

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

LAND CASE NO. 250 OF 2021

TERESIA SANKY RIGONI.....PLAINTIFF

VERSUS

- 1. PETER BREUBER.....1ST DEFENDANT**
- 2. LATIFA KASSIM ALLY as administrator
of the Estate of the Late MADINA JUMA MVUMBA....2ND DEFENDANT**
- 3. LATIFA KASSIM ALLY.....3RD DEFENDANT**
- 4. THE COMMISSIONER FOR LANDS.....4TH DEFENDANT**
- 5. THE HON. ATTORNEY GENERAL.....5TH DEFENDANT**

J U D G M E N T

Date of last Order:18/08/2023
Date of Judgment:27/09/2023

K. D. MHINA, J.

The main issue of controversy between the parties to this suit is the ownership of a parcel of land described as Plot No. 4 and 31 Block "B" Ununio Low-Density Area within Kinondoni Municipality.

Whereas **Teresia Sanky Rigoni**, the plaintiff herein ("the plaintiff"), lodged this suit in this Court on 28 December 2021 against **Peter Breuber**, **Latifa Kassim Ally** (as an administrator of the late **Madina Juma Mvumba**), **Latifa Kassim Ally**, the **Commissioner for Lands** and the **Attorney General** ("the 1st, 2nd, 3rd, 4th and 5th defendants respectively")

The background to this matter briefly, as can be gleaned from the pleadings, is as follows: the plaintiff alleges that prior to 1988, the 1st defendant acquired the suit land after being allocated by the Government. He was issued with a certificate of title number 36859. On 10 October 2007, the plaintiff purchased the suit land from the 1st defendant for a consideration sum of TZS. 20,000,000/=. The 1st defendant informed her that he compensated the original owner before acquiring the suit land.

She further alleges that she developed the land by constructing one storey house and two backyard buildings after purchasing it.

On 18 September 2018, when the plaintiff was in the process of transferring the suit land to her name, she was called by the 4th defendant, who was with the 3rd defendant and informed that she must give one plot to the 2nd defendant. Further, she was told to surrender the Title deed, but she declined.

Later, on 12 November 2020, the 4th defendant issued the electronic certificate of Title No. DSMT1007123 to the 2nd defendant.

This triggered the plaintiff to seek relief from this Court. She now prays for Judgment and Decree against the defendants for the following reliefs;

- i. *A declaration that the plaintiff is the lawful owner of the property described as plot no. 4 and 31 Block "B" Ununio Low Density.*
- ii. *A declaration that the certificate of Title No. DSMT1007123 is null and void.*
- iii. *A declaration that the 3^d defendant is a trespasser.*
- iv. *Perpetual injunction order against the 2nd and 3^d defendants to the property described as plot no. 4 and 31 Block "B" Ununio Low Density.*
- v. *2nd, 3^d and 4th defendants to pay special damages of TZS. 80,000,000/=*
- vi. *2nd, 3^d and 4th defendants to pay general damages of TZS. 800,000,000/=*
- vii. *2nd, 3^d and 4th defendants to pay punitive damages of TZS. 300,000,000/=*
- viii. *2nd, 3^d and 4th defendants to pay interest of 7% per month to the date of judgment.*
- ix. *2nd, 3^d and 4th defendants to pay interest at the Court rate of 12% per month on the decretal amount from the date of judgment until full and final payment.*

- x. Costs of the suit and*
- xi. Any other order and relief this Court may deem fit to grant in the circumstances.*

Except for the 1st defendant, who never appeared before the Court, the defendants vehemently disputed the claims in their written statements of defence.

Further, the 2nd and 3rd defendants allege that the certificate of title number 36859 issued to the 1st defendant was not in existence. That Title deed was acquired fraudulently as the Government did not acquire the land, and the 2nd defendant never sold the same to the 1st defendant.

On their side, the 4th and 5th defendants allege that in 1988 the land was registered by mistake to the 1st defendant. It was a mistake because prior to that, the 2nd defendant owned the parcel of land as the original owner. The land was not acquired from the 2nd defendant, and it was not acquired by the Government and paid compensation in 1987 by the 4th defendant for the purpose of allocating to the new developers. Therefore, the ownership of the 1st defendant was automatically void; thus, legally, he could not transfer the suit land to the plaintiff.

They further allege that the certificate of Title No. DSMT1007123 was legally issued to the 2nd defendant, who was the original owner.

