

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 199 OF 2022

KIDAWA MOHAMED (The Administratrix of

The estate of the late KHADIJA RAMADHANI) PLAINTIFF

VERSUS

DOTTO JUMA SAID 1ST DEFENDANT

HAFIDHI ABUU JUMA 2ND DEFENDANT

JUDGMENT

Date of the last order: 21.02.2023

Date of Judgment 28.02.2023

A.Z.MGEYEKWA, J

At the centre of controversy between the Plaintiff and the Defendants is a land (henceforth the suit premises) standing on Plot No. 777 Block 'A' Kipawa area within the City of Dar es Salaam. The material facts of this case are very brief and not difficult to comprehend. Kidawa Mohamed is the administratrix of the estate of the late Khadajia Mohamed who passed

away on 4th August, 1984. Sometime in 2011, when Kidawa Mohamed was making follow-ups and was in a process of transferring the suit premises to a new purchase as an administratrix disposed of it and gathering the estates of the deceased. According to the Plaintiff, Kidawa Mohamed (the administratrix of the estate of the late Khadija Ramadhani) by the late Khadija Mohamed discovered that the suit plot was sold to the 1st Defendant way back on 20th October, 2005 and the transfer was effected to the 1st Defendant and on 30th August, 2010 the 1st Defendant transferred the suit premises to the 2nd Defendant. On 14th September, 2010, the Ilala Municipal issued the approval of disposition to the 2nd Defendant. The purported sale was effected after the death of Khadija Mohamed, the lawful owner. All efforts employed to meet the Defendants at Ilala Municipal have ended nugatory. Hence the Plaintiff decided to lodge the instant case before this Court.

In the Plaintiff, the Plaintiff prays for Judgment and Decree against the defendants as follows: -

- i. For declaratory orders that the Plaintiff is a lawful owner of the suit premises, to wit, Plot No. 777 Bolck 'A' Kipawa area Ilala Dar es Salaam against the whole world.*

- ii. *Permanent orders of injunction, restraining the Defendants, jointly and severally, their savants. Workmen, against and anyone claiming title under them from trespassing into the suit premises.*
- iii. *Declaration orders that the sale agreement of the suit premises, to wit, Plot No. 777 Block 'A' Kipawa area Ilala Dar es Salaam made between the deceased and the 1st Defendant on 20th day of October, 2005 was illegal as a sale was effected while the deceased was dead.*
- iv. *Declaration orders that the sale agreement of the suit premises, to wit, Plot No. 777 Block 'A' Kipawa area Ilala Dar es Salaam between 1st and 2nd Defendant was also illegal as the 1st Defendant had no good title over the same.*
- v. *General damages for trespassing into and for loss of use of the suit premises.*
- vi. *Costs.*
- vii. *Any other(s) as this Honourable Court may deem fit and just to grant.*

When the matter came for mention on 4th October, 2022, the Plaintiff enlisted the legal service of Mr. Alfred Shenyangi, learned counsel. The Defendants have never appeared since the suit was instituted in this Court. Mr. Alfred informed the Court that the defendants refused to receive the summons and availed this Court of proof of service. The Court ordered

the Defendants to be served through publications in widely circulated newspapers.

The suit was argued before me on 16th February, 2022. I am alive to the fact that the Defendants were notified through the said publication to appear on 16th February, 2023, when this case was fixed for hearing, and the Defendants were so informed through the said publication. However, they did not appear on the stated date. Having regard to the entire circumstances of this case, I am of the considered view that the Defendants were duly being served therefore, I grant the Plaintiff's counsel prayer to proceed *ex parte* against the Defendants.

At all the material time, the Plaintiff was represented by Mr. Alfred Shenyangi, learned Advocates. During the Final Pre-trial Conference, the following issues were framed by this Court: -.

