

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
LAND CASE NO. 11 OF 2020**

**THE REGISTERED TRUSTEES OF  
MAKONDE HANDCRAFT VILLAGE..... PLAINTIFF**

**VERSUS**

**THE PERMANENT SECRETARY  
MINISTRY OF CULTURE,  
ARTS AND SPORTS.....1<sup>ST</sup> DEFENDANT**

**THE REGISTERED TRUSTEES OF  
CHAMA CHA WASANII WACHONGAJI  
TANZANIA (CHAWASAWATA).....2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**THE COMMISSIONER FOR LANDS,  
MINISTRY FOR LAND, HOUSING AND HUMAN  
SETTLEMENTS.....4<sup>TH</sup> DEFENDANT**

**THE REGISTRAR OF TITLES.....5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

*15/2/2023 & 09/3/2023*

**A. MSAFIRI, J.**

The plaintiff known as the Registered Trustees of Makonde Handcraft Village, is suing the Permanent Secretary, the Ministry of Culture, Arts and Sports (the 1<sup>st</sup> defendant), the Registered Trustees of Chama Cha Wasanii

*Alle.*

Wachongaji Tanzania (CHAWASAWATA) (the 2<sup>nd</sup> defendant), the Attorney General, (the 3<sup>rd</sup> defendant), the Commissioner for Land, Ministry for Land, Housing and Human Settlements, (the 4<sup>th</sup> defendant), the Registrar of Titles (5<sup>th</sup> defendant).

The plaintiff stated in her Complaint that she is a Board of Trustees formed by 67 group of people all carrying on various business activities among others of wood carving, related art works and conducts sale of the said art products. Her place of business is located at Plot No. 1 and Plot No. 13, Block 46, Mwenge Area, along Sam Nujoma Road, Kijitonyama, Kinondoni Municipality in Dar es Salaam.

The plaintiff claims that she is the lawful owner of the area registered as Plots No. 1 and 13, Block 46 located at Mwenge Area, Kijitonyama, Kinondoni Municipality, Dar es Salaam (here in a suit premises or suit land or suit property). That, the said suit land was lawfully acquired by plaintiff through lawful procedures and after compliance of the said procedures, the said suit premises was granted to her by the Commissioner for Lands (the 4<sup>th</sup> defendant) and she was issued with a Title Deed.

That, the 1<sup>st</sup> defendant through various correspondence letters, has informed the Chairman of the plaintiff that there was/is an ownership dispute over the suit premises between the plaintiff and the 2<sup>nd</sup> defendant, whereby the 1<sup>st</sup> defendant has ordered the plaintiff to return the Title Deed to the 1<sup>st</sup> defendant with intention of handing the same over to Baraza la Sanaa Tanzania (BASATA). That, upon receiving the said order from the 1<sup>st</sup> defendant, the plaintiff made efforts to communicate and meet with the 1<sup>st</sup> defendant.

defendant and all parties involved in the dispute for the purpose of solving the matter amicably but without success. After that, the plaintiff decided to issue a 90 days' notice to sue the 1<sup>st</sup> defendant and copied it to the 3<sup>rd</sup> defendant.

That, the plaintiff's activities and business and her members are unsafe and are always frustrated and/or stopped from doing their legal business activities by the defendants or their agents who through their regular interruption, have immense influence especially by virtue of the 1<sup>st</sup> defendant being a Government institution, hence grievously affecting the plaintiff's business.

Briefly the plaintiff prays for judgment and decree jointly and severally against the 1<sup>st</sup> and 3<sup>rd</sup> defendants as follows;

- i. A declaration that the suit property legally allocated by the Ministry for Lands, Housing and Human Settlements Developments to the plaintiff, lawfully belongs to the plaintiff.
- ii. That, judgment to be entered to condemn the acts and omissions of the 2<sup>nd</sup> defendant particularly her members who are named in the Plaint and who are leading in antagonizing the peace and harmony in the plaintiff's area and preventing the smooth operations of her business.
- iii. Declaration that the 2<sup>nd</sup> defendant is a trespasser to the dispute property and an intruder who, without justification interrupts the normal and lawful business of the plaintiff. *Adde-*

- iv. Declaration that the acts and threats of attempting to nullify the plaintiff's ownership of suit premises committed by the 1<sup>st</sup> defendant and supported by the 2<sup>nd</sup> defendant is unlawful, un procedural and illegal and lack justification.
- v. Declaration that both the 1<sup>st</sup> and 2<sup>nd</sup> defendants have no interest to claim, or legal right and or entitlement in the dispute area.
- vi. The 1<sup>st</sup> and 2<sup>nd</sup> defendants to pay general damages to the plaintiff for their acts of interfering, frustrating and disturbing the plaintiff while carrying her lawful business.
- vii. Costs of the suit be borne by the 1<sup>st</sup> and 2<sup>nd</sup> defendant.
- viii. Any further order or reliefs.