The controversy above put the parties at issue; therefore, on the first day of the hearing, the following issues were framed and were accordingly recorded by this court for the determination of this suit namely:

- i. Who is the rightful owner of plots no. 4 and 31 Block "B" Ununio Low Density.*
- ii. To what reliefs the parties are entitled*

At the hearing, the plaintiff was represented by the learned advocates Mr. Howard Msechu and Ms. Rose Njau. The 2nd and 3rd defendants were represented by the learned advocates Captain Ibrahim Bendera and Mr. Mganga Paul while the 4th and 5th defendants were represented by Mr. Thomas Mahushi, learned State Attorney. The 1st defendant was absent despite duly served registered post, electronic mail, and substituted service in Mwananchi Newspaper dated 2 February 2023 and Daily News dated 14 February 2023; therefore, the suit proceeded exparte against him.

In support of his case, the plaintiff called five (5) witnesses: **Theresa Sanky Rigoni** (the plaintiff), who testified as PW1; **Emmanuel Dismas**

Kisusi, former advocate, who testified as PW2; **Anna Chota**, Land Officer from the office of the Registrar of Titles who testified as PW3; **Fidelis E. Mrosso**, from Tanzania Revenue Authority who testified as PW4 and **David Deus Mdeshi**, a security guard from Nanga Security Company who testified as PW5.

In a bid to support their case, the 2nd and 3rd defendants called four (4) witnesses; **Latifa Kassim Ally** (the 1st defendant), who testified as DW1; **Jacob Mashanga Ngowi**, Land Officer formerly stationed at Kinondoni Municipal Council who testified as DW2; **George Rupia Ndimila**, former local street leader Ununio Street who testified as DW3 and **Idd Martin Mussa**, former Chairman of Ununuo Street who testified as DW4. On the other hand, the 4th and 5th defendants brought only one (1) witness, **Kajesa Minga**, Land Officer from the Office of the Commissioner for Lands, Dar es Salaam and Coastal Regions, who testified as DW5.

PW 1, Theresa Sanky Rigoni, testified that in 2007 when one Grewal informed her that Peter Breuber (1st defendant) was selling his plot (suit land), she became interested. She went to the Local Government office, where the officers assured her that the land was owned by Peter Breuber. When she met with the 1st defendant in the presence of Grewal,

the 1st defendant showed her the certificate of title regarding the suit land. Together with the 1st defendant, they went to her advocate, Mr. Sylvester Shayo, who, after an official search, confirmed that the 1st defendant was the owner of the plots. She tendered to that effect;

i. Official search dated 2 May 2007 with exchequer receipt No. 28509841 Exhibit P1.

She further testified that since there were no incumbrances, she entered into a sale agreement with the 1st defendant. She purchased the suit plot for TZS 20,000,000/=. She tendered to that effect;

ii. Sale agreement dated 10 October 2007 as Exhibit P2.

She was shown the suit plot and its boundaries on the same day, and the 1st defendant handed her the same. There was a storey house in the plot, and she was given the keys. Later, she constructed two houses and a wall fence. And started transferring the Title deed to her name by paying the requisite fees. She tendered to that effect;

iii. Stamp duty, registration fee, approval fee, site plan fee and land rent, collectively as Exhibit P3.

After payment, she was issued a tax clearance, but the transfer was not effected; when she wrote a letter to the Commissioner for Lands, she was initially informed that the file was missing, but later, she was requested to surrender the title deed, which she did. Still, she was not given that title deed again. After that, she communicated several times with the Ministry of Lands. She tendered to that effect;

*iv. A letter dated 20 May 2020 with Ref No. LD/12178/100;
A letter dated 6 December 2020 with Ref. No. LD/129178/33;
A letter dated 19 April 2013 with Ref. No. LD/129178/31;
A letter dated 12 September 2018 with Ref. No LD/189102/44; A
letter dated 9 June 2016 with Ref No. LD/129178/49, and
A letter dated 10 May 2016 with Ref No LD/129178/46, collectively
as exhibit P4.*

PW1 further testified that on 18 September 2018, she was summoned to attend the Ministry of Lands, where she was informed that Latifa alleged that the land described as Block "B" Ununio was owned by her grandmother. After a few days, she was summoned by the Commissioner of Lands, where she met Latifa and her relatives. The Commissioner informed her that they decided to give one plot to Latifa as compensation for the plants which were at that suit land when Latifa's

grandmother owned it. She disagreed, but she was given a letter regarding that decision. She tendered to that effect;

υ. A letter dated 19 September 2018 with Ref. No. LD/129178/75 as Exhibit P5.

