

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 188 OF 2021

DEUSDEDIT ITENDELE CHANILA..... PLAINTIFF

VERSUS

**AFRICAN PETROLEUM CO. LTD.....1ST DEFENDANT
COMMISSIONER FOR LAND.....2ND DEFENDANT
THE ATTORNEY GENERAL.....3RD DEFENDANT**

J U D G M E N T

*Date of last Order:20/02/2023
Date of Judgment:31/03/2023*

K. D. MHINA, J.

This is a suit for declaratory orders over a landed property described as Plot No. 3960 Block "A" Mbutu area, Kigamboni Municipality within Dar es salaam with Certificate of Title No. 192332 (suit land), after the allegation that there is a double allocation of the suit land done by the 1st and 2nd defendants, African Petroleum Co. Ltd and the Attorney General respectively.

The declaratory orders sought are;

- i. A declaration that the Plaintiff is the lawful owner of the property comprised in a Certificate of Title No. 192332 for Plot No. 3960

Block "A" Mbutu area, Kigamboni Municipality, with an area of 2003 square meters.

- ii. A declaration that the 2nd defendant illegally granted title deed in the property comprised in Certificate of Title No. 192765 for Plot No. 2001 Block "A" Mbutu area, Kigamboni Municipality, with an area of 33,823 square meters.
- iii. A declaration that the Certificate of Title No. 192765 for Plot No. 3960 Block "A" Mbutu area, Kigamboni Municipality, with an area of 33,823 square meters, is null and void
- iv. General damages of TZS 20,000,000/= , Punitive damages of TZS 10,000,000/= and costs.

The 1st defendant countered the allegation by filing the written statement of defence and alleging that the 1st defendant is a lawful owner of the suit land. Conversely, the 2nd and 3rd defendants filed their written statement of defence alleging that there was no double allocation as alleged by the plaintiff.

During the final Pre-Trial Conference, which is usually conducted under Order 8 Rule 40 of the Civil Procedure Code, Cap 33 R: E 2019, the following issues were framed for the determination of this Court;

- i. Whether there is double allocation.*
- ii. Who is the lawful owner of the suit premise.*
- iii. Whether the acquisition of part of the suit premise, Plot No. 2001, Block A, Mbutu Area Kigamboni by the 1st defendant was legal.*
- iv. Reliefs that parties are entitled to.*

In this suit, the plaintiff is represented by Mr. Raymond Swai and Mr. Bakari Ndeki, both learned advocates. The 2nd defendant was represented by Mr. Edwin Joshua Webiro and Ms. Lilian Samson Mirumbe, both learned state attorneys. The 1st defendant was represented by Mr. Peter Shapa, learned advocate who appeared up to the stage of the Final Pre-Trial Conference. After that, neither the 1st defendant nor his counsel appeared before this Court for a hearing despite knowing the date of the hearing. Further, the advocate was duly served because this matter was also scheduled in the backlog clearance session. Despite that efforts, it proved futile as the 1st defendant opted not to enter an appearance; therefore hearing proceeded ex parte against him.

To prove his case, the plaintiff called two witnesses, including himself. The first witness was **Deusdedit Itendele Chanila** (PW1). He testified that he bought the plot in dispute measuring 2003 square meters in Mbutu

area, Somangila Ward, within Kigamboni District from Salum Adam Mbelwa in 2018 for a consideration of TZS 40,000,000/=. He tendered to that effect;

- i. Sale agreement dated 07/09/2018 between Salum Adam Mbelwa and Deusdelt Itendele Chamila as Exhibit P1.

PW1 told this Court that he was living in Geita Region, and he got that plot through his son, Fabian Deusdedit Chanila, who was living in Dar es Salaam. When his son informed him that the plot in dispute was for sale, he traveled from Geita, and he purchased that plot from Salum Adam Mbelwa. He paid in two installments. The sale agreement was witnessed by Debora John Mchoro, an advocate.

Then he started to process the title deed for the plot and sent his son Fabian to the Ministry of Lands for a follow-up, and on 16 December 2020, the title deed was issued. He tendered to that effect;

- i. Certificate of the right of occupancy (Title Deed) with No. 192332 for Plot No. 3960 Block "A" Mbutu in the name of Deusdedit Itendele Chanila as Exhibit P2.

Further, PW1 testified that when his son later visited the plot in dispute, he found the 1st defendant had started to develop his plot by constructing a wall fence. After that, he got a copy of the 1st accused title deed and discovered his plot was “engulfed” within the 1st defendant’s larger parcel of land.