In her Complaint, the plaintiff expressly stated that she had no whatsoever claims against the 4<sup>th</sup> and 5<sup>th</sup> defendants, and their joining this suit was the result of order of this Court pursuant to the prayers made by the 1<sup>st</sup> and 3<sup>rd</sup> defendants.

In their amended written statement of defence, the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants denied the plaintiffs' claims and put her to strict proof. They contended that the plaintiff has no legal capacity to own any immovable property including suit property as the Administrator General recalled back the consent issued to the plaintiff way back on 7<sup>th</sup> December 2018.

The 1<sup>st</sup> and 3<sup>rd</sup> defendants stated further that the plaintiff's ownership of the plot in dispute is in question due to the means applied to secure the Title Deed, of which were tainted with false information presented to the 4<sup>th</sup> *Alle*.

and 5<sup>th</sup> defendants by the plaintiff. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants prayed for the dismissal of the entire suit with costs.

The 2<sup>nd</sup> defendant also filed her amended written statement of defence. She vehemently denied the plaintiff's claims and put her to strict proof. She stated further that the 4<sup>th</sup> and 5<sup>th</sup> defendants have been joined in the suit as they were involved in revocation of original letter of offer and registration of the new right of occupancy from the 2<sup>nd</sup> defendant to the plaintiff based on false information by the plaintiff to the said 4<sup>th</sup> and 5<sup>th</sup> defendants.

That, there was no conclusive mutual agreement between plaintiff and 2<sup>nd</sup> defendant for the grant of right of occupancy in any way to the plaintiff. The 2<sup>nd</sup> defendant maintained that, the ownership of the suit property is in question due to the means applied to secure the Title Deed, of which were tainted with false information presented to the 4<sup>th</sup> and 5<sup>th</sup> defendants by the plaintiff. The 2<sup>nd</sup> defendant prayed for the dismissal of the entire suit with costs.

None of the defendants filed a counter claim.

In the suit, the plaintiff was represented by Mrs. Makale, learned advocate, while the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants were represented by Mr. Stanley Mahenge, State Attorney who was assisted by various State Attorneys who kept changing by each day. The 2<sup>nd</sup> defendant was at first unrepresented whereby Mr. Isiaka Abdul, the Chairman of 2<sup>nd</sup> defendant entered appearance on behalf of the 2<sup>nd</sup> defendant. Later, after getting legal aid, the 2<sup>nd</sup> defendant was represented by Ms. Bahati Misso, advocate from Legal and Human Rights Centre (LHRC). *Alle*



The following issues were framed before the commencement of trial,

1. Whether the suit property was legally allocated to the plaintiff by the 4<sup>th</sup> and 5<sup>th</sup> defendants.
2. Whether the 1<sup>st</sup> defendant has powers to order the Title Deed owned by the plaintiff to be returned to the 1<sup>st</sup> defendant Ministry.
3. Whether the 1<sup>st</sup> defendant has interest in the suit property and if the answer is in the affirmative, to what extent.
4. Whether the 2<sup>nd</sup> defendant is a trespasser to the suit property.
5. To what reliefs are parties entitled to.

I shall analyse the presented evidence as I determine the herein above issues. To my view, the second and third issues are related so, I shall determine them jointly.

I will start with the first issue as to whether the suit property was legally allocated to the plaintiff by the 4<sup>th</sup> and 5<sup>th</sup> defendants.

I have gathered from the pleadings and from oral and documentary evidence adduced in Court that, there is no dispute between the parties that, currently, the plaintiff is the owner of the suit property as she was granted the same by the Commissioner for Land (4<sup>th</sup> defendant). The plaintiff is in possession of the Title Deed on the suit property which was issued on 18/11/2016 and collected by the plaintiff on 03/01/2017.

The dispute is the one claimed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants in their pleadings that the registration and grant of the Title Deed on the suit property to the plaintiff was based on misrepresentation and false information presented by the plaintiff to the 4<sup>th</sup> & 5<sup>th</sup> defendants. The plaintiff *Allo*

has maintained that there was no false information or misrepresentation as alleged but the Title Deed was issued on lawful procedures.

