

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

LAND CASE NO. 109 OF 2018

JULIUS RAPHAEL MAITARYA.....PLAINTIFF

VERSUS

**COMMISSIONER FOR LANDS.....1ST DEFENDANT
KINONDONI MUNICIPAL COUNCIL.....2ND DEFENDANT
MKATAPOMBE ALMASI MOHAMED.....3RD DEFENDANT
FRANCIS KAZZALA MONDI.....4TH DEFENDANT
MWAJUMA KITOI MSANGI.....5TH DEFENDANT
THE ATTORNEY GENERAL.....6TH DEFENDANT**

Date of Last Order: 31.03.2022

Date of Judgment: 31.05.2022

JUDGMENT

V.L. MAKANI, J

In this suit the plaintiff JULIUS RAPHAEL MAITARYA is for judgment and decree against the defendants jointly and severally as follows:

- 1. A declaratory order that the issuance and grant of Certificate of Occupancy of the suit land granted to the 3^d defendant was illegal thus null and void ab initio.*
- 2. An order for revocation of Right of Occupancy of the suit land granted to the 3^d defendant.*

3. *An order nullifying illegal transfer of the suit land from the 3rd defendant to the 4th and 5th defendants.*
4. *A declaratory order that the demolition of the plaintiff's building built onto the suit land was unlawful.*
5. *An order for the defendants jointly and severally to pay the plaintiff TZS 10,000,000/= (Ten Million) being compensation for unlawful demolition of the suit land.*
6. *An order for the defendants to pay general damages as it will be assessed by the court.*
7. *An order for costs of this suit.*
8. *Any other relief(s) that his honourable court shall deem fit and just to grant.*

The plaintiff was represented by Mr. Joachim Amani, Advocate from the Legal and Human Rights Centre, while Mr. Masunga Kamihanda, Mr. Mambalasa and Joyce Yonaz, State Attorneys represented the 1st, 2nd and 6th defendants. Mr. Kakamba represented the 3rd defendant while the 5th defendant failed to enter appearance though duly served as such the matter proceeded ex-parte against her. The plaintiff presented three witnesses including herself and the defendants side had four witnesses.

The following were the agreed issues:

- a. *Who is the rightful owner of Plot No. 353 Block 1 Mvumoni Kinondoni District under Certificate of Title CT No. 74699 (the **suit land**).*

- b. Whether the grant of CT No. 74699 to the 3rd defendant was lawful.*
- c. Whether the transfer of the Right of Occupancy from the 3rd defendant to the 4th and 5th defendants was lawful.*
- d. Whether the plaintiff is entitled to compensation of TZS 10,000,000/= and general damages to be assessed by the court.*
- e. To what reliefs are the parties entitled to.*

The first witness **PW1** was the plaintiff himself. He said he was in court because his piece of land, the suit land, was sold by the 3rd defendant to the 4th and 5th defendants. He said it was his land because there was a Sale Agreement (**Exhibit P1**) between him and one Hamadi Nassoro Karanja dated 07/12/1999. He said by the time he bought the suit land it was not surveyed, it was a Farm, but when it was surveyed it was referred as Plot 352, Block 1 Mivumoni, Kinondoni District. He said after the sale he was transferred to Meru-Arusha but while there he was informed that there was construction going on in his land. He said upon coming back he found a newly constructed house and a shack (*banda*) he had built had been demolished. He made enquiries and was informed that the house belonged to the 4th defendant and when he asked him why he was on his land he told him he purchased it from the 3rd defendant.

PW1 said a meeting was convened to resolve the matter, but it was not fruitful. He said the 3rd defendant is his friend and neighbour and they have known each other from 1997 and the basis of their friendship was that Karanja sold land to both of them at Mivumo. Karanja's Farm was divided into two, the 3rd defendant bought Plot 352 and he bought Plot 353. He said he complained to the local authorities (*Mjumbe wa Shina No. 2* and *Serikali ya Mitaa of Kisanga*) but the 3rd and 4th defendants were not cooperative as they did not accept calls for meetings. He said decided to go to the District Housing and Land Tribunal (the **Tribunal**) but there were objections on jurisdiction, so the matter was filed in this court. He prayed for the court to return the suit land to him, demolish the house standing on the suit land, payment of compensation and other reliefs. On cross examination, the plaintiff admitted that there was a survey that was conducted by Kinondoni Municipality in 2000 but he said the survey was a nullity because he was not present as he was not informed. He said the seller is dead and his witness is also dead.

PW2 was Kimolo Ramadhani Kimolo. He said he was local leader, Chairman of Serikali ya Mitaa from 1999 to 2014. He said he knew the plaintiff and also the 3rd defendant. he said in 2000 the

Government started a project for survey of 20,000 plots in Dar es Salaam. He said in the exercise of the survey, the landowners of the plots would stand on their plots for identification. He said the 3rd defendant stood on his plot and his wife stood on the suit land. He said the plaintiff complained that the 3rd defendant has taken ownership of the suit land and compensation, and when he tried to reconcile them it did not work so he referred the plaintiff to the Permanent Secretary Ministry of Lands vide a letter **Exhibit P2**.