- 1) *Whether the Plaintiff is the lawful owner of the suit premises*
- 2) *Whether the sale of the suit premises between the Plaintiff and the 1st Defendant was lawful.*
- 3) *To what relief are parties entitled to.*

The Plaintiff's case was founded on Kidawa Mohamed, who testified as PW1, and Winjeslause Kweyunga (PW2). Thirteen exhibits were adduced by the Plaintiff in support of her testimony to wit; an original death certificate of Khadija Ramadhani (Exh.P1), letter of administration of

stated dated 18th March, 2011 (Exh.P2), a Certificate of Loss Report dated 22nd November, 2014 and an affidavit of Kidawa Mohamed (Exh.P3 collectively), a letter dated 7th December, 2010 (Exh.P4), a letter dated 28th January, 2014 (Exh.P5), a letter dated 19th September, 2016 (Exh.P6), a letter dated 15TH August, 2018, a letter dated 19th September, 2016a certified copy of a Letter of Offer in regard to Plot No. 777 Block 'A' Kipawa area (Exh.P8), Copies of Sale Agreement, Notification of a disposition, Transfer of Offer of Occupancy and Application for Approval of Disposition (Exh.P9 collectively), A copy of Land Form No. 33 Certificate of Approval of a Disposition (Exh.P10), Sale Agreement between Doto Juma Said and Hafidhi Abuu Jumaa Hamisi datres 30.08.2010, Notification of a Disposition, Land Form No. 29, Land Application for Approval of Disposition, Transfer of R/O. Land Form No. 30. Land No. 35 (Exh.P11 collectively), A copy of Certificate of Approval of a Disposition -Land Form No.33 (Exh.P12), and a letter from the Municipality of Ilala to Kidawa Mohamed dated 22nd March, 2019 in regard to Plot. No.777 Block 'A' Kipawa (Exh.P13).

Mr. Shenyangi, counsel was the first one to kick the ball rolling leading PW1 to express the facts. PW1 testified to the effect that she is an administratrix of the estate of the late Khadija Ramadhani, the owner of the suit land. To substantiate her testimony she tendered a certificate of death (EXh.P1) and a letter of administration of the estate of the late Khadija Ramadhani (Exh.P2). Kidawa testified that the late Khadija

Ramadhani had a Letter of Offer but the same went missing. To substantiate his submission she tendered a Loss Report and an Affidavit (Exh.P3 collectively). PW1 testified that when gathering the estates of the deceased she went to Ilala Municipal and they informed her that there is a Letter of Offer in name of Khadija Ramadhani, but the same was already been transferred to Dotto Juma Said. The purported sale agreement was between Dotto Juma Said and Khadija Ramadhani dated 20th October, 2005 concerning Plot. No.777 Block 'A' Kipawa. In her testimony, PW1 stated that she informed the Officer of Ilala Municipal Council that Khadija Ramadhani passed away on 4th August, 1984, therefore it was impossible for her to enter into a sale agreement.

According to PW1 testimony, the Ilala Municipal Council the 1st Defendant sold the suit land to Hafidhi Abuu Juma, the 2nd Defendant. Dotto Juma Said on 14th September, 2010, transferred the suit premises to Hafidhi Abuu Juma, the 2nd Defendant. PW1 wrote several letters to remind the Municipal of Ilala to assist her to recover the suit premises but her efforts were infertile. Hence the Municipal of Ilala advised Tpw1 to lodge the instant case before this Court.

Wenjelaus Rwebukisa Kwenyunga testified as PW2, a Land Officer working at Ilala Municipality. He testified that as per their records, the first owner of Plot

No. 777 Block 'A' Kipawa was Hadija Ramadhani via a Letter of Offer dated 1st January, 1978. According to PW2, the late Khadija Ramadhani complied with all procedures of ownership and hence was declared as the lawful owner. PW2 testified that in 2005, Dotto Juma entered into a purported sale agreement concerning Plot No. 777 Block 'A' Kipawa Area with Khadija Ramadhani dated 20th November, 2005. Ilala Municipality received an application for disposition transfer from Dotto Juma Said to Hafidhi Abuu Juma. According to PW2 testimony, their Office received several letters from PW1 and they wrote a letter to Hafidhi regarding the suit premises but Hafidhi did not respond. Hence they advised PW1 to file a suit against the Defendants. To substantiate his testimony, PW2 tendered various exhibits (Exh.P8 – Exh.13).