PW1 said she was unsatisfied with that decision because she was not told to pay for the plants; instead, one plot was taken as compensation. Further, she stated that the 1st defendant informed her that he paid compensation before acquiring the land.

She concluded by testifying that on 3 May 2021, the suit plot was invaded after Latifa reported to the District Commissioner (the DC) that she trespassed into her land. The DC ordered the fence wall be demolished, and unfortunately, the demolition took place even in the plots which were not subject to the dispute.

At that time, the case was before the court, and when the DC was informed, he explained that Latifa did not inform him that the case was before the Court. Further, Latifa had already demolished the fence wall almost four times. She tendered to that effect;

vi. Ten (10) photos as Exhibit P6.

In his evidence, **PW2, Emmanuel Dismas Kisusi**, testified that as an advocate, he was the one who witnessed the sale agreement between the 1st defendant as the seller and the plaintiff as the buyer (Exhibit P2). The parties signed the agreement in his presence, whereby he also signed and stamped the same.

PW3, Anna Chota, testified to the following effect that Peter Breuber was the first registered owner of title deed No. 36859 for plots No. 4 and 31 Block "B" located at Ununio Low Density area. He acquired the land on 1 January 1988 and registered the same on 4 August 1990 for 99 years. To that effect, she tendered;

vii. Title deed with No 36859 as Exhibit P7.

On 2 May 2007, Theresa Rigoni requested an official search regarding that land. They informed her that Peter Breuber owned the title deed No. 36859 from January 1988.

Later, the office of the Registrar of Titles received an application for the rectification of that title deed for the reason that before the survey, the plot was owned customarily by Madina Juma, and it was discovered

that the ownership was not ended because Peter Breuber did not compensate Madina Juma.

Therefore, it was the Commission for Land who requested rectification by deleting the existence of title no. 36869 and the name of Peter Breuber and then replace it with the name of Excellence, the President of the United Republic of Tanzania. The application was done and registered as No. DSMF.0033960 on 28 February 2020.

She concluded by testifying that after rectification, the plot was divided into Plot No. 31 Block "B" Ununio with a title deed No. DSMT 1007123 was allocated, and the ownership was granted to Latifa Kassim Ally as the legal person representation of Madina Juma, and plot No. 4 was still without ownership.

PW 4, Fidelis E. Mrosso testified that the taxes regarding the transfer for plots no. 4 and 31 were paid. Upon that payment, the Tanzania Revenue Authority issued a statement of tax account on 27 July 2023, whereby a total of TZS. 3,800,000/= in the name of Peter Breuber. To that effect, he tendered;

viii. Statements of Tax account issued by TRA issued on 27 July 2023 to Peter Breuber as Exhibit P 8.

He further submitted that before TRA issues Tax clearance (Capital gain), the payee must submit the sale agreement, valuation and a transfer permit. In this matter, after submission, the assessment by TRA was TZS. 3,800,000/=, which was paid.

The last plaintiff's witness, **David Mdeshi (PW5)**, testified that as an employee of Nanga Security Company as a guard, while guarding the plot belonged to Theresa Rigoni, the plot was trespassed by some people. Further, they saw Bi. Latifa was taking sand from that plot.

There was also an incident where a goat covered with a shroud and mat was thrown into the plot. To that effect, he tendered;

ix. Two (2) photos collectively as exhibit P9.

He concluded that because the fence wall was demolished, they advised the plaintiff to construct it, and she constructed it again.

In the defence case **DW1, Latifa Kassim Ally** testified that Madina Juma Maumba, who passed away on 15 June 2003, was her grandmother,

and her father was the only child. Therefore, she was appointed the administrator of the estate of the late Madina on 5 February 2015.

She further stated that Madina was given the land by her late mother, Mwantumu Mwalimu.

Originally, the land was a farm, and they heard that the Government acquired part of it in 1987. However, the plot in dispute was not a part of the land taken by the Government. The land which was taken was Block "F" Tegeta. Therefore, they were the owners of Block "B" Ununio.