To confirm their claims, the plaintiff brought a total of three (3) witnesses. PW1 was Raphael Sebastian Matondane. He testified that he is an art dealer and a businessman. That his art business is at Mwenge and other areas and that he started dealing with art business in 1982.

He said he is also a Chairman of the Registered Board of Trustees of Makonde Handcraft Village, the plaintiff. He stated that the plaintiff owns the suit property which was allocated to her by the Government, and it is Plots No.1 and 13 Block 46, Kijitonyama Service Trade Area. The land is located at Sam Nujoma Road, Mwenge, Dar es Salaam.

PW1 stated further that the plaintiff supervises and manage the suit property to ensure that it is used for the purpose it was allocated for. That, the plaintiff represents the groups of people who are artists, art dealers and wood carvers who were transferred from their former places of business which were located at Skyway Hotel and Osterbay, Old Bagamoyo Road. These groups of artists and art dealers were moved to Mwenge area and were allocated the suit property by the Government through Dar es Salaam City Council, in 1984.

PW1, explained that, the suit property was allocated to about 56 groups dealing with arts and sale of artifacts. The property was distributed among the groups whereby each group got a piece of land measured 15 & 30 feet in size. That each group is an autonomy organ and has authority *Alle.*

over their given pieces of land but the overall supervisor of the said groups is the plaintiff who is the overseer and supervisor of the whole suit premises.

PW1 narrated a long story on how the plaintiff came into ownership of the suit property. I will paraphrase and make it short for the purpose of this judgment.

This Court was told that there was 56 groups of artists and art business dealers who were transferred by the Dar es Salaam City Council from their places of business which were located at Sky way and Osterbay, Dar es Salaam. These groups were granted a place at Mwenge (suit property), and it was in 1984.

The Dar es Salaam City Council wanted to formalize the ownership of the suit property so they directed the 56 groups to forward one name of an association whose name will be registered and a Title Deed on the suit property will be issued in the chosen name. That, after agreement, the 56 groups forwarded the name of an association called Wood and Ivory Covers Association (WICA) to Dar es Salaam City Council. However, WICA was dissolved in 1984, so, the City Council unregistered the Letter of Offer which was already issued in the name of WICA.

PW1 averred that, the leaders of those groups without involving other members referred the name of CHAWASAWATA (2<sup>nd</sup> defendant) to the City Council. Dar es Salaam City Council responded on that and another Letter of Offer on the suit property was issued in the name of CHAWASAWATA.

After the issue of the said Letter of Offer, other members among the 56 groups were unsatisfied, so there was disintegration of groups, some *Alle-*



supporting CHAWASAWATA and some supporting another association named Mwenge Arts and Crafters Association.

Following that, the City Council revoked the Letter of Offer which was issued to CHAWASAWATA and advised/directed that, all the groups of art dealers, wood carvers, and people in art business should unite and form one association which will represent all groups.

The dispute over the groups on the ownership of the suit property went on until 2002, when the Office of the President advised the disputing groups to meet with the City Council and solve the dispute amicably.

PW1 said that, on 28/10/2002, the Union Committee was formed which included CHAWASAWATA, Mwenge Arts and Crafters, Officers from Dar es Salaam City Council and Kinondoni Municipal Council. The meeting proposed the name of Makonde Handcraft Village to be the association to represent the groups and be registered as owners of suit property.

There was another meeting for approval of the proposed name by groups. The meeting was chaired by the then Kijitonyama Ward Councilor and the Secretary was the Ward Executive Officer of Kijitonyama and it was held on 26/3/2003. PW1 identified the Minutes of the said meeting which was signed by the said Ward Executive who was the Secretary of the meeting. The Minutes of the meeting were tendered by PW1 and admitted in Court as exhibit P1.

PW1 stated that, the Chairman of the meeting was Mr. Kisasi, the Ward Councilor but the Minutes were signed after two years by Mr. Kimbau, the new incoming Councilor who signed on behalf. He stated that those Minutes

*Alle.*

were among documents used to register the association of Makonde Handcraft Village.

After that, the leaders of Makonde Handcraft Village informed the Director, Kinondoni Municipal, that the association which represent other groups was already formed by the name Makonde Handicraft Village. The Director advised them to register the said association as per the law. Hence, Makonde Handcraft Village was registered by the Ministry for Home Affairs and issued with a Certificate for Registration. He proceeded to tender the Certificate of Registration which was admitted in Court as Exhibit P2.

PW1 stated that, after that the leaders of Makonde Handcraft Village began the procedure for registration of ownership of suit property. That they applied for registration in 2005 and the Title Deed was issued in 2017.

