

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
LAND CASE NO. 78 OF 2015**

**SALIM SAID MTOMEKELA..... PLAINTIFF  
VERSUS  
MOHAMED ABDALLAH MOHAMED.....DEFENDANT**

**J U D G M E N T**

*Date of last Order:24/02/2023  
Date of Judgment:30/03/2023*

**K. D. MHINA, J.**

This is the Judgment following the order of the Court of Appeal dated 15 February 2023 in Civil Appeal No 149 of 2019. The Court of Appeal directed that;

*"On the way forward, we nullify the Ruling of the trial court and direct that the case file be returned to the High Court for it to compose a proper judgment in compliance with the law."*

The main issue of controversy between the parties to this suit is the ownership of a parcel of land described as Plot No. 495 Block "G" Tegeta Area, whereby the plaintiff claimed that he is the lawful owner of that land and that the defendant trespassed into that suit land.

The declaratory orders sought are;

- i. Order of payment of TZS 261,000,000/= as compensation for the plaintiff's demolished house, four palm trees, and other environmental changes and annual rent.
- ii. Order of eviction of the defendant unlawfully building a house on plot no. 495 Block "G" Tegeta Area.
- iii. Order of demolition and its demolition costs of the defendant unlawfully building a house on plot no. 495 Block "G" Tegeta Area.
- iv. An order for payment of TZS 1,000,000/= rent for the continued defendant's unlawful stay on the plaintiff's landed property, thus plot no. 495 Block "G" Tegeta Area
- v. Interest on the decretal sum at the court's rate from the date of judgment until payment in full.
- vi. General damages for psychological torture, denial, and trespass over the plaintiff's plot since 2007 and
- vii. Costs of the suit.

The defendant countered the allegation by filing a written statement of defence, alleging that he is a lawful owner of the suit land.

Due to the “tug of war” over the ownership, the following issues were framed for the determination of this Court during the final Pre-Trial Conference, which usually conducted Order 8 Rule 40 of the Civil Procedure Code, Cap 33 R: E 2019,

- i. Who is the lawful owner of the suit property*
- ii. Whether the defendant trespassed into the plaintiff's landed property and.*
- iii. To what reliefs the parties are entitled to.*

At the hearing of the suit, the plaintiff was represented by Mr. Chambuso, while the defendant was represented by Mr. Rweikiza, both learned advocates.

To prove his case, the plaintiff called three witnesses.

The first witness was **Mhina Halfani Chambuso (PW1)**, who, by Special Power of Attorney, represented the plaintiff living in Germany. He testified that the plaintiff owned the suit plot after he was allocated by a letter of offer. He tendered to that effect;

- i. The letter of offer with LD/154598/1/MM dated 15 October 1991 as Exhibit P4.*

PW1 told this Court that in 1992 they built a shed in that plot, and to that effect, he tendered the photocopy of the shed taken on November 1994 (Exhibit P5)

He further testified that the plot trespassed, and when they complained, they were told that it was their duty to take care of the plot. Later, they searched and found that the plot was not allocated to anybody else. Further, the plaintiff was paying land rent up to 2017. He tendered to that effect;

- i. The complaint letter dated 15 February 2002 as Exhibit P6 (collectively).
- ii. The letter from the office of Commissioner for Lands dated 14 August 2015. as Exhibit P6 (collectively).
- iii. Official search dated 14 July 2015 as Exhibit P6 (collectively).
- iv. Land rent receipts as Exhibit P7.

**Jane Paulo Mwaipyana (PW2)**, the Land Officer from Kinondoni Municipal Council, testified that the suit plot was not in their records. The plot was under the plots dealt with the office of the Commissioner for Lands.

**Kaseja Ninga (PW3)**, Land Officer from the Commissioner for Lands office, testified that the owner of the suit plot was Salim Said Mtaka (He said he could not remember the last name correctly). He was allocated in 1991.

