

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

LAND CASE NO. 06 OF 2021

**UMAGE COOPERATIVE.....PLAINTIFF
VERSUS
ABRAHAM LYIMO & ANOTHER.....DEFENDANT**

J U D G M E N T

Date of last Order:10/03/2023

Date of Judgment: 06/04/2023

T. N. MWENEGOHA, J.

The plaintiff, a statutory corporate body duly established under Cooperate Societies Act, No. 20 of 2003 is claiming against the defendant a property situated on Plot No. 7 Block 8, Kisarawe Street (Makamba Street) at Gerezani Industrial Area in Ilala. Municipality, Dar es Salaam.

The said Plot, measuring at 40 X 80 square meters is claimed to have been allocated to the plaintiff since 1976 through letter of offers with Ref No. ILA/1300/26/HHK dated 16/6/1976 issued through Area Commissioner's office, Dar es Salaam, Land Division.

The defendants, who were represented by Victoria Paulo and Epaphra Ally advocates challenged the plaintiff's claims rebutting that the property

belonged to their father. Equally, they filed a counter claim against the plaintiffs.

The plaintiff who was represented by Sosten Mbedule prayed for the following reliefs: -

- i. Declaration that the Plaintiff is the rightful and lawful owner and entitled to exclusive possession and occupation of all that piece of land located in Plot No. 7 Kisarawe Street, Gerezani Industrial Area, Ilala Municipality, Dar es Salaam, including improvements therein comprising an area of 80 X40 square meters.**
- ii. Declaration that the Defendant's acts against the Plaintiff's property are unlawful and uncalled for and are accordingly trespassers.**
- iii. An Order against the Defendant restraining him, his workmen or agents permanently from trespassing or in anyway, interfering with the above Plaintiff's suit property.**
- iv. An order for eviction of the Defendant from the land in dispute.**

Costs against the Defendant.

Similarly, the defendants in their Counter Claim prayed for the following reliefs: -

- i. A declaration that the Plaintiff is the rightful owner of the suit property located at Gerezani area, Plot No. 7, Block W Kisarawe Street/Makamba Road Dar es Salaam.**

- ii. **A declaration that the Defendant is a trespasser on the suit property.**
- iii. **An order restraining the Defendant, agents and any one acting under its instruction from entering the suit premises.**
- iv. **Costs of this suit.**
- v. **Any other reliefs as this Honorable Court may deem fit and just to grant.**

Upon commencement of Final Pre - Trial - Conference, three issues were framed and agreed by both parties. These are:

1. Whether the land in dispute is within plot No. 7 Kisarawe Street (Makamba Street) Gerezani area or at Plot No. 7 Block 'W' Gerezani Street Gerezani Area.
2. Who is the lawful owner of the disputed property.
3. To what relief parties are entitled.

During hearing the plaintiff brought five witnesses and four Exhibits, while the defendants brought two witnesses and eight Exhibits. In determining the above issues, I will combine and discuss issue No. 1 and 2 together.

In the case at hand the plaintiff in the main case and the plaintiff in the counter claim possess Letter of Offers which were admitted as Exhibit.P2 and Exhibit D3. Consequently, they are both claiming ownership of the disputed area. The two documents "**letters of offer**" are recognized under Land Regulation Act, as among proof of ownership.

It is within testimony before this Court that after the acquisition of Letter of Offer, both parties were to process a Title Deed. According to PW1, he testified that when he went Municipal for survey of the disputed land, he was given a survey map (Exhibit. D5) where the area is recognized as Plot "7" Block at Gerezani area Ilala Municipal. That, his prayer to get Title Deed was not granted as the defendant also prayed for the area to be surveyed four days after him.

PW2 testified that they were informed by Ilala Municipal Land Officer that the land in dispute is cancelled. That they were shown a map which shown that the land is surveyed recognized that 'W' indicated to be cancelled with redpen/ink as per their Exhibit. P4. From the testimonies of the two parties the area according to survey map is plot No. 7 Block 'W' at Gerezani area Ilala, Municipality Dar es Salaam city.

Now, the next question is who is the lawful owner of the suit land?

According to testimony of PW1, PW2 and PW3 the suit land belongs to the plaintiff as the plaintiff acquired it since it was a thick bush. They narrated that the plaintiff acquired the land by making application of the same at the Dar es Salaam City Council, where they were granted the same and were issued with a Letter of Offer, Exhibit. P2.