Therefore, he decided to sue the 1st defendant because he engulfed and encroached the plot in dispute into his larger portion of land and the 2nd defendant because he issued the title deed to him first and later issued the title deed to the 1st defendant over the same plot of land. He prayed to be declared as a lawful owner of the suit land, costs for three years delay to develop the plot, traveling expenses, and costs of the suit.

The second witness, **Fabian Deusdedit Chanila (PW2)**, testified to the following effect that in 2018, his father (PWI), who was living in Geita, told him to find the land for investment. Upon the search, he went to Mbutu area, Kigamboni, and he succeeded in finding the land belonged to Salumu Mbelwa.

At the Local Government (Mbutu Street), he was assured that the land belonged to Mr. Mbelwa, who purchased it from Jafari Msing’ombe, the

first owner of the land. After satisfaction, he informed his father, who came and purchased that plot.

He further told this Court that since the land was already surveyed, they started to process the title deed, which was later issued on 16 December 2020. After that, they started the process of acquiring the building permit.

One day when he visited the suit land, he found the 1st defendant workers constructing a wall foundation; they told him they had a title deed and gave him a copy of the Title deed No 192765 issued on 16th February 2021 in the name of the 1st defendant for plot No. 201, Block A Mbutu Kigamboni with the size of 33822 Square meters (Exhibit P2). He reported the matter to the Street Chairman, and they went together to the suit land. The Chairman stopped those workers from continuing with what they were doing.

He concluded by testifying that when he went to the Ministry of Land for a search, he was informed that the survey map for the 1st defendant's plot was canceled.

In the defence case, **Emily Andrew Nelson (DW1)**, a Senior Survey Officer from the Ministry of Land who moved to the Ministry in 2018 but has been employed since 2002, testified that Plot No. 2001 Block "A" Mbutu Kigamboni was surveyed, registered and approved in 2006. Later, the Director of Survey and Mapping canceled that map and directed another survey based on the town plan map. (Exhibit D1). He said the reason for the cancellation of the map was that there was a town plan survey map; therefore, the plot had to be surveyed in accordance with that town plan map survey. That was done after the request from the Surveyors Company, which was accompanied by the official search of the town plan map (Exhibit D2)

He further testified that the Director issued the Consent to allow the survey of the suit land and later approved the map (Exhibit D3 for plots No. 3949-3966 Block "A" Mbutu Kigamboni).

He concluded by testifying that the plot allegedly owned by the plaintiff in this matter, plot No. 3960, is within the approved map.

Having summarized and considered the evidence brought before this court, the following are the deliberations of this Court in the disposal.

Starting with the 1st issue as to whether there is a double allocation, the entry point is the decision of the Court Appeal in **Ombeni Kimaro vs. Joseph Mishili t/a Catholic Charismatic Renewal**, Civil Appeal No. 33 of 2017 (Tanzlii), where it was held that;

"In cases of double allocation of land, even when it is occasioned by an authority or a person with legal mandate to allocated or transfer the land, the law is that the authority or transferor would have no title to pass to a subsequent grantee or transferee, by the application of the priority principle. The priority principle is to the effect that where there are two or more parties competing over the same interest especially in land each claiming to have titled over it, a party who acquired it earlier in point of 16 time will be deemed to have a better or superior interest over the other".

In his evidence, PW1 stated that he was the one who acquired the land and issued the title deed first before the same was issued to the 1st defendant on the same plot of land. The same as the testimony of PW2 that the plaintiff was issued the title deed on 16 December 2020 while the 1st defendant was issued on 16th February 2021.

Further, DW1 Senior Survey Officer from the Ministry testified that the surveyed plan for plot no. 2001 Block "A" Mbutu with C.T No 192765 was canceled by the Director of Mapping and Survey.

According to Exhibit D1, the survey plan was canceled on 01 December 2021 after the request from the Licensed Surveyor was granted on 13 March 2018 by amending the plan, which resulted in the cancellation of the survey of 2001 Block "A" Mbutu.

Also, DW1 testified that the new survey plan, which was approved, contained plots No. 3949-3966 Block "A" Mbutu Kigamboni. Therefore, plot no 3960, owned by the plaintiff, is within the approved survey plan.

It is from the above elaborations; I hold that there is no double allocation over the suit land because;

One, as per the cited case of **Ombeni Kimaro** (Supra), the priority principle is applicable in this matter. The one who acquired the plot earlier is deemed to have a better or superior interest over the others. In this matter, the plaintiff, who acquired the land and issued the C.T. on 16 December 2020, has a superior interest over the 1st defendant, who was given the C.T. on 16th February 2021.