In cross examination **PW2** said that at the time of survey he thought the 3rd defendant was owner of the suit land. He said **Exhibit P2** was in respect that the plaintiff did not receive compensation, but it was not in respect of ownership. He said on the suit land there was a mud house which he knew it was the house of the 3rd defendant. he admitted that after he wrote the letter of complaint the plaintiff never came back.

PW3 was Kindamba Nassoro Karanje. He said he knew the plaintiff as he purchased the land from his late brother. He said on the date of the sale he was present but he has not been there after the sale transaction. He said he did not know the 3rd defendant. When he was

shown **Exhibit P1** he said he did not remember the document and he insisted that he did not know the 3rd defendant.

DW1 was Adelphrida Camilus Lekule, Land Officer at the office of the Assistant Commissioner for Lands. She said the suit land was among the plots in the 20,000 Plots Project by the Ministry of Lands which started in 2000 and is still ongoing. She said the records show that the suit land was owned customarily by the 3rd defendant and he was the one who was compensated and was allocated the said plot. He said the process in respect of such projects starts with the local government (*Serikali za Mitaa*) and where there are any complaints they are dealt with by the respective Council. She said they did not receive any complaints and in 2006 there was a transfer from the 3rd defendant to the 4th defendant. She said in 2016 there was a formal complaint from the plaintiff about ownership of the suit land stating that he was the customary owner of the suit land but the plaintiff was informed by the Commissioner for Lands (**Exhibit D3**) that the suit land was already in the name of the 4th defendant. **DW1** said the 4th defendant has been granted Certificate of Title as to ownership of the said suit land (**Exhibit D3**).

On cross examination **DW1** said in such projects the Ministry works closely with the local government. She said if there are genuine complaints before completion of the grant, the process may be stopped or delayed but the process of grant in respect of the subject suit land was complete and the 3rd defendant was granted ownership.

On cross examination **DW1** said there was no record of a dispute in respect of ownership of the said suit land until 2016. **DW1** said that **Exhibit P2** was not received by the office of the Commissioner for Lands.

DW2 was the 3rd defendant. he said he was in court because he has been sued by the plaintiff. He said this is the third time he has been sued by the plaintiff as he has been before the Ward and the District Tribunal. He said he knows the plaintiff as his neighbour in Wazo. He said the suit land belonged to him and he had built a mud house. He said the Government Project on land involved valuation, compensation and survey which was duly conducted. He said they were given Letters of Offer and thereafter Certificates of Title. He said he demolished the mud house and built a brick house and in 2009 he sold the said property to the 4th defendant. He said complaints came 7 years after he sold the suit land.

Juma Miraji Usale was **DW3**. He said he was the Chairman of Serikali ya Mitaa from 1993 to 2009 and he said he knows the 3rd defendant. He said he found him in the Farm since 1998 and he had a mud house and was staying with his family. He said he was involved in the Project of 20,000 Plots and he said he does not know the plaintiff and the suit land belonged to the 3rd defendant.

The fourth defendant (**DW4**) was the last witness for the defence side. He said he bought the suit land from the 3rd defendant at TZS 35,000,000/= which was paid in instalments of TZS 15,000,000/= and thereafter TZS 20,000,000/=. He said he made a search and asked neighbours if the suit land belonged to the 3rd defendant and when they confirmed he proceeded with transfer processes. He said after the transfer he started developments and it was in 2016 when he started receiving complaints. He said he was summoned at the District Land Tribunal where the case was dismissed. He stated that the suit land belongs to him and it was transferred legally to him by the 3rd defendant. On cross examination he said the Certificate of Title was transferred to his name in 2011.

Final submissions on behalf of the parties were filed by Counsel as was ordered by the court, and I will touch upon the submissions in the course of analysing the evidence according to the issues that were framed.

It is trite law that whoever alleges must prove. This principle is embodied in section 110 of the Evidence Act CAP 6 RE 2019 and has been emphasized in the case of **Anthony M. Masanga vs. Penina Mama Mgesi & Lucia (Mama Anna) Civil Appeal No. 118 of 2014** (unreported) where the Court of Appeal 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."

In this present case the plaintiff has the duty to prove that he is the owner of the suit property and further that the Certificate of Title issued to the 3rd defendant is null and void. What this court is to decide upon is whether the burden of proof has been sufficiently discharged. In so doing I will consider the issues generally.