Having heard the testimonies of the Plaintiff, I am in a position to confront the issues framed for the determination of the present dispute between the parties. Before, I start to determine the issues I want to make it clear that in civil proceedings, the burden of proof lies with the one who alleges. See the case of **Govardhan P. Thakase v Janaradhan G. Thakase**, 2005 AIHC 1276. The Plaintiff is the one who alleges the existence of fact thus, PW1 must prove that she has an interest in the suit land. The standard of proof was elaborated under section 110 of the Evidence Act Cap.6 [R.E 2019]. This section places the burden of proof on the party asserting that partly desires a Court to believe him and pronounce

judgment in his favour. For ease of reference, I reproduce section 110 (1) of the Evidence Act, Cap.6 [R.E 2019] hereunder:-

"110 (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

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

Similarly, in the case of ***Nsubuga v Kavuma [1978] HCB 307*** the High Court of Uganda held that:-

"In civil cases, the burden lies on the plaintiff to prove his or her case on the balance of probabilities."

The first issue for determination is *whether the Plaintiff is the lawful owner of the suit premises*. In proving her case, the Plaintiff testified that It is undisputed that her late mother Khadija Ramadhani was the owner of the suit property and that she died in 1984. To substantiate her testimony, she tendered a Death Certificate which was admitted and marked as exhibit P1. The record shows that Kidawa Mohamed (PW1) was appointed as an administratrix of the estate of the late Khadija Ramadhani. To substantiate his testimony he tendered a letter of Administration with respect to Probate and Administration Cause No. 7 of 2011 (Exh. P2). According to PW2, the first owner of the suit land was Khadija Ramadhani and they

issued her a Letter of Offer dated 20th March, 1987 in regard to Plot No. 777 Block 'A' Kipawa Area. PW2 testified to the effect that the late Khadija Ramadhani complied with the procedure of acquiring ownership, hence she was the lawful owner. To substantiate his testimony he tendered a Letter of Offer (Exh.P8).

According to the evidence of PW1 and PW2, Dotto Juma purchased the Suit property from Khadija Mohamed (the deceased) on 20th October, 2005 and the Sale Agreement dated 20th October, 2005 (Exh.P9) is alleged to have been signed by Khadija Ramadhani and Dotto Juma Said.

I have scrutinized exhibit P9, which reveals that the sale between Dotto Juma Said and Khadija Ramadhani was done after the death of Khadija Ramadhani. Khadija Ramadhani passed away in 1984 (Exh.P1) and disposition was effected before the appointment of the Administratrix of the estates of the late Khadija Ramadhani. Kidawa Mohamed was appointed to administer the estate of the late Khadija Ramadhani in 2011 and by that time Dotto Juma Said had already transferred the ownership of Plot No. 777 Block 'A' Kipawa Area to his name (Exh.P9). It is trite law that no disposition can take place prior to the Probate or the letter of Administration being obtained from the competent court. Section 67 and 68 of the Land Registration Act, Cap 334 [R.E. 2019] state that:-

“67. On the death of the owner of any estate or interest, his legal personal representative, on application to the Registrar in the prescribed form and on delivering to him an office copy of the probate of the will or letters of administration to the estate of the owner, or his appointment under Part VIII of the Probate and Administration of Estates Act or the Fourth Schedule to the Magistrates' Courts Act shall be entitled to be registered as owner in the place of the deceased. Dispositions and assents by legal personal representative”.

See also in the case of **Yusufu Juma Sadiki & Another vs Nuru Mohamed Kihyo & 2 Others**, Land Case No. 26 of 2008 (HC-Land Division, DSM) (unreported). A similar position was discussed by my learned Sister Makani, J. in the case of **Abdallah Said Masoud v Gharib Suleiman & 5 Others**, Land Case No. 398 of 2016, whereas the sale of the suit property and the transfer thereof to the plaintiff, was declared unlawful hence null and void, for lack of better title to transfer ownership of land.

