

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 171 OF 2021**

MOHAMED HASSANALI KANJI PLAINTIFF

VERSUS

NARRY LALAN 1ST DEFENDANT

MATHIAS LALAN 2ND DEFENDANT

COMMISSIONER FOR LAND 3RD DEFENDANT

THE ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

Date of Last Order: 09/3/2023

Date of Judgment: 28/3/2023

A. MSAFIRI, J.

The plaintiff have instituted this suit against the defendants jointly and/or severally claiming illegal trespass and invasion of his land described as Plot No. 2087, which the 1st & 2nd defendants describe as Plots Nos. 42, 43 and 44 located at Block 'A' Pugu Mwakanga area, Ilala Municipality within Dar es Salaam City. (herein as suit land or suit property). The plaintiff seeks for this Court's declaration that the act of Commissioner for Land (3rd defendant) of allocating the land to the 1st defendant was illegal and unlawful and for an order directing the 1st and 2nd defendants to demolish and remove debris of all structures erected thereon, and hand over vacant possession. *Alle.*

The plaintiff claims that he is the lawful owner of the suit land and that the 1st and 2nd defendants wrongly acquired the suit land and the 3rd defendant wrongfully allocated the suit land to the said 1st and 2nd defendants.

The plaintiff is praying for judgment and decree against the defendants jointly and/or severally as follows;

- i) A declaration that the plaintiff is the lawful owner of Plot No. 2087 Block A which the 1st and 2nd defendants describe as Plots Nos. 42, 43, and 44 Block A Pugu Mwakanga area, Ilala Municipality Dar es Salaam City.
- ii) A declaration that the 1st and 2nd defendants did not lawfully acquire the suit land and the consequent survey and creation of Plot Nos. 42, 43 and 44 Block A, Pugu Mwakanga, Ilala District, Dar es Salaam was improper and unlawful.
- iii) A declaration that the 3rd defendant did not lawfully allocate the Plots to the 1st and 2nd defendants.
- iv) An order directing the 1st and 2nd defendants to demolish and remove debris of all business structures since erected on the suit land and hand over vacant possession.
- v) A perpetual injunction restraining the defendants, their agents, workmen and/or anyone claiming to be under their instructions from however meddling in and interfering with the plaintiff's peaceful occupation of the land in whatsoever manner.
- vi) Costs of the suit.
- vii) Any other orders or reliefs the Court may deem just to grant. *Alls*

In the hearing of the case, the plaintiff was represented by Mr. Samson Mbamba, learned advocate, the 1st and 2nd defendants were represented by Mr. Rafael David, learned advocate, while the 3rd & 4th defendants were represented by Ms. Hossana Mgeni, learned State Attorney.

The following issues were framed for determination of the matter;

1. Who is the lawful owner of the suit premises?
2. Whether the act by the 3rd defendant of surveying and allocating land in dispute to the 1st and 2nd defendants and the plaintiff was lawful.
3. To what reliefs are the parties entitled to.

To my opinion, these issues are interrelated so, they can be determined after the analysis of the whole evidence which was presented in Court.

In proving their case, the plaintiff had three witnesses.

Mohamed Hassanali Kanji, the plaintiff, testified as PW1. He stated that the suit land is his property known to him as Plot No. 2087 Block A, Pugu Mwakanga, Dar es Salaam. He tendered the original Certificate of ownership (Title Deed) which was admitted in Court as Exhibit P1. He said that he bought the suit land from Abasi Salum Kambi who was the administrator of the estate of his father the late Salum Kambi. He tendered a Sale Agreement which was admitted as Exhibit P4.

He said that Abasi Kambi was appointed as an administrator of the estate of Salum Kambi in Probate Cause No. 84 of 2002 at Temeke Primary Court.

Aelle

That, the vendor Abasi Kambi gave him (PW1) the former sale agreement of the late Salum Kambi. (A letter of offer of Tanganyika Territory). He tendered a receipt of payment of Survey Plan and Survey Map No. 56702 of 2009. The documents were admitted collectively as Exhibit P5.

PW1 stated further that in January 2012, having bought the suit land, the vendor Abasi Kambi took him to see it and hand over the said land. That Abasi Kambi told him that the 1st and 2nd defendants are his (PW1's) neighbours. That, surprisingly, the 1st and 2nd defendants claimed that the suit land is their property, and that it is registered as Plot No. 43 Block A Mwakanga.

