

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND CASE NO. 55 OF 2021

KOMBO OMARI HAMISI1ST PLAINTIFF
YASIN MAULID JUMA2ND PLAINTIFF
AMIRI HUSSEIN SHABANI3RD PLAINTIFF
HALIFA SAID BUSHIRI4TH PLAINTIFF
OMARI JUMANNE MTAWALA5TH PLAINTIFF
FADHILI HASSAN KIJAZI6TH PLAINTIFF
PATRISIA A. LIBETI7TH PLAINTIFF
NZEYIMANA SIPALO NTLIVAHU 8TH PLAINTIFF
GATI MOHELE KIKULI9TH PLAINTIFF
BONIFACE TITO MLINDA10TH PLAINTIFF
RASHID H. MAKULUDYA11TH PLAINTIFF

VERSUS

JAMES Z. MABALA1ST DEFENDANT
CDJ CLASSIC GROUP LIMITED
AND TRIBUNAL BROKER2ND DEFENDANT
MALUNGA LUZUBA
a.k.a BABA SIPALO3RD DEFENDANT
MARIAM LUZUBA
a.k.a. MAMA BRAYAN4TH DEFENDANT

JUDGMENT

24/6/2022 & 26/07/2022

GWAE, J

Undisputedly from the parties' pleadings and evidence adduced during trial that, what prompted the parties' dispute is the institution of a land dispute by the 1st defendant, James Z. Mabala vide Application No. 214 of 2019 in the District Land and Housing Tribunal of Ilala (Herein "DLHT") against the 3rd and 4th defendant known by names of Malunga Luzuga @Baba Sipalo and Mariam Luzuga @ Mama Bryan respectively.

The basis for the 1st defendant's application was on a trespass on his Plot No. 199 Block "C" Buyuni Area within Ilala Municipal Council in Dar salaam Region (hereinafter to be referred to as suit plots) by erecting houses therein. The said Land Application was eventually heard and determined ex-parte and in favour of the 1st defendant on the 10th day of March 2020. The DLHT subsequently issued eviction and demolition order on the 17th September 2020 vide 1st defendant's Misc. Application No. 404 of 2020. The DLHT's order was served to the 2nd defendant the tribunal broker for enforcement on the 9th day of November 2020.

However, prior to the eviction and demolition of the residential houses allegedly built in the Suit Plot the plaintiffs seemingly to have become aware of the intended actions by the 1st and 2nd defendants, among other things they subsequently filed a Miscellaneous Application No. 537 of 2020 in the DLHT aimed at restraining the defendants and his agents or any other person from evicting them and or demolishing their residential houses. On the 9th November 2020, the DLHT duly issued a temporary order maintaining status quo pending hearing of the plaintiffs' application enter-parties nevertheless on the same date the 2nd defendant implemented the DLHT's order. The Miscellaneous Application filed by the plaintiffs in DLHT was noticeably overtaken by event as a result the plaintiffs through their counsel, Mr. Hamza Abraham Senguji withdrew it. Hence, this suit where the plaintiffs herein are found seriously claiming to have their residential houses demolished while they were not party to the proceedings instituted in the DLHT and that they are lawful owners of their respective plots.

Through the amended plaint duly filed on the 10th December 2021, the plaintiffs pray for judgment and decree against the defendants jointly and severally as follows;

1. Declaration that, the defendants illegally and unlawfully demolished the residential houses of the plaintiffs
2. Plaintiffs be allowed to build their residential houses in the suit premises
3. Declaration that the 3rd and 4th defendant are fictitious persons
4. Payment of Tanzania Shillings Seven Hundred million (Tshs. 665, 000,000/= being the value of the houses demolished by the 1st and 2nd defendant
5. Payment of the general damages to be assessed by the court
6. The defendants to be condemned to pay interest on (3) above at the court rate of 12 %per annum from the date of demolition to the date of determination of this suit
7. Costs of the suit to be borne by the defendants
8. Any other relief (s) this court deems fit and just to grant

Through his amended written statement of defence, the 1st defendant prayed for an order dismissing this suit with costs on the ground that he is the lawful owner of the suit land and that all plaintiffs' houses were built in the Suit Plot which is lawfully owned by him.