PW1 stated further that during the years following the application for the ownership of the suit property, the Director of Kinondoni Municipal issued 90 days' Notice to CHAWASAWATA with intention to revoke/cancel the letter of offer which was granted to them in 1988.

The letter showing correspondences between CHAWASAWATA and the Office of Director, Kinondoni Municipality was admitted as Exhibit P3. Finally, the Letter of Offer which was issued to CHAWASAWATA on the suit property was revoked in 2015 by a Notice in a Public Gazette.

PW1 stated further that among the condition for the plaintiff to be issued with Title Deed on suit property was that the the plaintiff should form a Board of Trustees of an association of Makonde Handcraft Village and register it. That, in compliance, the Board of Trustees was formed and they

*Atts*

wrote the constitution and proceed to register the said Board. The Certificate of Incorporation of the Board of Trustees of Makonde Handicraft Village was tendered and admitted in Court as Exhibit P6.

After that, the Ministry of Land, through Commissioner for Lands granted the Board of Trustees a Title Deed (Certificate of Right of Occupancy) on the suit property. It was issued on 03/01/2017. The Original Title Deed was tendered and admitted in Court as Exhibit P7.

PW1 maintained that, the procedure for the registration and acquiring the Title Deed on the suit property was lawful, there was no forgery or fraud acts. PW1 stated further that, there was complaints of forgery from the 2<sup>nd</sup> defendant. The complaints were reported to Police Station Oysterbay and Dar es Salaam Special Police Zone Office. That, there was investigations on the alleged forgery on the documents submitted to the Ministry of Land for acquisition of Title Deed. However, after investigation, it was found that there was no forgery. He tendered the letters from the Police Force which was admitted as Exhibit P8 collectively.

PW1 argued that the grant of the Title Deed by the Commissioner for Land to the plaintiff was lawful and all the procedures required for attaining the said Title Deed were complied with by the plaintiff. And that the claims of the defendants that the Title Deed was issued basing on the fraud/forgery or misinformation by the plaintiff have never been proved.

PW1 stated that as of now, the suit property is lawfully owned by the plaintiff and the Title of ownership is registered in her name. That the plaintiff is paying all necessary land rents as the lawful owner of the property. *Atts-*

He tendered the receipts of land rent payment which was admitted in Court as Exhibit P.16

In cross examination by Mr. Mahenge for the 1<sup>st</sup> defendant, PW1 stated that the Minutes of joint meeting of the stakeholders of the arts, art dealers, and carvers, with the Kinondoni Municipal Council was among the documents presented to the Commissioner for Land when the plaintiff was requesting for the ownership of suit property. He agreed that the ownership of the suit property was allocated to Makonde Handcraft Village because of presentation to the Commissioner for Land, of the Minutes of Joint Committee which passed the resolution of approving the name of Makonde Handcraft Village.

PW1 admitted in cross-examination that the Minutes of the meeting shows that the meeting was held in 26/9/2003. But it was signed by Mr. Kimbau who was the Councilor by then on 09/3/2006. He explained that, the Chairman could not sign at that time because he had left the office, it was during General Election and the Minutes were later signed by his successor.

PW2 was Pius Sagala Paulo. He said that he is currently an Assistant General Secretary of Makonde Handcraft Village since 2017. He practically reiterated the evidence adduced by PW1. He insisted that the Title Deed issued to the plaintiff is lawful, and the plaintiff is the Registered Trustees of Makonde Handcraft Village. He stated further that, the Board of Trustee is the supervisor and coordinator to all assets of Makonde Handcraft Village. *Alb*



PW2 admitted on cross examination that exhibit P1 was among the documents they attached in their request for the Certificate of Ownership/Title Deed on the suit property.

In their joint defence, the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants claimed first in their amended joint WSD that the 2<sup>nd</sup> defendant was occupying and was the lawful owner of the suit property until 2016 when the plaintiff gave misrepresenting information to the 4<sup>th</sup> and 5<sup>th</sup> defendants and successfully acquired ownership over suit property.

The misrepresentation claims by the defendants is based on the Minutes of the meeting which was held on 26/9/2003 which were admitted in Court as Exhibit P1. The defendants maintains that the Minutes are defective since they did not contain the list of attendees, and it was signed by the different person as a Chairman on 09/03/2006 which is about two years after the date of the meeting.

To prove their claims, the defendants called one Kesi Juma Tuyuyu, who testified as DW1. He said that he was Street Executive Officer of the area of Mwenge Nzasa since the year 2002 up to 2005. Mwenge is the area where the suit property is located.

