

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

LAND CASE NO. 61 OF 2014

**RESTITUTA GREGORY MLUGE (The Administratrix of the late GREGORY PAUL
CONSTANTINE MLUGEPLAINTIFF**

VERSUS

**ERFAN AHMED ALADIN (as administrator of the estate of AHMED JAFFER
ALADIN).....1ST DEFENDANT**

COMMISSIONER FOR LANDS.....3RD DEFENDANT

THE ATTORNEY GENERAL4RD DEFENDANT

KINONDONI MUNICIPAL COUNCIL.....5TH DEFENDANT

JUDGMENT

28/6/2022 & 12/07/2022

GWAE, J

The plaintiff, Restituta Gregory Mluge who is suing in the capacity of an administratrix of the estate of the late Gregory Paul Constantine Mluge (deceased) had instituted this suit in 2014 against the defendants



herein above. She is claiming to be the lawful owner of a Plot No. 551 located at Mbezi Beach Kinondoni Municipal Council in Dar es salaam Region which according to her, it is now Plot No. 934 at the same vicinity following the resurvey by the 2nd defendant.

Therefore, the plaintiff claims for judgment and decree against the defendants as follows;

1. A declaration that the plaintiff as an administratrix of the late Gregory Mluge is the lawful owner of the Plot No. 551 Mbezi area Kinondoni Municipality, Dar es salaam with certificate of Title No. 84720
2. A declaration that Plot No.551 Mbezi Beach is one and the same Plot No. 934 Mbezi area and that the alleged change by the 2nd and 4th defendant and its grant aimed at dispossessing the late Gregory Mluge and his estate of a lawfully acquired property
3. A declaration that the 2nd defendant wrongly and unlawfully issued a certificate of occupancy with Title No. 84720 to the 1st defendant as the said plot belong to the plaintiff
4. An order to the 1st defendant to immediately vacate Plot No. 551 Mbezi Beach (Plot No. 934 Mbezi Beach) and hand over vacant possession and ownership to the plaintiff within seven days from the date of judgment failure of which all developments on the plot shall belong to the plaintiff



5. An order to the 2nd defendant requiring him to issue new certificate of occupancy and accurate site plan to the plaintiff within 30 days from the date of judgment
6. Special damages to the tune of Tshs.600,000,000/= against the 1st and 2nd defendant
7. General damages at the court discretion
8. Punitive damages against the 1st and 2nd defendant for illegally challenging the site plan and dispossessing the late Gregory of his property
9. 24 % interest rate on (6) above from the 2007 to the payment date
10. A stern warning and rebuke to the 2nd defendant for clandestinely changing the site plan without due regards of the rights of the late Gregory Paul Mluge and the plaintiff
11. Costs be provided
12. Any other order or relief that this court may deem just and fair to grant

Praying for an order of an court dismissing the plaintiff through his statement written of defence, the 1st defendant avers that he lawfully owns the suit plot (Plot No. 934 measuring 3287) as he was procedurally issued a letter of offer dated 7th November 1995 followed by issuance of a certificate of title with Title No. 84720 which was never changed from Plot No. 551. Whereas it is the version of the 2nd, 3rd and 4th defendant through their joint



written statement of defence that Plot No. 551 was not changed to Plot No. 934 and that the two plots are distinct.

During trial of this suit, the plaintiff was represented by Deiniol Msemwa, the learned counsel who was assisted by Mr. Paul (adv) whereas Mr. Martine Frank and Miss Hawa appeared for the 1st defendant and Mr. Thomas Mahushi assisted by Tausi Kheri, both the learned state attorneys represented the 2nd, 3rd and 4th defendant. The court with an involvement of the parties' advocates framed the following issues;

1. Whether the plaintiff was allocated with plot No. 551 at Mbezi Beach-DSM
2. Whether Plot No. 551 Mbezi Beach was changed to Plot No. 934 at Mbezi Beach and if so, whether that was lawful done
3. If the answer in issue No. 2 is answered in affirmative, whether the allocation of Plot No.934 Mbezi Beach to the 1st defendant was lawful
4. Who is the lawful owner of Plot No. 934 Mbezi Beach and or Plot No. 551 Mbezi Beach?
5. What are the reliefs the parties are entitled to?