He further testified that in 2005 they received a letter from the plaintiff's lawyer requesting the status of ownership of the suit plot. They responded that according to the records, Salim Said had been the owner since 1991.

In the defence case, **DW1 Mohamed Abdallah Mohamed** testified that he began constructing the house in 2010 in plot no 495 Block "G Tegeta. He was a lawful owner of the suit premises and had the letter of offer and the sale agreement. He purchased the same from Mariam A. Hamisi. To that effect, he tendered:

- i. The letter of offer with LD/154598/1/MM in the name of Mariam A. Hamisi dated 18 July 1991 as Exhibit D1

He further testified that he found nothing on the plot when constructing the house. In 2010 he was told that people went to the suit land as if they were negotiating the sale, and later some people told

him the plot belonged to them. He was also demanded to pay land rent, and he paid the same. He tendered the following to that effect:

- i. Request to pay land rent and land rent receipt as Exhibit D2

He further testified that when he was making a follow-up at the Ministry of Lands, he realized there was a case and was told to wait until the finalization of the case.

He concluded by testifying that of the two letters of offer, the first one was Exhibit D1 on 18 July 1991, while Exhibit P4 was issued on 19 October 1991.

Having closed their testimonies, the parties filed their respective written submissions to assist the court in reaching a just decision.

In deliberation and determination of the 1<sup>st</sup> issue as who is the lawful owner of the suit property, this Court will be guided by Section (1) of the Evidence Act, Cap. 6 [R.E. 2019], which reads

*"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."*

Similarly, I will be guided by the case of **Hemedi Said vs. Mohamedi Mbilu** (1984) TLR 113; it was held that;

*"He who alleged must prove the allegations."*

Further, the Court of Appeal in **Paulina Samson Ndawavya vs. Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017 (unreported), held that;

*"It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved."*

Based on the above, the rival arguments over the ownership of the suit land, as adduced by witnesses, were as follows;

On the plaintiff's side, the evidence was that he was allocated that land by a letter of offer with No. LD/154598/1/MM on 15 October 1991 [Exh.P4]. When the plaintiff discovered that the suit land had trespassed, he complained in writing to the Director of the Municipal Council of Kinondoni. He copied to the Commissioner of Lands [Exh.P6 collectively].

On 14 August 2015, the office of the Commissioner for Land by a letter with Ref. LD/154597/24 [Exh. P6 collectively] informed the plaintiff's

advocate that the owner of Plot No. 495 Block "G" Tegeta is Mtomekela Salim. Further, the letter stated that the plaintiff was the one responsible for taking *care of his plot; I quote the last paragraph of that letter;*

*"Aidha kwa mujibu wa kumbukumbu zetu, kiwanja hiki kinamilikiwa na Ndg. Mtomekela Salim kupitia barua ya toleo yenye Kumb. Na. LD/154597/1/JKD ya tarehe 14/10/1991. Ofisi yetu inatambua kuhusu kuwepo kwa mgogoro juu ya kiwanja hiki. Hivyo, kupitia barua yetu ya tarehe 23/12/2014 ofisi ilimtaka mmiliki achukue hatua stahiki dhidi ya uvamizi uliofanywa kwenye kiwanja hiki kwa kuwa ndiye mwenye wajibu wa kulinda kiwanja chake.*

Another piece of evidence from the plaintiff's side is the land rent receipts [Exh P7], that he was paying the land rent for the suit land. The receipts indicated that the plaintiff paid land rents for years 2014 up to 2017.

The evidence of PW3, the Land Officer from the office of Commissioner for Lands, testified that according to the records in the office of Commissioner for Land, the suit plot was allocated to the plaintiff in 1991.



When he was cross-examined, he stated that according to their records, the offer issued to the plaintiff was the one that was recognized.

On the defence side, the defendant's evidence was that he purchased the suit land from Mariam A. Hamisi in 2000. He tendered the letter of offer with LD/154598/1/MM in the name of Mariam A. Hamisi dated 18 July 1991 [Exh. D1]

Further, he was requested to pay the land rent and paid the same [Exh. D2].