He stated that there was various meetings between the Local Street Government and the artists who were doing their business at the area of suit property intended to solve the dispute among the conflicting groups about the suit property. That the last meeting was convened on 2003, and the purpose of that meeting was for the conflicting artists groups to form one unifying association which will be granted the certificate of ownership of the *Atle*.



suit property. That on that meeting, the Chairman was the Councilor of that area known as Kisasi and the Secretary was him, DW1.

When he was shown Exhibit P1, which is the purported Minutes of the said meeting, DW1 denied to have written the Minutes. He stated that, after the meeting on which he was secretary, he and Councilor Kisasi went back to the office with the draft of the Minutes and kept them in the office. After that, he DW1 and Councilor Kisasi left the office and the drafted Minutes were kept in custody at the office.

DW1 vehemently denied to have signed the Minutes, and stated that on the place of the secretary, the Minutes were signed by one Charles Mwita who was a member of the Street Local Government who was not supposed to sign the Minutes as he was not a Street Executive Officer.

Hence as per the evidence of DW1, the Minutes of 26/9/2003 which passed the resolution to form a name Makonde Handcraft Village for purpose of ownership of the suit property, was a nullity since it was not signed by him, the Street Executive Officer but it was signed by a member of the Street Local Government. He insisted that the Minutes were not authentic and were signed by the Chairman three years later after the meeting i.e. in 2006.

However, on cross examination, DW1 stated that, Exhibit P1 was not the Minutes of the meeting chaired by Councilor Kisasi and on which he was a secretary. He said further that he don't recognize the meeting of Exhibit P1 as he was not a Secretary and did not sign the Minutes so the Minutes were nullity. *Adde.*

DW2 Evod Eliezer Kyando, supported the claims of DW1. He stated that the plaintiff's claims that they were lawfully granted the suit property are not true. He testified in Court that the procedure of the grant of ownership to the plaintiff was full of discrepancies.

He explained that, one of the discrepancies was the Minutes of the meeting which agreed that the name Makonde Handcraft Village was the association to be granted the ownership of the suit property. The Minutes were presented to the Commissioner for Land among other documents for the process of acquisition of Title Deed.

He claimed that the Minutes had not met the requirement of proper Minutes and proper meeting. And that the Chairman who chaired the said meeting did not sign the Minutes but they were signed by another person, three years after the date of the said meeting.

DW3 was Adelfrida Camilius Lukule, a Land Officer from the office of Commissioner for Land. She stated that in 1988, the suit property's ownership was granted to the Registered Trustees of CHAWASAWATA (the 2<sup>nd</sup> defendant). The ownership was granted through a Letter of Offer which she tendered and was admitted as Exhibit D4 in Court. She said that, however due to the dispute over the suit property involving CHAWASAWATA and Mwenge Art Dealers, the ownership by the Registered Trustees of CHAWASAWATA was revoked in 2015 by the order of His Excellency the President of Tanzania.

DW3 stated further that it was the office of Director of Kinondoni Municipal Council which informed the Commissioner for Land that the

disputing groups have agreed to settle the dispute amicably. That the agreement was to form one association which will be granted ownership of suit property for the benefit of all.

That, the office of Commissioner for Lands directed the Municipal Council to give them a copy of the said agreement, and the Municipal Council complied and handed the Commissioner for Land a copy of the Minutes of the meeting of 26/9/2003, on which the disputing parties agreed that the new association will be named Makonde Handcraft Village and shall be the one registered as owner of the suit property.

DW3 admitted that, the Minutes of the said meeting had no names of participants of the meeting.

DW3 explains the conditions upon which the Commissioner for Land can revoke the Certificate of ownership/Title Deed. She stated that, first; is when the owner fails to comply with the conditions set in the said Certificate/Title Deed, second; failure to develop the land within the time set in the Title Deed, third; abandonment of land, and fourth; failure to pay land rent for a long time.

DW3 asserted that, if the office of Commissioner for Land is to discover that there was a wrong information or illegal documents presented to it by the applicant in the process of application for registration of Title, then the consequence is that, that ownership/registration will be nullified. She added that, after that discovery, the Commissioner for Land has legal authority through the Land Registration Act, Cap 334, to rectify the Title of ownership. *Aelle.*

She concluded by stating that the Land Act, Cap 113 has given a room to rectify the ownership of the land if it will be discovered that there was irregularities or un-procedural facts in granting the ownership of that particular land.