It is the plaintiff who kicked the ball rolling, she appeared as a sole witness (PW1), in her testimony, PWI told the court her plot had been



trespassed by different encroachers in different times including the last trespasser, the 1st defendant issued with a certificate of title and there are developments in the Plot No. 934. She added that despite the fact that she was allocated and issued with a letter of offer on 26th June 1988 she did not make improvements due existence of trespasses over the plot. The PW1 supported her evidence by tendering, letters of administration granted in her favour (PE1), a letter of offer issued in the name of the deceased person (PE2), two Demand notices (PE3&PE4), a letter regarding property tax (PE5) land rents receipt in respect of Plot No. 551 (PE6).

After close of the plaintiff's case, the 2nd, 3rd and 4th defendant entered their joint defence by parading two witnesses in their favour, these were; Ally Maulid Mgone, land surveyor (DW1) and Hellen Philip, land officer (DW2). These two witnesses adduced their evidence to the effect that, Plot No. 551 and Plot No. 934 are two different plots owned by two different persons. DW1 through the Town Plan Drawing (DE1) testified that even plots nearby plot no.551 are different from plots which are nearby Plot No. 934 adding that from east of Plot No. 934, there is Indian Ocean shore unlike in Plot No. 551 where there is rifle range from east. DW2 further



testified that the plaintiff is still the owner of her plot No. 551 granted in 1988 and the same has not been revoked. Equally, she stated that the 1st defendant is lawful owner of Plot No. 934 Mbezi Beach within Kinondoni District in Dar es salaam.

Similarly, the 1st defendant through his affirmed testimony told the court that his later father, Ahmed Aladin who passed away in 2012 was allocated with Plot No. 934 and issued with a letter of offer in 1995 and that in 1998 he was issued with a certificate of title and there are developments made in the Plot No.934. He added that there are other four plots owned by his late father which are nearby Plot NO. 934. In support of his oral evidence he tendered five exhibits namely; premium receipts (DE2), Land rental receipts (DE3), receipt for building permit (DE4) and a survey map (DE5).

Having briefly given the account of the evidence adduced by both sides, it is now the noble duty of the court to determine issues indicated herein seriatim as to the 1st issues which reads; **whether the plaintiff was allocated with plot No. 551 at Mbezi Beach-Dar es salaam.** The 1st issue, should not curtail me for an obvious reason that the same is not contentious in legal sense since both sides have never pleaded that the plaintiff was not

granted letter of offer over Plot No. 551 at Mbezi (See para. 10 of the 2nd, 3rd and 4th defendants' joint WSD as well as para.10 of the 1st defendant's written statement) and above all the same have been proven to the required standard not only by the plaintiff but also by the defendants (DW1 and DW2). Moreover, the offer letter issued on the 26th November 1988 (PE2) is relatively indicative that, the deceased person, one Gregory Constantine Paul Mluge was allocated that plot for a residential purpose as well as exhibit P5 and PE6. The 1st issue is thus answered in affirmative.

Determination of the 2nd issue, **whether Plot No. 551 Mbezi Beach was charged to Plot No. 934 at Mbezi Beach and if so, whether that was lawful done.**

Examining the parties' evidence, it is sufficiently established that there was no change of Plot No. 551 at Mbezi Beach to Plot No. 934 at Mbezi Beach within Kinondoni Municipal Council. The plaintiff's assertion that, her Plot No. 551 was changed to Plot No. 934 without her knowledge is not supported by any piece of evidence. It is trite law that who alleges existence of a certain fact bears a burden of proof as to existence of such fact, I would subscribe my holding with a judicial decision in **The Manager, NBC, Tarime v Enock**

M. Chacha (1993) TLR 228

Corollary to the above, Bahati J, has said this in Felix M Shirima v Mohamed Farahani and Another (2) It is a cardinal principal of law that in civil cases there must be proof on the balance of the probabilities. In this case, it cannot be said that the scanty evidence adduced in this Court proves in any way what is alleged in the plaint. There must be proof of the case on the standard by law which is on the balance of the probabilities even when a case proceeds ex-parte like in this case. . . ."

