and relied by **DW2** and **DW3**, officers of the Municipal Council and authorised agents of the Commissioner's Office. Essentially there was no evidence which was contrary to what was testified by **DW2** and **DW3** and admittedly, the evidence of these two witnesses was not shaken.

Mr. Nassoro further said that the evidence of **PW4** showed that there was amalgamation of Plot 219 and Plot 211 into one and that the amalgamation was done in contravention of the law, that is, the Town and Country Planning Ordinance CAP 378. It should be noted that **PW4** is not an authorised Land Officer, but in any case he later admitted that Plot 219 is not in existence which fact was duly corroborated with the testimony of **DW2** and **DW3** who are officers

conversant and with authority on land matters. Subsequently and basing on the evidence on record, it is apparent that the suit property never existed and even if it existed, there is no proof of ownership of the said property to the plaintiff. The first issue is therefore answered in the negative.


Having established that the plaintiff is not the owner of the suit property and that the suit property never even existed, the second and third issues are straight forward. The 1st defendant cannot be a trespasser in the suit property because he is the owner of Plot No. 211, Block H, Temeke. Even the visit to the locus in quo was not of assistance to the plaintiff as he has failed to prove the existence of the suit property and his ownership therein. Similarly, the demolition cannot be illegal for the same reasons that the suit property was never in existence and the property was not in the ownership of the plaintiff. The 2nd defendant being a planning authority had the power according to the Urban Planning Act and the Local Government (Urban Authorities) Act to demolish a structure which in their view is not in the standard as provided by the law.

The plaintiff has prayed for compensation of TZS 600,000,000/=. In my considered view, there was no injury or loss in this whole transaction which could be attributed to the defendants. If the plaintiff paid the land rent as per **Exhibit P2** he did so at his own detriment because he did not have anything to support existence and ownership of the suit property to himself. In that regard, I don't find it necessary to award any compensation whatsoever and I hold as such.

As for the damages prayed by the plaintiff, it is trite law that the court discretionarily awards general damages but on the other hand the court must be moved 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**). I have given due consideration of the prayer, and I am of the view that if there was any injury or loss then it would not have been prompted or caused by the defendants. Subsequently, the plaintiff is not entitled to the award of damages or at all.

In the result and for the reasons I have attempted to address, I hold that the plaintiff has failed to prove his case to the standards of law required of balance of probabilities and is not entitled to any of the reliefs prayed in the plaint or at all. The suit is therefore without merit and is hereby dismissed with costs.

It is so ordered.



V.L. MAKANI
JUDGE
31/05/2022