Having analysed the evidence, now I will determine the first issue on legality of allocation of the suit property.

It is my finding that the suit property was lawfully allocated to the plaintiff. The reasons for my findings are that;

First; the procedure of registering the suit property in the name of the plaintiff was supervised by the Kinondoni Municipal Council who received the requisite documents from the disputing groups and forwarded them to the Commissioner for Land for the registration purpose.

So, it was not the plaintiff alone who initiated and sent the needed documents to the Commissioner for Land, but rather the documents were approved by the Municipal Council which forwarded the same to Commissioner for Land.

This was stated by DW3 who stated that the Commissioner for Land received the required documents for registration from the Director, Kinondoni Municipal Council.

Second; the defendants have claimed that the Minutes of the meeting which agreed on the name of association which will bear the ownership of suit property were tainted with irregularities and misinformation. *Alle-*

However, this Court is of the view that, the witness from the Commissioner for Land, DW3 who was representing 4<sup>th</sup> defendant, did not state that the office of Commissioner for Land was misinformed or how was it misinformed. She stated instead that the Minutes of the disputed meeting of 26/9/2003 had discrepancies due to the fact that, there was no list of participants of the said meeting. She did not specifically said that the so called discrepancies of the Minutes of 26/9/2003 rendered the whole process of preparing and issuing the Title Deed to the plaintiff, a nullity.

DW1 and DW2 testified that the Minutes were tainted with irregularities on the fact that, first the Chairman who chaired the Minutes on the said dates did not sign the same on the date of meeting which was 2003 but they were signed by another successor Chairman after two years i.e. in 2006.

DW1 told the Court that he was the secretary of that meeting but did not sign the Minutes of the said meeting but it was signed by another member of the Street Local Government.

However, the Court was not told on whether there was or there is mandatory provision of Law or Regulations or Guidelines on how the Minutes of an official meeting should be drafted /written. If there is any, then the same were not produced in Court to show how the so called discrepancies in the said Minutes were fatal. The Court was not told the fatality of the said Minutes to the procedure of granting of the Title Deed on suit property by the Commissioner for Land. Further, it was not clear whether the contents of Minutes were false or untrue. The defendants capitalized on the format of *Acts.*



the Minutes rather than the contents. They failed to show the Court how the 4<sup>th</sup> defendant was misinformed by the plaintiff.

It was clear to this Court that the Minutes of 26/9/2003 were not the sole document which the Commissioner for Land relied upon on granting the Title Deed, but there were other documents which the plaintiff forwarded to the Commissioner of Land via the office of Director of Municipal Council; there was also requirement of presenting the Certificate of Registration of Makonde Handcraft Village, and the Certificate of Registration of Board of Trustees of Makonde Handcraft Village.

Furthermore, DW3 told the Court that her office was satisfied by the documents which were presented in respect of the registration of the suit property to the plaintiff and it proceed to grant ownership. In addition, during cross examination, DW3 admitted that the office of Commissioner for Land has never noticed the said discrepancies since 2016 when the Title on suit property was processed and issued in 2017 to the plaintiff. She said that she noticed the said discrepancies recently when she was preparing to adduce evidence in this case.

Among the four conditions which DW3 told the Court that are the reasons upon which the ownership of land can be revoked, none of them is the Minutes of the meeting which have discrepancies.

It should be noted that the witness of the plaintiff, PW1 stated that there was allegations of forgery by the 2<sup>nd</sup> defendant to the Plaintiff. But the Police Force investigated and it was reported that there was no such forgeries. *Alle*

It should also be noted that none of the witnesses denied that the meeting of 26/9/2003 ever took place. DW1 admitted that the meeting of 2003 took place and it was the last meeting by the disputing parties and that its purpose was to form one group/association which will be granted ownership of suit property. He agreed that Councilor Kisasi was a Chairman. His only dispute to the Minutes was that, they were signed by the incoming Chairman and secretary, after the expiry of the office term of the outgoing Chairman and secretary and upon the latter having left the Minutes under the custody of the office. DW1 never disputed or denied the contents of the Minutes exhibit P1. Same is with DW2 who also maintained that the Minutes had discrepancies due to the fact that they had not attached a list of participants of the meeting.

Isihaka Abdul Dege, the Chairman of the 2<sup>nd</sup> defendant, who testified as DW6, admitted that the meeting of 2003 was indeed conducted, but he did not participate but another Chairman of 2<sup>nd</sup> defendant who was by then holding that post, did participate. Although admitting that he did not participate and that he was not at the meeting, he denied that there was any agreed terms on the proposing and forming the name Makonde Handcraft Village.