Throughout the trial of this particular suit, the plaintiffs were duly represented by Mr. Hamza Abraham Senguji, the learned counsel whereas advocate Shepo Magirari John appeared representing the 1st and 2nd defendant. However, the trial of the suit proceeded ex-parte against the 3rd and 4th defendant as per the court's order dated 21st day of November 2021.

The issues that were framed by the court on 25th April 2022 were as follows;

1. Who is the lawful owner of the suit land?
2. Whether the 1st & 2nd Defendant Illegally and unlawfully demolished the plaintiffs' residential houses.
3. To what reliefs are parties entitled to.

In proving their case, all plaintiffs appeared in court for testimonial purposes (PW3-PW13). The plaintiffs' side was also able to summons two witnesses, Said Abdallah Likwembe (PW1) and Said Abdallah Andanenga (PW2) who testified to be the sellers of pieces of land to the plaintiffs. In essence the PW1 and PW2 told the court that, they had their own parcels of land which they customarily owned and that they sold the plots to the plaintiffs in different periods adding that the sale agreements were reduced



into writing and the same were duly witnessed. Both PW1 and PW2 denied to have sold the suit plot to the Green Foundation Ltd by stating that, the said Green foundation did buy a parcel of land measuring thirty (30) acres from one Juma Pondamali at Mbondole area in Msongola Ward.

These witnesses proceeded testifying that the parcels of land that they sold to the plaintiffs have not been surveyed to date save to 20, 000 plots surveyed at Buyuni area and not Mbondole village and seriously refused knowing the 3rd and 4th defendant in their suit premises.

All plaintiffs adduced their oral evidence by essentially stating that, they are lawful owners of their respective pieces of land in the suit plot and that they were neither the parties in the 1st defendant's Application No. 214 of 2019 duly filed in the DLHT nor were they served with the eviction and demolition notice.

Apart from oral plaintiffs' evidence adduced during trial, the plaintiffs were also able to tender the following twenty-one (21) exhibits;

1. Sale agreement dated 9th March 2018 between PW1 and Amiri Hussein Shaban (3rd defendant)
2. Sale agreement dated 18th June 2016 between PW1 and 2nd plaintiff

3. Sale agreement dated 29th Nov. 2017 between PW1 and 6th plaintiff
4. Sale agreement dated 27th June 2015 between PW1 and 8th plaintiff
5. Sale agreement of 1st February 2010 between PW1 and 9th plaintiff
6. Sale agreement dated 3rd July 2016 between PW1 and 4th plaintiff
7. Sale agreement of 8th August 2016 between PW2 and 5th plaintiff
8. A civilians' complaint letter dated 22nd March 2018 addressed to the
DED-Ilala, written RC
9. A reply letter by DED to a complaint letter dated 22nd October 2018
10. Official search dated April 2022 over Plot No. 168 & 169 Block c
Buyuni addressed to Shabani Rashid Mtoka
11. Reply letter as to the request for official search dated 26th May
2022 indicative that No record as to Plots No. 168 & 169
12. Proof of fees paid by the plaintiff for Service of summons to the
3rd and 4th defendant through Mwananchi Newspapers
13. Proof of service
14. Photos of a demolished house of 10th plaintiff
15. Sale agreement dated 22nd October 2016 between PW1 and 10th
plaintiff

16. Drawn order of the DLHT dated 9th Sept. 2020 for maintenance of status quo
17. A photo of a demolished house of 6th plaintiff
18. Plaintiffs' Notice of withdrawal of Misc. Application No. 537 of 2020 issued on 11th August 2021
19. Exchange agreement with a farm and motorcycle between 1st plaintiff with one Jumanne Hassani
20. Sale agreement made on 2nd April 2013 between Jumanne Hassani and 11th defendant
21. A deed of transfer of ownership of land from one Juma Mfaume to 7th plaintiff of 15th November 2011

Having testified as herein above, the plaintiffs sought orders of compensation in respect of the demolished houses, general damages and costs of the case against the defendants.

The 1st defendant and 2nd defendant were equally given an opportunity to make their defence and herein under is brief evidence given to the court.

The 1st defendant who appeared in court as DW1 defended himself by testifying that he purchased the suit plot measuring 4014 square meters from Green Foundation on the 26th September 2007 however in 2016 he noticed some developments being made thereon. He reported the matter to the Ilala Council Authority which subsequently did bicorn recovery through DW3, Ramadhani Selemani. He further testified that in the year 2018, two houses owned by the 3rd and 4th defendant whom he named as trespassers as he bought the plots from people who were not lawful owners, were found being built in his plot. The acts which led him to institution of Application No. 214 of 2019 whose resultant order was eviction and demolition order issued on the 7th September 2020.