After that, PW1 wrote a letter to the Land Office, the Department of Survey and Planning and made inquiry on the 1st and 2nd defendants' claims. The Land Office replied and advise PW1 to seek for his right in Court. He tendered the said letter which was admitted as Exhibit P6 in Court.

In cross examination, PW1 stated that the suit land was surveyed in 2009, and in the beginning, it was a farm. He averred that he was sold a piece of plot out of that farm and not the whole farm.

PW2 was Hamza Salum Kambi. He stated that Salum Kambi Nyamigala was his father and he passed away in 1988. After the death of Salum Kambi, his son Abasi Salum Kambi was appointed the administrator of the estate of Salum Kambi. However, Abasi Kambi also died in 2016. So, he, PW2 was appointed an administrator of the estate of Salum Kambi. He tendered the letter of administration of estate which was taken by the Court for judicial notice. *Aelle*

In cross examination, PW2 stated that the late Salum Kambi left a large farm sized about 5 acres at Pugu. That he bought the said farm in 1946 from two women. He said that he has heard of the dispute between the rival parties in this case but he does not understand it. He stated further that the late Salum Kambi had siblings which he named as Ndela Kambi, Mwatanga Kambi, Kesi Kambi and Radhia Kambi. He said that they are his aunties and only one of them, Kesi Kambi is surviving.

PW3 was Ally Simon Mkumbi. He said that he lives at Pugu which is also known as Pugu Kajiungeni, Pugu Mwakanga and Pugu Bombani. That he was born there at Pugu in 1947 and had lived there since then.

PW3 stated that he knew the late Salum Kambi, who owned a big farm at Pugu. That the farm was owned by Salum Kambi since 1955 when PW3 was standard one. That the farm had coconut trees, mango trees and other crops. And that the late Salum Kambi has built a hut and a toilet inside the said farm.

PW3 said further that he knew Abasi Salum Kambi, the son of the late Salum Kambi. That, Salum Kambi died in 1985 and later his son Abasi Kambi told him that he has sold the said farm.

In cross examination, PW3 said that at the beginning, the size of the farm was 5 acres but as the years passed, it was reduced to about 3 1/2 acres, and this was due to the development of the area such as construction of road which passes by the said farm. He said further that Abasi Salum Kambi told him that he had sold the said farm to one Indian called Golo.

The 1st and 2nd defendants had three witnesses.

Alle.

DW1 was Mathias Lalan, the 1st defendant. He stated that Plot No. 43 Block A Pugu Mwakanga is his property. He tendered a Title Deed of the said property which was admitted as Exhibit D1. He said that he bought this property in March 1991 from the four women namely Kesi binti Kambi, Ndela binti Kambi, Mwatanga binti Kambi and Radhia binti Kambi.

That the property was a wild farm at that time, and measured about half an acre. That, in the course of clearing that farm, he met with the neighbours who were occupiers of the land surrounding the previously purchased land. He agreed to buy more pieces of land from those neighbours and join the pieces to become one property. He named the neighbours as Mohamed Bete, Iddi Manga and Rajabu Forogo.

After purchasing the land, in total, it was measured about 4-5 acres. He decided to request for the survey of the said land. He sent the application for survey in July 1991 to Ilala District Council at that time. He tendered the application letter which was admitted for identification.

He said further that, the land was surveyed and created into three plots, Plot No. 42, Plot 43 and Plot No. 44. The Plot No. 43 was registered in DW1's name Mathias Lalan and Plots No. 42 and 44 were registered in the name of Mary Lalan, his wife who is also 2nd defendant. He tendered Survey Drawing which was admitted as Exhibit D3. He also tendered a letter from the Director of Survey and Mapping which he said was directing for revocation of survey of Plots No. 2085, 2086 and 2087 Plot A Pugu Mwakanga. That, the reason for direction of revocation was that the land was already surveyed and registered.

Alls.

DW1 stated that the plaintiff's claims that the suit property belongs to him are not true because the claimed Plot No. 2087 does not exist.

When cross examined by Mr. Mbamba, counsel for the plaintiff, DW1 stated that, he had a sale agreement on the land in dispute and that the original sale agreement was presented at the Ministry for Land during the survey and registration procedure. He was led to tender the photocopy of sale agreement which was annexed on his written statement of defence. The photocopy of sale agreement between Michael Lalan and Ndela binti Kambi, Mwatanga binti Kambi, Kesi binti Kambi and Radhia binti Kambi was admitted in Court as Exhibit D5. DW1 stated further that the survey and registration of the suit property to him was done according to the procedures required in the process of acquisition of Title Deed. He said that, to his knowledge, Plot No. 2087 has not been revoked.