The Court failed to believe this witness who admitted that there was a meeting, he admitted further on his absence at the meeting, but denied the resolutions of the same meeting. DW6 did not tell the Court how he came to know the resolutions of the meeting which he did not attend. *Alle -*

The Court was told through the evidence from the parties that, after the grant of Title Deed to the plaintiff, there was complaints. However, despite the claimed complaints, as per the evidence, the Certificate of ownership/Title Deed was issued since 03/01/2017. From that date until now, no any complaint has ever forwarded by any complainant or people claiming to have interest to the suit property, to the Commissioner for Land on the irregularities or illegalities on the procedure of grant of ownership of suit property to the plaintiff.

Having gone through the evidence, and as I have pointed hereinabove, I find that the defendants have failed to show the claimed misinformation or false information which were allegedly presented to the Commissioner for Land and Registrar of Titles. The pointed discrepancies which are solely based on the Minutes of a meeting, as I have earlier stated are based on the format of the Minutes and are not fatal, hence cannot be a base of nullification of the Title Deed.

The registration of land and grant of a Title Deed is a serious procedure whereby the authorities with mandate has to ascertain that all the conditions legally set for registration and grant of the same are complied with. The registration of an interest under a land system should not be taken simply as any presentation of a registered interest in land is a prima facie evidence that the person so registered is the lawful owner of the said land.

In the case of **Amina Maulid Ambali & 2 others vs. Ramadhani Juma**, Civil Appeal No. 35 of 2019 (CAT- Mwanza) (unreported), the Court of Appeal among other observations cited the book of **Conveyancing and**

*Alls.*

**Disposition of Land in Tanzania** by Dr. R.W Tenga and Dr. S.I Mramba  
Law Africa Dar es Salaam, 2017 at page 330 where it was said:

*"...the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transaction that confer, affect or terminate that ownership or interest. **Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title.**"(emphasis supplied).*

Subscribing to that position, I am not convinced by the defence claims of false misrepresentation which are based on the purported discrepancies of Minutes of a meeting. Again, the defendants did not prove whether the contents of the Minutes were false or that the Minutes were forged. Hence on the balance of probability and the burden of proof which has been shifted to the defendants to prove their claims, I find that the plaintiff has succeeded to prove on the legality of her ownership of the suit property.

Another claim which was raised by the 1<sup>st</sup> defendant in the joint amended WSD is that the plaintiff has no legal capacity to own any immovable property including the suit property as the Administrator General recalled back the consent issued to the plaintiff way back on 07/12/2018

This was corroborated by the evidence of DW2 who stated that the Administrator General has directed the plaintiff to hand back the consent which was previously issued to her as a permit to own the land in dispute. *Alles*



DW2 tendered the letter from Administrator General to the plaintiff, and it was admitted as Exhibit D3. He said that, that due to that fact, it is as if the plaintiff has no possession of Title.

However, it is not in dispute that currently the owner of the suit property is the plaintiff as the suit property is still registered in the name of the plaintiff.

Section 2 of the Land Registration Act Cap 334 R.E 2019 defines the "owner" to mean, in relation to any state or interest, the person **for the time being** in whose name that estate or interest is registered.

Hence any interested party to the suit property has a right to present before the Commissioner for Land, any complaint about the parties' dissatisfaction on the ownership of the suit property and that party is at liberty to seek for rectification of the registered ownership.

For the foregoing reasons, the first issue is answered in affirmative.

The second issue is whether the 1<sup>st</sup> defendant has powers to order the Title Deed owned by the plaintiff to be returned to the 1<sup>st</sup> defendant Ministry.

The procedure for rectifying the ownership of the Title Deed was clearly explained by DW3, the Land Officer in her evidence. She pointed out four grounds upon which the Commissioner for Land may rectify the ownership. I will not reproduce them here as I have already stated them earlier.

DW3 stated further that, the Commissioner for Land has legal authority through the Land Registration Act to rectify the ownership if he discovers *Alles.*



that there was wrong information or illegal documents presented during the process of application for ownership of land. That, the Commissioner will do so by deregistering the Title in the Register of Registrar of Titles. And that, after the ownership of Title is removed from the Registry, the ownership of that land is returned to the Excellency the President until further action.