Equally, the 1st defendant's testimony was supported by one Mboni Mohamed, DW1 who told the court that the parcel of land bought by Green Foundation was surveyed since 2007 adding that PW1 and PW3 were the ones who assisted the said Registered Trustees of Green Foundation to acquire its land.

On his part, the 2nd defendant through her principal officer one Chacha Nyamhanga (DW4) admittedly testified that he evicted people from the suit plot and demolished houses which were therein however he said that, as the



case by DW1, that, there were only two complete houses and two incomplete house that were demolished on the material date. He denied to have been issued with DLHT's temporary injunctive order. DW4 when cross examined if he served the notice by fixing or he personally served the houses' dwellers, he replied to the negative by stating that, the environment was threatening. Admittedly, DW4 refuted knowing the 3rd and 4th defendant or them being introduced to him by Mbondole village authority. DW4 further told court that that after he had accomplished his work, he handed over the suit plot to the decree holder now 1st defendant.

To substantiate her oral evidence, the defence side, produced a total of sixteen (16) exhibits which were received for evidence value and the same were accordingly marked as DE1-DE16), These were, sale agreement dated 26th September 2007 between the 1st defendant and Registered Trustees of Green Foundation, sale price being Tshs.3,500,000/=, Survey Plan, E'361 dated 22nd November 2007 (DE2), letter of offer issued on the 3rd June 2008 relating to Plot No. 199 Block "C" Buyuni area bearing the name of the 1st defendant with size 4014 Square Meters (DE3), DED's letter with a head "bicorn recoveries on Plot No. 199 and 7 other plots (DE5), Eviction and Demolition Order issued on the 17th September 2020 (DE6), Judgment of the



DLHT pronounced on 10th March 2020, Handing over note issued by DW4 in favour of the 1st defendant (DE6) and a letter of Mbondole village confirming ownership by Green Foundation of a parcel of land measuring about 30 acres dated 10th August 2006 (DE8).

The defence also tendered a 14 notice to vacate from the suit plot issued on 18th September 2020 (DE9), a letter dated 18th day of September 2020 addressed to DC regarding eviction and demolition order issued by DLHT (DE10), a letter written by the 2nd defendant and addressed to DLHT's chairperson for police (DE11), DLHT's letter 5th October 2020 to RPC-Ilala (DE12), RPC's letter to DC dated 7th October 2020 (DE13), 2nd defendant's letter dated 2nd Nov. 2020 addressed to DLHT for renewal of eviction and demolition order (DE14), 2nd Eviction and Demolition order issued on the 4th November 2020 and Report on execution of Eviction and Demolition Order which was received and marked as DE16. That, marks an end of the defendants' defence.

After the close of the parties' case, the advocates representing both parties applied and obtained the court's leave to file their closing submissions which they subsequently filed in accordance with the court's order. The parties' final submission shall be given due consideration however as of now



I heartedly thank the counsel for the parties for their support and guidance towards making of this judgment.

Before I start determining the framed issues herein, I would like to respond to the legal issue raised by the counsel for the 1st and 2nd defendant on jurisdiction of this court as far as the plaintiffs' act of instituting an objection proceeding before DLHT followed by this suit. I do not borrow the opinion of the learned counsel that, the proper avenue was to file a revision to the court. I am of the that view simply because the plaintiffs' Misc. Application in the DLHT, even if it would have been determined on merit, yet in my considered view, the plaintiffs would have a remedy of filing a fresh suit to this court as they had correctly opted depending on the pecuniary jurisdiction as envisaged in the plaintiffs' amended plaint where their claims are of More than Tshs.700,000,000/= . More so, the plaintiffs' application before DLHT was baseless and there was no conclusive order that was made after the 2nd defendant had accomplished his duty. Hence, provisions of Order XXI Rule 62 of the CPC cannot be into play.