DW2 Narry Lalan did not have much to say. She said that she is the 1st defendant's wife, and she is the legal owner of Plots No. 42 and 44 located at Pugu. The Title Deed on the said plots were admitted in Court as Exhibit. D6. She stated that the plaintiff's claims are not true because her Plots. No. 42 and 44 are lawfully registered and owned by her.

In cross examination, she admitted that the land/plots were bought by her husband the 1st defendant. Even the process of planning, measuring and/or survey of the land on those plots were all managed by her husband, the 1st defendant, and she, the 2nd defendant does not know anything about the said process.

Aelle.

DW3, was Kesi Kambi Nyamigala. She said that she knows the 1st defendant Mathias Lalan because he owns a piece of land at Pugu Kajiungeni which was previously owned jointly by her and her siblings, Ndela, Mwatanga and Radhia who are now deceased. DW3 testified further that, the four of them agreed to sell their said piece of land which was about ¼ acre. She said that the piece of land was granted to them by their father Kambi Nyamigala. That, they sold that piece of land to Michael Lalan at a price of Tshs. 300,000/= .That, the area was formerly owned by their father Kambi Nyamigala.

In cross examination, DW3 stated that in those old days, there was no procedures of appointment of administrator of the estate of the deceased, so nobody was appointed an administrator of the estate of Kambi Nyamigala when he passed away. So, they sold the suit property to the 1st defendant and they entered a sale agreement.

DW4 was one Shukuru Mohamed Mbegu. He said that he know the 1st defendant as he is employed by him in his farm located at Pugu. That, when the 1st defendant purchased the suit property in 1991, he was the witness and signed in the sale agreement. That DW1 bought the neighbouring pieces of land, and joined them to form one plot.

DW4 said further that, he was a witness when the 1st defendant was buying a piece of land from Ndela binti Kambi and her sisters. He said that the 1st defendant bought other pieces of land from the neighbours surrounding the area who were Athumani Bete, Idd Mmanga and Forogo.

Alls

In cross examination, DW3 stated that he has lived at the suit property since 1991 when the 1st defendant purchased the suit property. He said that the Village Local Government was present during the sale of the suit land but admitted that in the Sale Agreement there is no witnessing or attestation by the said Village Government.

On the side of the 3rd and 4th defendants, two witnesses were brought and gave their evidence in Court.

DW5 was Emily Andrew Nelson, who stated that he is a Senior Surveyor of Land from the Ministry of Lands. He said that he knew about the land dispute in the case at hand. He admitted that Plots No. 42, 43 and 44, Block A Mwakanga, Pugu, were measured, surveyed and approved in 1995. However the very same area in 2009 was resurveyed, measured and created into Plots No. 2085, 2086 and 2087, Block A.

The witness DW5 was shown and identified the survey maps which are Exhibits P1, D1 and D6. He admitted that all Deed Plans from the two survey maps were issued by their office.

DW5 stated that, the first survey of Plots No. 42, 43 and 44 was done in 1995. However later, in 2009, the same area was resurveyed and Plots 2085, 2086 and 2087 were created. That, later, the Director of Survey and Maps discovered that the area has already been surveyed in 1995, so, the said Director cancelled the second survey done in 2009, by rectifying the survey map (Deed Plan). He averred that the second survey was un-procedural.

Alls.

In cross examination, DW5 stated that, there was cheating in the second survey where by the one who conducted it was a public servant but he did the survey illegally through a private company. DW5 insisted that the survey on Plots. No. 2085, 2086 and 2087 was revoked, and it was done so after discovery of cheating in the procedure of the said survey.

In re-examination, DW5 said that on the process of revocation/rectifying the survey, the Director of Survey and Maps has no duty to inform the person who has conducted an illegal survey, about the revocation of the same.

DW6 was Adelfrida Camillius Lekule, a Land Officer at the Ministry for Lands. Her evidence was similar to the evidence of DW5. In addition, she said that, the Office of Commissioner for Land, had information that, the area with Plots No. 42, 43 and 44 were owned by the defendants who owned it customarily. That the 1st defendant caused the suit land to be surveyed in 1995 and the plaintiff surveyed the same in 2009.