PW1 further testified that in 2015, they discovered that the land in dispute was trespassed. They were informed that there were conmen who invaded and allocated to themselves that land. They went to Kinondoni Municipal Council to request that certificates of title be granted to them, but they were informed that there were persons to whom the Commission allocated the suit land for Lands. The Municipal Officer Jacob Ngowi, who was working on that issue, wrote to the Ministry of Land asking how that person acquired the land, but there was no response.

After she made a follow-up at the Ministry of Lands, she was allocated one plot, i.e., No. 31 block B Ununio, by a title deed. To that effect, she tendered;

- i. Title deed with No. DSMT 1007123 dated 12 November 2020 for plot No. 31 Block B Ununio as Exhibit D 1.*

After that, they were not satisfied with that decision and, therefore, started to pursue their right regarding the ownership of plot No. 4 because it was not acquired by the Government.

She further testified that despite being allocated plot No. 31, the plaintiff prohibited them from entering the premises and filed a caveat.

Therefore, she reported the matter to Kinondoni Municipal Council, where she was given the "bouncers" to help her, and the bouncers handed her the suit plot. The next day, she found her guards were chased, and the plaintiff put her guards.

Later, upon the advice of the Kinondoni Municipal Council and the help of the local authority, she reported the matter to Oysterbay Police Station. The Police removed the guards of the plaintiff, and she employed the Maasai guards. But after five days, the Maasai guards were removed by Police Officers.

She complained to the District Commissioner at the meeting convened at Tegeta, and upon the District Commissioner's directives, she went together with the local leaders and the OCD from Mbweni Police station to the suit plot. While at the suit plots, the fence wall was demolished, but later it was constructed again.

She concluded by testifying that when she reported back to the Police, she was told to refer the matter to the court. To that effect, she tendered;

ii. Letter dated 29 July 2021 with Ref No DSM/KIN/CID B. 1/1/Vol. XL 11/325 issued by RCO Kinondoni as Exhibit D2.

DW2, Jacob Mashanga Ngowi, testified that when he was at Kinondoni Municipal Council, he was the land officer who attended Latifa Kasim Ally when she complained of the trespass into their land located at Ununio area

Upon inspection, he discovered that the land was surveyed and allocated but found no documents indicating the survey and allocation of that land.

Further, he discovered that the Ministry of Lands did the allocation and not the Kinondoni Municipal Council; therefore, he wrote a letter requesting the documents but did not receive any response until he was transferred in April 2016. To that effect, he tendered;

iii. A letter dated 7 May 2015 with ref No. KCM/LD/46749/3/MHE from KMC to the Commissioner for Lands as Exhibit. D3.

He concluded by testifying that the process when the Government plans to acquire land from original owners to new developers must be initiated by Government notice or advertisement to notify that a particular area is ready for town planning. But regarding Block "B", he did not find any document or evidence if that was done.

In his testimony **DW3, George Rupia Ndimila**, a former local executive officer of Ununio Street, testified that in 2015, when he was still in that position, he was approached by Latifa Kassim Ally, who had a complaint about their land at Ununuo and she wanted to register the same. After describing the land, he asked Latifa if they were the granddaughters of Bi Madina and requested the document showing the administration of the estate. After receiving the documents, he asked for a week to satisfy himself if they were indeed the grandchildren of Bi. Madina.

He further testified that upon his follow-up, he found that the suit land belonged to Bi. Madina and also discovered that the family of Bi. Madina was large and was based at Ununio.

He also found that one of the grandchildren of Bi Madina owned the plot near the Ununio bus stand.

Further, he stated that he discovered that Bi Madina had a dispute with one European named Peter. It was after the conmen surveyed the land belonged to Bi Madina in 1986 without her consent at Block B "Ununio". He insisted that they were the conmen because that land was owned by an individual and not the Government; therefore, it was not possible for a person to survey that land without compensating the owner. He discovered that fact after making a follow-up at the Land authorities.

He further testified that there was land described as Block "F" Ununio, bordering with Block "B" Ununio, which the Government acquired, but Bi Madina was not compensated. The Government did not take block "B", located at Wazo Ward. It was only Block "F", which was acquired by the Government. Then, he submitted a written report to the Commissioner for Lands. To that effect, he tendered;

iv. Letter dated 20/02/2015 with Ref. No SM/UMM/KK/HJ/VOL....01/2015 from Afisa Mtendaji wa Mtaa wa Ununio to the Commissioner of Lands as Exhibit D4.