Two, since the survey plan 2001 Block "A" Mbutu owned by the 1st defendant was canceled by the Director of Mapping and Survey, therefore that means from the date the survey plan was canceled, 1 December 2021, that plot ceased to exist. Thus, the survey plan for the 1st defendant plot was superseded by the plaintiff's survey plan.

Three, the new survey plan indicated that the plot owned by the plaintiff is within that approved survey plan.

Flowing from above, there is only one plot that is valid, and as I alluded to earlier, following the cancellation of the survey plan for Plot No. 2001 Block "A" Mbutu, the plot ceased to exist. Therefore, the issue of double allocation is not in existence.

The 2nd issue on, who is the lawful owner of the suit premise, should not detain me long because of what I held in the 1st issue above. That following the determination that there is no double allocation and that the survey plan for Plot No. 2001 Block "A" survey plan for Plot No. 2001 Block "A" was canceled. What remained is the Certificate of Title No. 192332 for plot no. Plot No. 3960 Block "A" is owned by the plaintiff. Neither the

ownership of the plaintiff over the plot in dispute nor the validity of the title deed was challenged.

From the discussion above, it is shown and proved by the plaintiff that he is the lawful owner of the disputed plot. His evidence was corroborated by the evidence of PW2 and even DW1, whose testimony proved that the plaintiff is the lawful owner of the suit land.

Therefore, with these crystal-clear pieces of evidence, the second issue is decided in the affirmative that the plaintiff is a lawful owner of the suit land because he has a good title.

Turning to the 3rd issue on whether the acquisition of part of the suit premise, Plot No. 2001, Block A, Mbutu Area Kigamboni by the 1st defendant was legal, in my opinion, this also should not detain me long, and I decide this issue negatively because;

One, there is no material evidence or proof of how the 1st defendant obtained his title deed. Because he did not testify, therefore, nothing was testified on the issue.

Two, since the survey plan for that plot, was canceled, it is immaterial whether the 1st defendant acquired the plot legally or not because the plot is non-existing.

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

- i. A declaration that the Plaintiff is the lawful owner of the property comprised in a Certificate of Title No. 192332 for Plot No. 3960 Block "A" Mbutu area, Kigamboni Municipality, with an area of 2003 square meters.
- ii. A declaration that the Certificate of Title No. 192332 for Plot No. 3960 Block "A" Mbutu area, Kigamboni Municipality, with an area of 2003 square meters, is lawful.

Since I have found, as I elaborate above, that the plaintiff is the lawful owner of the plot and that his certificate of title is valid, then I hold that the plaintiff is the lawful owner of Plot No. 3960 Block "A" Mbutu area, Kigamboni Municipality, with an area of 2003 square meters and Certificate of Title No. 192332 for that plot is valid and lawful.

For the 3rd and 4th prayers ie

- iii. A declaration that the 2nd defendant illegally granted title deed in the property comprised in Certificate of Title No. 192765 for Plot No. 2001 Block "A" Mbutu area, Kigamboni Municipality, with an area of 33,823 square meters.
- iv. A declaration that the Certificate of Title No. 192765 for Plot No. 3960 Block "A" Mbutu area, Kigamboni Municipality, with an area of 33,823 square meters, is null and void.

As I elaborated above, since I have found Plot No. 2001 Block "A" Mbutu area, Kigamboni Municipality, with Certificate of Title No. 192765 is a non-existence plot after the cancellation of the survey plan for that plot, therefore there is nothing to declare or order in respect of the 3rd and 4th reliefs.

The 5th and 6th prayers are for general damages of TZS 20,000,000/= and punitive damages of TZS 10,000,000/=. Unfortunately, the pleadings do not establish the damages suffered by the plaintiff, and the pleadings do not even mention why the plaintiff is requesting such damages. Therefore, the prayer of damages is declined.

In conclusion, the judgment and decree is entered in favor of the plaintiff as follows;

- i. Plot No. 3960 Block "A" Mbutu area, Kigamboni Municipality, with an area of 2003 square meters, is hereby declared as the property of the plaintiff, Deusdedit Itendele Chanila;
- ii. Certificate of Title No. 192332 for Plot No. 3960 Block "A" Mbutu area, Kigamboni Municipality, is declared lawful and valid.
- iii. Plaintiff is to have his costs from the 1st defendant.

I order accordingly.



K. D. MHINA
JUDGE
31/03/2023