Having the suit plot surveyed and allocated to the two different people, the complaints arose between the plaintiff and the defendants. DW6 said that the Office of the Commissioner for Land responded to the said complaints by convening a meeting between the two disputing parties and tried to settle the dispute amicably but was unsuccessful.

DW6 stated further that the Office of the Commissioner for Land acknowledge and recognize the Title Deeds of Mathias Lalan and Mary Lalan to be the lawful Title Deeds which were lawfully issued by the said Office. That, the Office of the Commissioner for Lands started the process of

Alls

rectifying the Title Deed which was issued on Plot No. 2087 Block A Pugu Mwakanga. However, the process was not completed after the institution of Land Case No. 37 of 2014 in the High Court. The Office then wrote a letter to the parties advising them to seek solution of their disputes to the Court. DW6 tendered the letters from the Office of Commissioner for Lands which were admitted as Exhibit D7 collectively.

In cross examination by Mr. Mbamba, DW6 stated that the Office of Commissioner for Lands has no information on the customary ownership of Michael Lalan but it has the information on his ownership of a registered land.

After presentation of evidence by the parties, final submissions were filed by counsels for the parties as it was ordered. I commend the counsels from all parties for their useful submissions and I have taken them into consideration in the course of determining the matter as per the framed issues.

The first issue is who is the lawful owner of the suit premises?

The plaintiff claims that he is the lawful owner of the suit premises which he describes as Plot No. 2087 Block A Pugu Mwakanga area, Ilala Municipality, Dar es Salaam. He accuses the defendants particularly the 1st and 2nd defendants of illegal trespass and invasion of his claimed land.

On their part, the 1st and 2nd defendants claim that they are the lawful owners of the suit premises which they describe as Plots No. 42, 43 and 44 Block A Pugu Mwakanga Area. *Alle.*

To prove their claims of ownership each party tendered a Certificate of ownership (Title Deed) which they claim it was lawfully issued by the Office of Commissioner of Land. The plaintiff's Title was admitted in Court as Exhibit P1. It was issued by the Commissioner for Lands on 13/4/2011. The 1st and 2nd defendants also proved their ownership by the Certificates of ownership (Title Deeds) on Plot No. 43 Block A Pugu Mwakanga which was issued on 26/6/2004, and on Plots No. 42 and 44 Block A Pugu Mwakanga which was also issued on 26/6/2004 by the Commissioner for Land.

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

In the final submission, the counsel for the plaintiff also has admitted that ownership of land is proved by being registered as Title holder. In the current matter, both the plaintiff and the 1st and 2nd defendants' names are registered as owners of the suit property, the plaintiff describing it as Plot No. 2087, while the defendants describe it as Plots Nos. 42 & 44, and 43.

According to the evidence, the 1st and 2nd defendants who are the wife and husband respectively, are the first occupiers of the suit property. They claim to have purchased the suit property in 1991 from the previous owners and in 1995 they had the land surveyed and registered. On his side, the plaintiff also claims to have bought the same land in 2010 from the lawful previous owner and had the land surveyed (now resurveyed) in 2015 and registered.

Alle.

The Surveyor from the Ministry for Lands who represents the 4th defendant and who testified as DW5, said that the ownership of the 1st and 2nd defendants are lawful. That, the resurvey and registration of the suit premises by the plaintiff was tainted with irregularities, was un-procedural and hence was unlawful.

DW5 told the Court that the Director of Survey and Maps has directed the revocation of the survey conducted in 2015 initiated by the plaintiff because, the office of the said Director has discovered that the same piece of land has already been surveyed in 1995 and registered in the names of the 1st and 2nd defendants.

The similar evidence was adduced by DW6, a Land Officer from the Office of Commissioner for Land who stated that the said Office started the procedure of rectification of the plaintiff's Title Deed after it was discovered that the same has already been registered in the names of the 1st and 2nd defendants, however the procedure for rectification was not completed because of the Land Case pending in Court, so the plaintiff was advised to seek for the Court's intervention on the matter.

In his pleading and the evidence submitted in Court, the plaintiff has claimed that the 1st and 2nd defendants did not lawfully acquire the land from the original owner. And that, the suit property never belonged to Ndela binti Kambi, Mwatanga binti Kambi, Kesi binti Kambi and Radhia binti Kambi who allegedly sold the suit property to the 2nd defendant.