(See also section 100 & 101 of Tanzania Evidence Act, Cap 6 Revised Edition, 2002).

In my considered view, the oral evidence adduced by DW2 with effect that, there two distinct files relating to the plots in dispute owned by two different persons carries more weight than plaintiff's mere assertion. It must also be known that whenever a person is granted a right of occupancy that right remains valid unless the same is procedurally revoked (See a judicial jurisprudence in the case of **Subuhi Mowchee vs. Charles Kagma**, Civil Appeal No. 1 of 1987 (unreported-H.C)).

That being the position, it is my firm opinion that, the plaintiff ought to have been able to prove that Plot No. 551 was either revoked and or changed



to Plot No. 934 and that the same was wrongfully granted to the 1st defendant. Moreover, the amendment of Mbezi Planning Scheme dated 4th November 1997 Drawing Number 1/850/597 (DE1) is clear that there is a Plot No. 551 which is intact to date as sufficiently testified by DW1 who amply stated that an amendment of resurvey of a parcel of land does not deprive original owners of their respective plots save to an addition of plots created out of the land in question. The 2nd issue is consequently determined not in favour of the plaintiff.

In the 3rd issue, **answer in issue No. 2 is answered in affirmative, whether the allocation of Plot No. 934 Mbezi Beach to the 1st defendant was lawful.** As the 2nd issue was not answered in affirmative as deliberated herein above. It follows that, the allocation of Plot No.934 at Mbezi Beach was lawful since it has no connection with the allocation of Plot No. 551 to the plaintiff who is rightful of the same. The court's determination of the 3rd issue equally determines the 4th issue to the effect that, the plaintiff is the lawful owner of Plot No. 551 at Mbezi Beach and the 1st defendant lawfully owns Plot No. 934 at Mbezi Beach.



As to the 5th issue, **what are the reliefs the parties are entitled to**, having determined the 1st to 4th issues as herein, the plaintiff is the lawful owner of the Plot No. 551 Mbezi Beach- Kinondoni Municipality, equally the defendant, holder of Right of Occupancy in respect of Plot No. 934 Mbezi Beach is therefore lawful of the Suit, my finding is fortified by a judicial decision in the case of **Salum Mateyo v. Mohamed Mathayo** (1987) TLR 111 where Justice **Mroso** (as he then was) had the following to say;

"It seems to me clear that in law, the appellant in whose name the suit premises were registered was the owner. I am fortified in this view by section 2 of the Land Registration Ordinance, chapter. 334 which defines "owner" in relation to any estate or interest as the person for the time being in whose name the estate or interest is registered."

In view of the above discussions and the above cited court's decision, I therefore make the following orders;

1. The plaintiff's suit against the defendants is dismissed save to an order decelerating that the plaintiff is a rightful owner of Plot No. 551 at Mbezi Beach- Kinondoni District in Dar es salaam
2. That, 1st defendant is declared a lawful owner of Plot No.934 at

Mbezi Beach- Kinondoni District in Dar es salaam

3. Considering the fact and reason for the institution of this suit, that is, plaintiff's lack of corporation from the 2nd and 4th defendant and that the matter was initially decided ex-parte against the 1st defendant, each party shall therefore bear his or her costs

It is so ordered



Court: Right of Appeal fully explained.

**M. R. GWAE
JUDGE
12TH JULY 2022**

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JUDGE
12TH JULY 2022**