In determining the issue of who is the lawful owner of the suit premises, it is vivid that PW1 is the administratrix of the estate of the late Khadija Ramadhani dully appointed to step into the shoes of the deceased. As I have pointed out earlier, no disposition can take place unless the administrator or administratrix of the estate is appointed, therefore in the

demise of the deceased, it is only the administratrix PW1 who is vested with legal powers to transfer the suit property on behalf of the deceased.

In the absence of clear or cogent proof that the title passed from Khadija Ramadhani before her death, it is questionable as to the result of the disposition of the suit premises to Dotto Juma Said and later to Hafidhi Abuu Juma. The sale of agreement between the late Khadija Ramadhani and the other one between Dotto Juma Said and Hafidhi Abuu Juma were fabricated and the same was the basis of a transfer of ownership of Khadija Ramadhani.

Consequently, as PW1 has never transferred the suit property to anyone, it means that the lawful owner of the suit premises is the administratrix of the estate of the late Khadija Ramadhani, I am saying so because Kidawa Ramadahni was appointed to administer the estate of her late Khadija Ramadhani (Exh.P2).

Based on the above analysis I find that the suit property remains to be a party of the estate of the late Kadija Ramadhani until the administratrix discharges his power to dispose or distribute the same to the heirs if any.

Addressing the second issue *whether the sale of the suit premises between the Plaintiff and 1st Defendant was lawful*. The evidence shows that the sale of the suit premises to the 1st defendant was not lawful

because the sale is fabricated, the same was signed by Khadija Ramadhani on 20.10.2005 while, by that time Khadija Ramadahani was not alive, she passed away in 1984 (Exh.P1). In that regard, it is doubtful highly impossible that the deceased could have signed the sale agreement in 2005. Therefore the sale of the suit land in 2005 was completely null and *void abinitio* and therefore Dotto Juma Said had no good title to pass to Hafidhi Abuu Juma. Therefore, find that the title remained in the name of Khadija Ramdhani whose administratrix of the estate is Kidawa Mohamed.

Last issue, to *what relief are the parties entitled*. Starting with reliefs (i), to (iv) based on the above findings, it is clear that the Plaintiff's prayers have merit.

The fifth prayer on general damage, the Plaintiff is claiming total general damages. It is the trite law that general damages must be averred that such damage has been suffered by the Plaintiff after the consideration and deliberation on the evidence on record able to justify the award. And in awarding general damages, the court has to assign reasons for awarding the same. See **Alfred Fundi v Geled Mango & 2 Others** Civil Appeal No. 49 Of 2017 CAT Mwanza, **YARA Tanzania Limited v Charles Aloyce Msemwa and 2 Others**; Commercial Case No. 5 of 2013: HC of Tanzania (Commercial Division) at Dar es Salaam

(unreported). In my considered view, the Plaintiff did not tender any cogent evidence to prove the alleged damages therefore, in my view, this prayer is unfounded. Therefore, the prayers under paragraph (v) crumble.

The suit is allowed, therefore court declares as follows:-

1. That the suit property remains in the name of Khadija Ramdhani whose administratrix of the estate is Kidawa Mohamed.
2. The Defendants are restrained, jointly and severally, their servants, and workmen and, agents from the suit premises from trespassing the suit land.
3. That the sale of the suit premises Plot No. 777 Block 'A' Kipawa Area between the Khadija Ramadhani (deceased) and 1st Defendant and the transfers thereof are unlawful and hence null and void.
4. That the sale of the suit premises Plot No. 777 Block 'A' Kipawa Area between the 1st and 2nd Defendants and the transfers thereof are unlawful and hence null and void.
5. The Defendants to bear the costs of this suit.

Dated at Dar es Salaam this date 28th February, 2023.


A.Z.MGEYEKWA

JUDGE

28.02.2023



Judgment delivered on 28th February, 2023 in the presence of Mr. Richard Kipungu, learned counsel holding brief for Mr. Alfred Shenyangi, learned counsel for the Plaintiff.




A.Z.MGEYEKWA

JUDGE

28.02.2023

Right to appeal fully explained.