Having narrated as above, I find that both the plaintiff and the defendant claimed that they paid land rent through Exh. P7 and Exh. D2 respectively. In my thorough analysis of the documents, i.e., Exh. P7 and Exh. D2, I find that the receipts in Exh. P7 are the land rent receipts, while the receipts in Exh. D2 are the property tax receipts. I will elaborate on the distinction between the two later.

From the above findings, it is quite clear that the suit land is surveyed; therefore, the entry point is section 2 of the Land Registration Act, Cap 334 [R: E 2019]. It reads;

*"Registered land means the land in respect of which an estate has been registered."*

The provision of the law above indicates that the prima facie proof of ownership of land is a registration and, in our country, most cases, by Letters of Offer or Certificates of Title.

Further, in **Salum Mateyo v Mohamed Mateyo** [1987] TLR 111, it was held that:

*"... proof of ownership is by one whose name is registered".*

In addition to that, the Court of Appeal in **Nacky Esther Nyange vs. Mihayo Marijani Wilmore and another**, Civil Appeal No. 2017 of 2019 (Tanzlii), it held that;

*"...the Certificate of Title is conclusive proof of ownership of land".*

From the above cited, the following are the essential requisites for the ownership of the surveyed land;

**One**, the owner of the land must be registered and, as indicated earlier in most cases, by Certificate of Title or Letters of Offers.

**Two**, the Title deed is the conclusive proof of ownership

Therefore, the question is whose name is registered and who has the title deed.

From the evidence on record exhibit.P6, collectively, by an official letter, the Commissioner for Land office revealed that according to their records, the owner of the suit land is the plaintiff. Further, the evidence of PW3 was that the records in the office of the Commission for Lands indicate that the plaintiff owns the land.

On the other hand, neither evidence was adduced nor was a document tendered from the defendant's side to indicate that his name appears in Commissioner for Land records.

Therefore, flowing from above, based on evidence on record, it is quite clear that the one whose name is registered in the Land Registrar is the plaintiff.

In my opinion, the issue of letters of offer and who has the valid one should not detain me long. This is because the letter of offer shall follow the event on who is registered as the lawful owner of the suit land. Therefore, from above, I have the following;

**One**, the letters of offer issued to the plaintiff is the one which goes part and parcel with his registration recognized by the Commissioner for Land. The possession of the letters of the offer is ipso facto proof of ownership.

**Two**, PW3, when he testified, he said that the only offer recognized by the Commissioner for Lands was the offer issued to the plaintiff.

The Court of Appeal in **Leopold Mutembei vs. Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development, and another**, Civil Appeal No 57 of 2017 (Tanzlii), held that;

*“We find it apt to emphasize the essence of any land titles system by referring to the observation made by Dr. R.W. Tenga and Dr. S.J. Mramba in their book bearing the title **Conveyancing and Disposition of Land in Tanzania: Law and Procedure**, Law Africa, Dar es Salaam, 2017, at page 330:*

*“... 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 transactions 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."*

**Three,** the plaintiff was paying land rent for the suit plot. It is common ground that the law obliged the holder of the certificate of title to pay land rent. This is per section 33 (1) (2) and (3) of the Land Act, Cap 119 [R: E 2019]. The section reads:

*(1) The holder of a right of occupancy shall, subject to the provisions of this section, pay an annual rent for that right of occupancy in the manner provided for under the provisions of the Public Finance Act.*

*(2) Rent shall be paid in any installments and at any intervals of time during the year as the Commissioner shall determine or which is provided in the certificate of occupancy.*

*(3) Rent shall be paid to the Commissioner or an authorized officer at the office of the Commissioner or any other place which the Commissioner determines or which may be prescribed.*

Therefore, Land rent is paid for the right to use and occupancy of any parcel of land and is charged to the holder of granted Rights of Occupancy.