This argument was reiterated in the plaintiff's final submissions where the counsel for the plaintiff argued that the 2nd defendant had no better title

Alls.

to the suit land before the survey because he has bought the same from the people who has no title to pass. That, the said Ndela binti Kambi, Mwatanga binti Kambi, Kesi binti Kambi and Radhia binti Kambi did not own the said land but according to him, the same was owned by their late father. That, the sellers were not administrators of the estate of their late father so they could not legally sell the said land.

Exhibit D5 is a photocopy of the sale agreement between Mathias Lalan (2nd defendant) and Ndela, Mwatanga, Kesi and Radhia. A photocopy was admitted by the Court after the 2nd defendant was led to tender it in cross examination under Sections 154 and 164 of the Evidence Act Cap. 6 R.E 2019. Previously, the 2nd defendant has told the Court that the original sale agreement was handed over to the Ministry for Lands during the application for registration of ownership. Exhibit D5 shows that the Sale Agreement was entered in 1991.

DW3, Kessi binti Kambi the surviving vendor and DW4 the one who witnessed the sale, testified in support of the evidence of DW1, the 2nd defendant.

DW3 stated that they sold the land in dispute to the 2nd defendant and **that the land belonged to their father, and it was given to them by their father Kambi Nyamigala.** That the land was measured at ¼ acre only, and that it is the one they sold to Mathias Lalan. She vehemently denied that, their brother the late Salum Kambi Nyamigala had owned the land which they sold to Mathias Lalan. She admitted that they had no any document of ownership since on those days, there was no such a thing and

Alls.

the land was a wild bush. She said that after the death of their father, there was no process of administration of estate of their father.

On his part, the evidence of plaintiff shows that Salim Kambi Nyamigala was the owner of the suit property which he bought in 1946. Exhibit P5 was said to be the sale agreement during the era of Tanganyika Territory. It shows only the signature of the purchaser, Salim Kambi Nyamigala but not the signatures of the purported owners/vendors one Asha binti Mbaruk and Zabibu binti Mbaruku. The agreement does not show the size of the farm. Nevertheless, as per the plaintiff's evidence, it is a large farm about 8109 sqm. out of which the plaintiff was sold a piece of plot.

In my view, after the analysis of evidence, Salim Kambi Nyamigala purchased a farm in 1946. It was his own farm, purchased by him and there is no evidence to show that Salim Kambi Nyamigala inherited any piece of land from his father Kambi Nyamigala.

However, Kesi binti Nyamigala stated that the piece of land which she and her siblings sold to Mathias Lalan belonged to their father Kambi Nyamigala and not Salim Kambi Nyamigala. The Court was never told if there was ever the dispute over the state of the estate of Kambi Nyamigala and whether there was the distribution of properties of Kambi Nyamigala the father of Salim Kambi Nyamigala and his siblings. DW3 Kesi Nyamigala, in her evidence in chief, told the Court that the piece of land they sold to Michael Lalan **was given to them by their father, Kambi Nyamigala**. It was not made clear to the Court that their father Kambi Nyamigala

Alle-

bequeathed the said piece of land to his three daughters or he died intestate and the daughters just grabbed the said piece of land.

So, the issue whether the vendors of the ¼ acre piece of land sold to the 2nd defendant were the administrators of the estate of their late father Kambi Nyamigala or not, it is not the duty of this Court to deal with it as it can be determined by a probate court if any party is interested to pursue the matter of administration of the estate of Kambi Nyamigala, which, as I have pointed earlier, the Court was never told whether there ever have been a dispute over that. This Court was brought to the attention of the administration of the estate of the late Salim Kambi Nyamigala only which again, this being the Land Court, cannot dig deep into that.

Having said that, it is my considered opinion that the plaintiff is not in position to challenge the sale of a piece of land by the vendors Mwatanga, Ndela, Radhia and Kesi Kambi Nyamigala as he has not proved that the farm which was purchased by the late Salim Kambi Nyamigala in 1948, is part and parcel of a piece of land which was sold by Salim Kambi's siblings to Michael Lalan. It is my strong belief that the vendors Ndela, Mwatanga, Kesi and Radhia had a good title to pass to the 2nd defendant Michael Lalan.

Besides that, the suit property is a registered land. It is my belief based on the evidence adduced in Court that, before the registration, the disputing parties had complied with conditions set for the registration of a Certificate of Title and the Office of the Commissioner for Land upon satisfaction, proceeded to grant the Titles accordingly.