Hence, the second issue is answered in negative. Despite the evidence of correspondences and various meetings to solve the dispute, and despite the fact that the 1<sup>st</sup> defendant, by her instrument, has mandate to oversee the development and progress of the art and artists, she has no any legal mandate or power to order the Title Deed to be handed to BASATA or to the 1<sup>st</sup> defendant Ministry herself. The authority which has been mandated such power and exercise that said power on behalf of the President of the United Republic of Tanzania is the Commissioner for Land. The Court of law has powers also to revoke the ownership upon the proof that the same was unlawfully granted but after the complainant has presented his/her complaints to the Commissioner for Lands.

Hence the proper legal procedure was for the 1<sup>st</sup> defendant to present her complaints/ advice/proposals to the relevant authority which could have revoked the said Title Deed, and upon application as per the procedures, a new Title could have been issued to BASATA or whatever art-based institution chosen to hold the ownership.

As it is now, the Ministry could not issue directives that the plaintiff hand over the Title Deed because the plaintiff is the legal owner of the suit property and their ownership has not been rectified/revoked.

*Alle.*

The third issue is whether the 1<sup>st</sup> defendant has interest in the suit property and if the answer is in the affirmative, to what extent.

This issue need not take much of the Court's time as it relates to the second issue.

It was the evidence of DW2 that all issues pertaining the welfare, harmony, progress and development of art and artists is a priority and mandated to the 1<sup>st</sup> defendant and that this is according to the laws and policies and the instrument of the said Ministry(1<sup>st</sup> defendant).

So according to the evidence, if the land dispute between the groups of artist and art dealers threaten the peace, harmony and progress of the art and artists, then the Ministry for Culture, Arts and Sports (1<sup>st</sup> defendant) has direct interest.

The Court has gone through the evidence which shows the efforts of the 1<sup>st</sup> defendant to settle the dispute amicably between the parties. Hence, yes, the 1<sup>st</sup> defendant has an interest in the suit property, to the extent of securing peace and harmony to the two disputing parties.

However, as per the Court's findings in the 2<sup>nd</sup> issue, the 1<sup>st</sup> defendant, despite the fact that she has interest on the suit property, has no mandate to take over the Title Deed from the plaintiff which was lawfully granted to her by the Commissioner for Land. The legal personnel of the 1<sup>st</sup> defendant could have pursued the lawful procedure for the application for revocation or rectification of the Title Deed being held by the plaintiff instead of ordering directives as the 1<sup>st</sup> defendant has done. *Alles.*

The fourth issue is whether the 2<sup>nd</sup> defendant is a trespasser to the suit property.

The finding of this Court is that the plaintiff is the legal owner of the suit property. It is the evidence of DW3 that the Letter of Offer which was issued in 1988 by the Ministry of Land to the 2<sup>nd</sup> defendant was revoked in 2015 by the order of the President of United Republic of Tanzania.

DW3 stated further that, after revocation of ownership of suit property by CHAWASAWATA, the 2<sup>nd</sup> defendant, the Commissioner for Land granted the ownership of suit property to the Registered Trustees of Makonde Handcraft Village.

Hence from this evidence, which was presented by the plaintiff's witness PW1 and corroborated by the witness for defence DW1, legally, the 2<sup>nd</sup> defendant is not the owner of suit property and hence has no any claim over the suit property.

The fourth issue is answered in affirmative.

The fifth and last issue is to what reliefs are the parties entitled to.

I find that the plaintiffs have succeed to prove her case that she is the rightful owner of the suit property, so the case is decided in her favor.

In their amended Plaint, the plaintiffs have prayed for the judgment to be entered to condemn the acts and omissions of the 2<sup>nd</sup> defendant and especially her members whose names have been listed in the relief part of the said Plaint.

*Alle.*

I agree entirely with the 2<sup>nd</sup> defendant's evidence that no any scintilla of evidence was presented by the plaintiff to prove the claimed acts and omissions committed either by the 2<sup>nd</sup> defendant or her members individually. Hence the Court hereby disregard the claims and prayers against them.

The Court hereby order that;

1. The plaintiff is the lawful owner of the property located at Plots No. 1 and 13 Block 46 KIjityama Area, Kinondoni Municipality, Dar es Salaam herein referred as suit property.
2. The 2<sup>nd</sup> defendant has no claim whatsoever on the ownership of the suit property.
3. The acts, efforts and any attempts done by the 1<sup>st</sup> defendant and supported by the 2<sup>nd</sup> defendant to direct the plaintiff to return the Title Deed of suit property to the 1<sup>st</sup> defendant are declared unlawful and un-procedural.
4. Costs of this suit be borne by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

It is so ordered.

Right of appeal explained.



*A. Msafiri*

**A. MSAFIRI**

**JUDGE**

**09/3/2023**