He concluded by testifying that he further discovered that before Ujamaa Villages in 1974, the land in dispute was owned by Bi Mwantumu, the mother of Bi Madina, and Bi Madina was the only child.

Also, Bi Madina had one child by the name of Kassim, who was the Magistrate. Kassim had Children by the names of Latifa, Hamida, Rahima and others.

Also, the land owned by Bi Madina was large, and the Government took it and constructed a road to Boko and established Block "F".

Bi Madina never surrendered her land to the Government. And until her death, she owed the Government. At that land also, Bi Madina Juma allocated the land for the graves, known as Ununio graves. Bi Madina was also buried in the same land.

DW4, Idd Mohamed Mussa, former Street Chairman of Ununio Street who was born in that area, testified that when Bi. Latifa went to him, complaining that their land was invaded. He directed her to see the local executive officer.

In his testimony, he stated that the land in dispute belonged to Bi. Madina because since they were younger, they knew that she was the owner of that land as a “shamba”, and they were playing football in that land, Block “B”.

He stated the land was no longer a farm after being surveyed and divided into plots.

He concluded that before the survey, there was no dispute regarding the ownership of Bi. Madina over the suit land, and at Ununio area, they knew the land belonged to her.

The last defence witness was **DW 5, Kajesa Minga**, who testified that according to their records, the dispute over Plot No. 4 and 31 started when the Commissioner for Lands rectified the plots Teresia Sanky owned. It was after the Commissioner discovered that the Plots were surveyed while the land was owned by Bi Madina, who was the original owner (Mkazi wa Asili).

He further testified that rectification was initiated after the Commissioner’s office received a complaint that the land belonging to Bi Madina was taken without her being compensated.

According to the records, Bi Teresia Sanky was notified of the rectification and was informed to surrender the title deed so that the same be rectified and allocated to the administrator of the estate of Bi Madina, one Bi Latifa. To that effect, he tendered;

v. Letter dated 09 June 2016 with Ref. No. LD/129178/49 from the Commissioner for Lands to Teresa Sanky Rigon as Exhibit D 5.

He further testified that according to the record, Peter Breuer was the one who was allocated the land in dispute after he requested the surveyors from the Ministry of Land to survey the suit land. Those surveyors were at the program known as Site and Service to survey the land in the Tegeta area. Then Peter Breuer also requested the suit plot, which was not under the Government Programme, to be surveyed, and then later, he was allocated the same.

PW5 also testified that rectification was done after the Ministry of Land was satisfied that the original owner was not compensated.

As a result of rectification, Bi Latifa was granted ownership of Plot No. 31 and Teresia Sanky was notified to apply for the ownership of Plot No. 4, with a size of 10,000 Square Meters, but he did not do so. It was still in the name of the Excellency, the President of the United Republic of Tanzania.

He concluded by testifying that the ownership of Peter Breuer was not according to the law. Therefore, the claims of Bi Sanky were not proper. Further, she was notified by the Ministry as to why the rectification was done, which was usually initiated by the Commissioner for Lands and later presented to the Register of Titles.

In a nutshell and briefly, that was the evidence from both the plaintiff and defendant's witnesses.

To clarify their cases, the plaintiff and the 2nd and 3rd defendants filed their final submissions. And I thank them for highlighting key issues of the dispute. However, there was a new issue raised by the final submission, which, quite briefly, I will address at a later stage of the judgment.

In deliberation and determination of the suit, I will start with the 1st issue concerning the ownership of Plots No. 4 and 31 Block "B" Ununio Low-Density.

As per the evidence, in my view, the issue is straightforward. And on this, as standard in proving the case, this Court will be guided by Section 110 (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."

From above, the first sub-issue to determine is whether or not the land in dispute is a registered land.

On this, the key witnesses were PW3 and DW5. Both Land Officers, PW3 from the office of the Registrar of Titles and DW5, the officer of Commissioner of Lands, although they testified on opposite sides, but their pieces of evidence were similar.

Both testified that Plots 4 and 31 were initially registered in Peter Breuer's name with C.T No. 36859. Later, due to rectification, C.T No. 36859 became non-existent and caused the "birth" of C.T No. DSMT 1007123 for Plot No. 31, which was allocated and granted to Latifa Kassim Ally (as the legal person representation of Madina Juma), and Plot No. 4 was still in the name of the Excellency, the President of the United Republic of Tanzania.