Aills

Hence since both the plaintiff and the defendants have presented the Certificates of Title which were issued by the Commissioner for Lands and the Commissioner for Lands has admitted to have registered the same though at different times, then the said Certificates of Titles are both valid.

In the case of **Hamza Salum Kambi vs. the Commissioner for Land and Another**, Land Case No. 132 of 2018 HC DSM (unreported), my learned sister Hon. Makani, J, cited with approval the case of **Amina Maulid Ambali & 2 others Vs. Ramadhani Juma**, Civil Appeal No. 35 of 2019, CAT Mwanza (unreported) where the Court of Appeal stated;

*"In our considered view, when two persons have competing interests in a landed property, the person with a Certificate thereof will always be taken to be a lawful owner **unless it is proved that the Certificate was not lawfully obtained.** (Emphasis added).*

The above cited case made reference to the book of Conveyancing and Disposition of Land in Tanzania by Dr. R.W Tenga and Dr. S.J Mramba, Law Africa DSM, 2017 at page 330. It was stated as follows;

*"... 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***

Accts.

of titles to the property, for the register itself is a conclusive proof of the title (emphasis added).

I fully adopt this stance and I apply it to the case at hand. In the present case, as per the pleadings and evidence adduced, the plaintiff to date, is the owner of Certificate of Title which has not been revoked or rectified by the Commissioner for Lands or Registrar of Titles. It was said that there was process of rectification but the evidence shows it was never completed.

The Commissioner for Lands has admitted to have registered and issued a Certificate of Title to the plaintiff in his name which was admitted in Court as Exhibit P1. Similarly, the 1st and 2nd defendants are the valid owners of Certificates of Titles which was issued to them by the Commissioner for Lands. This gets me to the case of double allocation where the priority principle comes into use.

In the case of **Kimaro vs. Joseph Mishili t/a Catholic Charismatic Renewal**, Civil Appeal No. 33 of 2017, Court of Appeal at Dar es Salaam (unreported), the Court of Appeal at page 16 appreciated the application of priority principle. It stated thus;

"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 time will be deemed to have better or superior interest over the other" *Alle*.

Further in the High Court case of **Suzan Raphia Linjewile (as administratrix of the estate of the late Remigius Majangara Linjewile) vs. Omari Abdallah Hassan**, Land Case No. 263 of 2017, Hon. Makani, J, elucidated more on this priority principle. She stated that;

"It is also the law that in situations where there are competing interests on the same subject matter the Principle of Priority comes into play. The principle carries the maxim "he who is earlier in time is stronger in law." This means the first in time prevails over the other. In other words, if rights are created in favour of two persons at different times, the one who has advantage in time should have advantage in law."

I wholly subscribe to this position which I find to be similar to the circumstances in the case at hand. It is not in dispute that there are two disputing parties who have same interest over the same subject matter which is the suit property. As stated earlier, each party was registered as the owner of the suit property, in different titles, different names and at different time but purportedly over the same suit property. The property was surveyed twice and Certificates of Titles on the same were issued by the authorizing authority.

As I have observed earlier this Court is of the view that since the property is registered, the Court cannot start to search behind the register. This Court finds that each party at different times was registered as owner of the suit property.

Alle

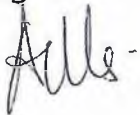
However invoking the priority principle or Principle of Priority, this Court finds that the 1st and 2nd defendants are the prior grantees of the Certificates of Title of the suit property so they have the advantage in time and the advantage in law.

By the evidence, the 2nd defendant bought the suit property in 1991 and had it surveyed in 1995 and was granted Certificate of Title in 2004. Meanwhile the plaintiff bought the property in 2010 which was surveyed in 2009 and was granted the Certificate of Title in 2011.

The right of occupancy cannot exist over a prior right of occupancy over the same piece of land. This was rightly observed in the case of **Hamisi Sinahela vs. Hassan Mbwele** (1979) LRT 28, which was reiterated in the case of **Delefa Misungwi vs. Milika James**, Land Appeal No. 32 of 2021 (HC. Mwanza) where it was held that;

"grant of a right of occupancy over a piece of land when a prior right of occupancy over the same piece of land still subsists is irregular, accordingly, the prior grantee of a right of occupancy is entitled to the land."

It is for the analysis and findings elucidated herein above that I find it safe to answer the first issue in the case at hand that the 1st and 2nd defendants are the lawful owners of the suit premises.