I note that admission of Exhibit 2 was contested by the defendants' counsels as the Letter of Offer was addressed to M'ssers Umage Cooperative Society. To them the word M'ssers was translated as a name and they concluded that it is therefore a Letter of Offer of a different person. According to Collins Dictionary, 3rd Edition, the word M'ssers is used as a title noun before the

names of two or more men as the plural of Mr. It further define the word M'ssers to be a word used before the names of two or more men as part of the name of a business.

This Court is convinced that, the same is the meaning of the word M'ssers appearing in the Letter of Offer as it was addressed to a group of men in Umage Cooperative Society. Therefore, the objection is overruled. Furthermore, so long as the name of the plaintiff is attached therein there is no reason for it not to be admitted.

The plaintiff's witnesses (PW1, PW2 and PW3) also testified that the plaintiff is corporative society registered as exhibited in Exhibit. P3. That Robson Lyimo who is the defendant's father was the first chairman of the cooperative who by then was allowed to build the two shops frames for storing his properties in the suit land. That, other 4 members who were also founders got designated areas too to conduct their business as they were carrying different activities as welders, painters and so forth. That, after his death his administrator claimed for ownership of the two shop frames his father was using and alleged that the land is of their father. Among the founders are PW1 and PW2, who also narrated on how they were granted the land by Area Commissioner and how they cleared the bush so as to make the land habitable for their activities.

The plaintiff also called Nicholas Attanas Lyimo, a brother to the defendants' deceased father, as PW5. He informed this Court he was a member of UIMAGE since 1977 however he had started to work since 1972 when his brother brought him to Dar es salaam and that he was being trained by

someone called Abdul. He testified to have been part of the group throughout and was there when they were requesting the land for use by UIMAGE. He further claimed to have participated in clearing the bush and cleaning the area with others back in time. It was his testimony that the suit land belonged to the plaintiff. He confirmed that his brother, Robinson Lyimo was a chairman of the UIMAGE Cooperative Society. That, some members were given designated area including his brother, who built two fames in 1990s. That, his brother, Lyimo continued to stay on the area as he was given by other members to conduct as his business

To the defendant especially DW2 who is the administrator of estate relied on the Letter of Offer, Exhibit. D3 and argued that the suit land belonged to their father, Robson Lyimo. That, their father has been using it for his entire life, and up to now they are collecting rent thereon.

A general rule on burden of proof is embodied under **Section 110 of the Evidence Act Cap 6 R. E. 2002** which shift the burden of proof to the one who alleges. Further, in the case of **Hemed Said vs. Mohamed Mbilu 1984 TLR 113 HC**, the Court said:

"According to the law both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win".

Moreover, in the case like this where there is a counter claim, there is counter suit and that placed the duty of proving allegation to both parties. Looking

at the testimony and evidence tendered between the two parties now is my duty to measure the evidence given by the two sides.

The witnesses of the plaintiff have narrated before this Court on how they obtained the suit land and how the deceased who is the father of the defendants obtained the suit. Although their letter of offer was challenged by the defendant that it was out of time, but this Court note the plaintiff's testimony that they were about to register their land but due to this dispute, the same failed. It was challenged that the Exhibit. P2 looks like a letter not signed, not titled, this was replied by the PW4 that it was due to ignorant of their official and not the plaintiff, fault and in addition, the said document referred to the plaintiff.

On the part of the defendants, they presented two witnesses who are Robinson Lyimo's sons who only testified that the suit land is their father's. However, they did not establish how their father acquired the suit plot. On top of that they tender Letter of Offer (Exhibit. D3) which I have the following observation on it.

One, it was granted on 01/07/1978 while the plaintiff's Letter of Offer was granted on 01/04/1976; obviously when there is dispute on the two documents like in situation at hand, the one who was granted an offer earlier have a superior right over the later one.

Two, looking at the said document tendered by the defendants, Exhibit. D3, it is addressed to Robinson Lyimo & 3 others although the word 3 others

indicate to be concealed, and the reasons given for such action were not satisfactory.

Three, the said Exhibit D3 indicated that it was granted for 99 years, although the number 99 is scribed in a way that shows there were other numbers written on document and the number 99 were scribed over and changed from the original numbering to 99 years. These actions are visible with naked eyes.

All the above reasons made this Court question its credibility.

Now having weighed the evidence and testimonies tendered before this Court, I find that the plaintiff has heavier evidence compared to the defendants. Hence, he is the lawful of the suit land.

In addressing to the reliefs parties are entitled to, this Court finds that: -

1. The plaintiff is the lawful owner of the suit property,
2. That the costs of the suit be borne by defendants.

It is so ordered.




T. N. MWENEGOHA

JUDGE

06/04/2023