Similarly, the parties and subject matter in this suit cannot be easily said to have been the same persons litigating on the same subject matter (s) as in the Application No. 214 of 2019 filed in the DLHT. The parties in



the said 1st defendants' Application where the 1st defendant as applicant and 3rd and 4th defendant who stood as respondents unlike the present suit

Now, coming to the 1st **issue which reads, who is the lawful owner of the suit Land?**

Considering both oral and documentary evidence adduced by both sides, I am persuaded by the evidence adduced by the 1st defendant and his witnesses (DW2 and DW3) that the 1st defendant is the lawful owner of the suit plot. Sale agreement between Green Foundation and the 1st defendant, the letter offer tendered and Survey Plan highly support the 1st defendant's testimony.

The assertion by PW1 and PW2 that the Registered Trustees of Green Foundation did not compensate the former owners of the land, is unfounded since if it was so, it was upon them (PW1 and PW2 and any other persons who could claim against the said Foundation or Ilala Municipal Councilor both or it was more proper if the sellers of the suit plots would be joined as defendants taking into account that the 1st defendant has amply established that he purchased the suit plot since 2007 whereas the plaintiffs' evidence is to the effect that sale agreements were of 2010s that means the alleged



transactions between PW1 and some of the plaintiffs and the ones with PW2 were made after the 1st defendant's purchase. It follows that, PW1 and PW2 had no good title over the suit plot when they were disposing the same to the plaintiffs. I subscribe a judicial prudence cited by the defence counsel in **Farah Mohamed vs. Fatuma Abdallah** (1995) TLR 205 where it correctly held that whoever has no legal title to the land cannot pass good title over the same to another person.

Objectively considering, the evidence in its totality, in this regard I find the evidence by the 1st defendant is more credible than that of the plaintiff. I am fortified by a judicial decision in **Hemedi Saidi vs. Mohamedi Mbilu** (1984) TLR 113 where it was held;

"In measuring the weight of evidence, it is not the number of witnesses that counts most but the quality of the evidence"

I also find, as rightly testified by DW3, that Plot No. 199 Block "C" Buyuni area-Ilala instead of Mbonndole area does not affect the survey plan provided that, the survey plan in question was issued by an authorized surveyor. Examining the evidence adduced during trial especially that of DW4 and documentary evidence namely, PE2 and PE3, it is with no doubt



that, the suit plot is surveyed one as contrary to the plaintiffs' assertions. That being the case, it is the name of the 1st defendant which is registered denoting that he is the lawful owner of the same unless the plaintiff would have proved that the same was unlawfully obtained (See **Salum Mateyo v. Mohamed Mathayo** (1987) TLR 111). Having determined as herein above, the 1st defendant is thus found to be the lawful owner of the suit Plot No. 199 Block "B" Buyuni area-Ilala Municipal Council -Dar es salaam.

In the second issue on **whether the 1st and 2nd defendant illegally and unlawfully demolished the plaintiffs' houses**

Assessing the parties' evidence, I have observed that the 1st defendant was certainly the victor of the dispute filed in the DLHT and that he applied for execution of the decree vide Misc. Application No. 404 of 2020. It is also sufficiently established by both sides that, the DLHT's order maintaining status quo issued on the 9th November 2020 was not made into an attention of the 2nd defendant before the eviction and demolition in question. However, it is the lamentations on the part of the plaintiffs that, they were not duly served with the requisite notice of the execution in respect of the 1st



defendant's Application No. 214 of 2019 nor were they party to such proceedings.

Worse still, the plaintiffs and their witnesses (PW1 & PW2) seriously and adequately testified that, the judgment debtors in respect of the 1st defendant's Application before DLHT were not residents of the suit plot. This piece of evidence was also strongly supported by DW4's evidence when cross examined by the plaintiffs' counsel if he served the 3rd and 4th defendant or if they were shown to him by Mbondile Village leaders when they went to the suit plot with the aim of serving them with demand notice, his reply was to the negative, for sake of clarity parts of his testimony is reproduced herein under;

"I did not affix any demolition notice. I did not know the said Malunga and Mariam as I was not familiar. The street chairperson did not introduce the said Malunga and Mariam nor was I familiar with them. Upon arrival at the street office, I found many people thereat".

According to the evidence adduced by the DW4, the plaintiffs together with PW1 and PW2, it is certainly that the 3rd and 4th defendant were neither known in the suit plot, Mbondole village nor were they living in the suit, it is



clear that the plaintiffs were not duly served with the requisite notice to vacate and demolish their houses built in the suit land. Taking into account that they innocent purchaser and the ones who erected their building without awareness that the suit land belonged to the 1st defendant. The 1st defendant must have abandoned or failed to effect development in a certain period since he bought the plot in 2007 whereas the dispute arose in 2018 when he found structures in his plot.