The second issue is whether the act by the 3rd defendant of surveying and allocating land in dispute to the 1st and 2nd defendants and the plaintiff was lawful. 

In the amended plaint, the plaintiff averred that, the cause of action against the 3rd and 4th defendants is on the basis of wrongful allocation of the suit land to the 1st and 2nd defendants after a wrongful sale of suit land by unknown and unauthorized persons, and consequently after a wrongful survey of the said land by the 1st and 2nd defendants.

In their joint written statement of defence (WSD), the 1st and 2nd defendants claims that the plaintiff is the one who has trespassed as he has fraudulently invaded and resurveyed the suit premises. That, the plaintiff found the suit premises already occupied and developed by the 1st and 2nd defendants.

The 3rd and 4th defendants, in their statement of defence (WSD), averred that the act of 3rd defendant of allocating the disputed land to the 1st and 2nd defendants was lawful since all the procedures were followed. That, the 3rd defendants allocated the disputed land to the 1st and 2nd defendants after being satisfied that the said land belongs to them and they had followed all procedures for land allocation.

DW5, Surveyor from the Ministry of Land stated that, it is true that the suit property was surveyed and resurveyed. First survey which created Plots No. 42, 43 and 44 was done and approved in 1995 and the second survey was done in 2009 and created Plots No. 2085, 2086 and 2087.

He acknowledged the survey maps from the two surveys. He also acknowledged the Deed Plans from the two surveys and admitted that they were both issued by his Office. The Deed Plans are exhibits P1 and D1 in Court. Exhibit D1 from the 1st and 2nd defendants was issued on 22/6/2004

Atills

and Exhibit P1 from the plaintiff was issued on 19/7/2010. DW5 admitted that the two surveys were done manually before the introduction of a new system called integrated Land Management system.

He informed the Court that with the old manual procedure for survey, it was difficult for a surveyor to discover whether there was cheating by the person claiming to be the owner of the land and requesting for the said piece of land to be surveyed. DW5 said that if it was discovered that the survey was done on wrong information/details or by fraudulent means, then the survey is always revoked.

DW5 stated that after the second survey, it was discovered by their office that there was irregularities in the procedure of second survey of the suit property and it was discovered that the place has already been surveyed and registered to another person.

So, they decided to revoke the second survey by rectifying the survey map. So on 16/11/2011, the Director of Survey and Mapping issued a permit to the Surveyor of Ilala Municipal to revoke the survey of Plots No. 2085, 2086 and 2087. The reason for revocation given in Exhibit D4 is that; first the survey was done on the area already surveyed. Second; is that the surveyor who conducted second survey went contrary to the procedures for survey as he did the survey through his private company, the act which was not permitted. According to Exhibit D4, that surveyor Mr. Chamwiti was to face disciplinary measures.

Alle

The Office of the Commissioner for Lands, the 3rd defendant, acting on the survey approvals, went on and issued certificates of Titles to the 1st and 2nd defendants and the plaintiff at different times.

So, the second issue is answered in affirmative. DW5 has admitted that the two surveys were done and approved and the Deed Plans issued by their Office although admitting that the second survey had procedural irregularities, then the survey and allocation was legal but unknowingly that the second survey was tainted with irregularities and based on cheating. After it was discovered by the 3rd defendant about the fact that the suit property has already been surveyed and that on the second survey the 3rd defendant was misguided by cheatings, it went on to issue the permit for revocation of the said survey and started process of the rectification of the second Certificate of Title.

Hence the survey an allocation of the suit property to the 1st and 2nd defendants was lawful but the re survey and registration of the same to the plaintiff was unlawful as it was tainted with irregularities and cheating and the subject matter was already surveyed and registered to another people.

The last issue is the reliefs the parties are entitled to. For the reasons I have endeavored to address herein above, the plaintiff is not entitled to any reliefs he claims and his claims are dismissed with costs.

I proceed to order as follows; *Alle.*

1. The plaintiff's case is dismissed.
2. I hereby nullify the Title Deed No. 89657, L.O No. 397549 Plot No. 2087 Block A Pugu Mwakanga Area in Ilala Municipality, Dar es Salaam.
3. I hereby nullify the survey of Plots No. 2085 - 2087 Block A, Pugu Mwakanga Ilala Municipality, Survey Plan No. E'351/219 with Registered Plan No. 56720.
4. The defendants are entitled to the costs of this suit.

It is so ordered.

Right of appeal explained.



A. MSAFIRI

JUDGE

28/03/2023