On the contrary, property tax is governed by the Local Government Finance Act of 1982 and the Urban Authorities (Rating) Act of 1983. It is levied by local government councils based on the value of land improvements, that is, buildings only. The payee can be the property owner or tenant, or occupier. Therefore, property tax receipts in any way cannot prove ownership of the suit land.

In my further discussion, the defendant stated that he purchased the suit land from Mariam A. Hamis, but as per the records, there is no such evidence. When he was cross-examined, he said he misplaced that sale agreement. Further, he stated that Mariam A. Hamis passed away; therefore, he did not get any documents from her.

Therefore, from what the defendant had testified, that means on his part, no documentary evidence was produced in court to authenticate his allegation; and this weakens his case.

Flowing from the above discussion and considering that the construction of the house is not proof of ownership, the first issue is decided in favor of the plaintiff that he is the lawful owner of the suit land.

Coming to the 2<sup>nd</sup> issue of whether the defendant trespassed the land, briefly, I have the following. The evidence indicated that the defendant constructed a house in a suit land. Even in his evidence, the defendant testified that he started constructing the house in the suit land in 2010.

. In **Frank Safari Mchuma vs. Shaibu Ally Shemndolwa** [1998] TLR 280, the term trespass to land has been defined as;

*"..unjustifiable intrusion by one person upon the land in the possession of another. It has therefore been stated with a light touch that: "If the defendant places a part of his foot on the plaintiff's land unlawfully, it is in law as much a trespass as if he had walked half a mile in it."*

Therefore, from the above discussion, it is quite clear that an act of the defendant to interfere and intrude on the suit's land by constructing a house therein amounts to trespass into the plaintiff's land.

It is; therefore, the 2<sup>nd</sup> issue is decided in the affirmative that the defendant is a trespasser.

In the final analysis as regards the 1<sup>st</sup> and 2<sup>nd</sup> issues, I hold that the plaintiff is the lawful owner of Plot No. 495 Block "G" Tegeta Area and that the defendant is a trespasser.

The last issue is on reliefs sought by the plaintiff as enumerated in his pleading. For clarity, I will deal with each relief claimed. In the first relief, the plaintiff prayed for an;

- 1. Order of payment of TZS 261,000,000/= as compensation for the plaintiff's demolished house, four palm trees, and other environmental changes and annual rent.*

Unfortunately, the pleadings do not establish the damages suffered by the plaintiff. The pleadings did not even mention the value of the house/shade and the trees or why the plaintiff requested such compensation. Therefore, the prayer for compensation is declined.

In the 2<sup>nd</sup> and 3<sup>rd</sup> reliefs, the plaintiff prayed for an;

- 2. Order of eviction of the defendant unlawfully building a house on plot no. 495 Block "G" Tegeta Area.*
- 3. Order of demolition and its demolition costs of the defendant unlawfully building a house on plot no. 495 Block "G" Tegeta Area.*



Since I have already held and declared that the plaintiff is the lawful owner of Plot No. 495 Block "G" Tegeta Area and that the defendant is a trespasser, the reliefs above deserve to be granted.

Therefore, I grant as prayed but subject to execution proceedings. The parties must follow execution procedures.

In the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> reliefs, the plaintiff prayed for an;

- 4. An order for payment of TZS 1,000,000/= rent for the continued defendant's unlawful stay on the plaintiff's landed property, thus plot no. 495 Block "G" Tegeta Area*
- 5. Interest on the decretal sum at the court's rate from the date of judgment until payment in full.*
- 6. General damages for psychological torture, denial, and trespass over the plaintiff's plot since 2007.*

Again, unfortunately, the pleadings and evidence do not establish the allegations claimed in the reliefs claimed and damages suffered by the plaintiff. Therefore, the prayers for payments and compensation are declined.

In conclusion, as I elaborated above, the judgment and decree are entered in favor of the plaintiff with costs.

I order accordingly.