The rationale of the 14 notice to vacate and demolish, is to enable the occupier to peacefully remove his properties within the suit land. If the 2nd defendant was not familiar with the decree debtors and those dwelling within the suit land, he ought to have served them by affixing a copy or copies of notice in a conspicuous place on the leased house. It was the duty of the 2nd defendant to prove that he actually served the purporting decree debtors and persons whose buildings were to be affected by the DLHT's order of eviction and demolition. In France **Mchalange vs. Tanzania National Road Agency and two others**, Land Case No. 22 of 2018 (unreported-H.C) had these to say;

"I am of the respectful opinion that since the plaintiff was a trespasser, the 30 days' notice had no any effect.



Considering that, the plaintiff was notified to demolish his house and served his belongings. I fully subscribe to the state attorney submission the demolition notice was legal”.

In our instant case, the eviction and demolition order were legal on the face of it however the same were not served to the plaintiffs nor were they made parties to such proceedings and that, the court’s satisfaction that, the decree debtors were not clearly identified to have been owners of the said two demolished houses not only before the DLHT but also before this court. Basing on the above deliberations, the 2nd issue is answered in affirmative.

Last court’s determination is **on reliefs that the parties are entitled.**

I am invited by the defence counsel via his final submission to hold that, that since the plaintiffs are not lawful owners of the suit plot, thus their entries therein constitute trespass to land and therefore have no right to benefit from their wrongful acts. He urged this court to make a reference to the decision of the Court of Appeal of Tanzania in **Princes Nadia (1998) Ltd vs. Remency Sikusiry Tarimo and 2 others**, Civil Appeal No. 242 of

2018 (unreported). I partly agree with the submission by the counsel for the 1st and 2nd defendant the plaintiffs would not be entitled to any remedy if they are trespassers per se as opposed to the circumstances of this case where the plaintiffs were not aware of the case instituted in the DLHT and they were not made party thereto.

Likewise, had the purported decree debtors been evidently identified and known to be the trespassers of the suit plot and the ones who were proved to have sold the pieces of land in dispute to the plaintiffs the decision in **Princes** (supra) would bind this court. I am therefore of the view that, the circumstances of this suit are different from those in **Princes Nadia** (supra).

I have however found that the plaintiffs' prayer on the specific damages is not awardable since the same has not been specifically pleaded and proved taking into account that each plaintiff adduced to have his or her own house but not specifically pleaded in terms of how many houses were demolished, value of each house (See Para.6 of the Amended Plaint). More so, the plaintiffs' evidence on record is quite insufficient in support of the construction costs of each house save to the general damages for the reasons that, if the plaintiffs were accordingly notified of the eviction and

demolition order they would serve some of their belongings by taking them out from their houses.

The act of the 1st defendant to have joined the 3rd and 4th defendant whom in any way they can be termed as existing persons and, if yes, they were of not within the suit plot as per the sufficient evidence adduced by the parties. I am holding so simply because the plaintiffs' evidence is found to be more credible justifying this court to hold that it is more probable that the 3rd and 4th defendant were fictitious persons and if not fictitious it follows therefore, they are not residents within the 1st defendant's plot as rightly argued by the plaintiffs' counsel.

In the upshot, the plaintiffs' suit partly succeeds and it is partly dismissed, I thus herein under make the following orders;

1. That, the 1st defendant is the lawful owner of Plot No. 199 Block "B" Buyuni area-Ilala Municipal Council -Dar es salaam.
2. That, the plaintiffs are entitled to general damages at the rate of Tshs. 25,000,000/= each making a total of Tshs. 275,000,000/= against the 1st and 2nd defendant severally and jointly
3. That, the 3rd and 4th defendant are fictitious persons, if existent but not residents of Mbondole area-Ilala Municipal Council



4. That, the 1st and 2nd defendant are condemned interest of 7 % at the court rate of the decretal amount in (2) above from the date of judgment to the date of full satisfaction of the decree

5. That, the 1st and 2nd defendant to bear the costs of this suit

It is so ordered

Dated and delivered through visual video this **26th July, 2022**




M. R. GWAE
JUDGE
26/07/2022

Court: Right of appeal fully explained


M. R. GWAE
JUDGE
26/07/2022