The main proof by the plaintiff that he is owner of the suit plot is the Sale Agreement between himself and one Nassoro Karanje dated 07/12/1999. A critical look of **Exhibit P1** reveals that it is wanting in

description of the subject plot of land. It merely states that the plot is in Container Mivumoni but there are no landmarks for purposes of easy identification which have been stated therein such as bordering neighbours and the like. Indeed, when the plaintiff bought the plot the area was unsurveyed, but the measurements stated in the said Agreement thus: *"10 metres (north) 45 metres (south) length 35 metres (west) and 57 meters East"* cannot be satisfactorily describe the land because such measurements can be anywhere within Container Mivumoni as it was a big area before it was surveyed. The Agreement does not even mention the district the suit land is located. Proper description of the suit land enables proper award of rights to a party and also easy execution. It is common knowledge that the rationale behind proper description of land in dispute is to inform the court of the identity of the suit land as against all the other pieces of land surrounding it. In the case of **Daniel Dagala Kanuda (as administrator of the Estate of the Late Mbalu Kushaba Buuda vs. Masaka Ibeho, Sita Luchas Elisha Lucas, Cheyo Sita Njegelo & Maduhu Mughogote, Land Appeal No. 26 of 2015 (HC-Tabora)** it was stated:

"....The legal requirement for disclosure of the address or location was not cosmetic. It was intended for informing the Tribunal of sufficient description so as to

specify the land in dispute for purposes of identifying it from other pieces of land around it. In case of a surveyed land, mentioning the plot and block numbers or other specifications would thus suffice for the purpose. This is because such particulars are capable of identifying the suit land specifically so as to effectively distinguish it from any other land adjacent to it."

It is apparent therefore that in the absence of proper description of the suit land the court cannot safely state that the plaintiff lawfully bought the same piece of land currently in dispute. The plaintiff cannot claim to be owner of the suit land which he cannot properly describe. In essence, the said Sale Agreement is not sufficient proof that the plaintiff was the owner of the suit land before it was surveyed and I hold as such.

Further, the Sale Agreement in itself is not sufficient to confer ownership right to the that the plaintiff. But as correctly submitted by Mr. Kakamba in his submissions, the supporting testimony by **PW3** is contradictory. While the plaintiff said that at the date of sale, he was present at the suit land with the seller and his witnesses, **PW3** testified that there was only one person buying, that means there were only three people the seller (**PW3's** brother), the plaintiff and **PW3**. Mr. Kakamba also pointed out that **PW3** said he signed a

document, but when he was showed **Exhibit P1** he said he did not recognise it, worse still he said he did not know the 3rd defendant at all. Mr. Kakamba's concern have merit as the evidence creates a lot of doubt as to whether there was a sale transaction as such it is not safe for the court to rely on the Sale Agreement itself without any corroborating evidence. In view thereof the plaintiff has failed to prove ownership of the suit land to the required standards of the law.

On the other hand, the 1st, 2nd, 3rd and 6th defendants proved that all procedures for survey up until the Certificate of Title was granted to the 3rd defendant was complied with. **DW1** testified that the 3rd defendant was the original customary owner as per Form No. 19 (**Exhibit D1**) and as per the letter from the Commissioner for Lands (**Exhibit D2**) which were admitted without any objection. **Exhibit D1** shows that apart from having a piece of land within the area, the 3rd defendant also received compensation, and on the basis of this form he was granted Certificate of Title (**Exhibit D3**) which according to **DW1** was transferred to the 4th defendant. The evidence in respect of the survey, grant of the Certificate of Title to the 3rd defendant and thereafter transfer of the said Certificate of Title to the 4th defendant has not been shaken. And in any case, the Letter

to the Commissioner for Lands (**Exhibit P2**) reflects that the plaintiff's interest was not in ownership but rather compensation.

It is the law that prima facie proof of ownership of land in a surveyed area is a certificate of title or at least a Letter of Offer. 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 lawful obtained."

In the present case and according to **DW1**, the Certificate of Title to the suit property is currently registered in the name of the 4th

defendant following the transfer from the 3rd defendant as such he is the lawful owner of the suit land.

The plaintiff claimed compensation of TZS 10,000,000/=. However, having established that the plaintiff **is not** the owner of the suit property and that the survey process and grant of the Certificate of Title to the 3rd defendant was proper, it goes without saying that the plaintiff is not entitled to the compensation of TZS 10,000,000/= claimed or at all.

The plaintiff also asked for general damages to be assessed by the court. It is trite law that the court discretionarily awards general damages. An award of general damages is to try and place an injured party in as good position as that party would have been had the wrong complained of not occurred (see the case of **Tanzania-China Friendship Textile Company Limited vs. our Lady of Usambara Sisters [2006] TLR 70**). I have given due consideration of the prayer, and in view of the circumstances of the case as explained above, if the plaintiff suffered any injury or loss then it **was not** prompted or caused by the defendants.

Subsequently, the plaintiff is not entitled to the award of damages or at all and I hold as such.

For what I have strived to address hereinabove, I hold that the plaintiff has failed to prove his case to the standards of law required of balance of probabilities and is hence not entitled to any of the reliefs prayed in the plaint or at all. The suit is therefore dismissed with costs.

It is so ordered.


V.L. MAKANI
JUDGE
31/05/2022