It is from the above pieces of evidence on the background of the status of the plot that it is clear that suit plots were surveyed and registered.

The finding above “landed” me into section 2 of the Land Registration Act, Cap 334 [R: E 2019], which is instructive when the land in dispute is registered. The section reads;

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

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), held that;

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

From the above provision of the law and cited case laws, it is clear that the prima facie proof of land ownership is a registration. In our

country, in most cases, registration is by Certificates of Title or Letters of Offer.

Reverting to the facts of this suit, the plaintiff's basis of ownership was based on C.T No. 36859, which was tendered by PW3 exhibit P7. On the other hand, DW1 basis of ownership was based on C.T No. DSMT 1007123. But as I alluded to earlier, C.T No 36859 was rectified by the Registrar of Title and became non-existent as per the evidence of PW3 and DW5.

In contrast, according to the same witnesses (PW3 and DW5), the valid title was C.T No. DSMT 1007123. This evidence was corroborated by DW1, the holder of C.T No. DSMT 1007123 (Exh.D1).

From above, the issue of registered land and ownership is not a new phenomenon in our jurisdiction. There is a plethora of authorities on the subject. On this, 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."

Therefore, from the above discussions and the cited case law, it is quite clear that the holder of the certificate of title is the one who has proof that she is the owner of the suit land.

The above is the general principle because there are exceptions to that general position as the Court of Appeal in **Jacqueline Jonathan Mkonyi and another vs. Gausal Properties Ltd**, Civil Appeal No. 311 of 2020 (Tanzlii), held that;

"..... we wish to observe that this is not a case of end justifying the means, so we agree that registration of land would not ipso facto prove title in the absence of evidence establishing how one got the title."

This exception establishes the **principle of tracing**. That means in certain circumstances, the background and evidence of how a person acquired the land must be traced to check its lawfulness.

To conduct tracing in this suit, I frame the following sub-issues: **one**, whether the 2nd defendant owned the land in dispute; **two**, if the answer is in affirmative, whether the 1st defendant compensated the 2nd defendant; and **third**, whether the land was acquired by the Government prior to its allocation and registration.

To answer the first sub-issue, there was evidence that DW1, DW3, DW4 and DW5 both testified that the suit plots were the properties of the late Bi. Madina. Further, as I alluded to earlier, both PW3 and DW5 testified that the rectification was done because it was discovered that the land was the property of Bi. Madina. On this, the plaintiff had nothing useful on whether the land was owned by Bi. Madina or any other person

As for the second sub-issue, there was no evidence from the plaintiff that Bi. Madina was compensated by the 1st defendant. In addition to that, the evidence of DW3 and DW5 both stated that Bi. Madina was not compensated. In fact, according to PW3 and DW5, that was the reason for

the rectification of C.T No. 36859, which was in the name of the 1st defendant.

On the last sub-issue, apart from pleading in the plaint, neither of the plaintiff's witnesses testified that the Government acquired the suit plots prior to its registration. On the other hand, the evidence of DW2, DW3 and DW5 indicated that the Government never acquired the suit plot. In fact, DW5 stated that the suit plots were outside the Government program known as Site and Service to survey the land in the Tegeta area to allocate land for new developers.

Another aspect of the tracing principle is the issue of bona fide purchaser. The question is whether, in the circumstances of this matter, the principle of bona fide purchaser may arise. On this, I have the following;

One, having gone through the pleadings and evidence, the key issue that triggered the dispute between parties was the rectification of the title deed for the plot purchased by the plaintiff but still in the name of the 1st defendant. That rectification was because of the discovery that the land in dispute was surveyed and procured illegally. Being a bona fide purchaser, a pleading party must prove that the land was acquired lawfully. In the

absence of lawful acquisition of land, the bona fide purchaser is not legally protected. See **Godebertha Rukanga vs. CRDB Bank Ltd and three others**, Civil Appeal No. 25 of 2017 (Tanzlii).

The evidence indicated that the 1st defendant did not legally acquire the land in dispute; therefore, he had no good title to pass to the plaintiff. In such circumstances, the plaintiff cannot benefit from the principle of bona fide purchaser.

Two, there was no finalized transfer to the plaintiff. Instead, when the plaintiff was transferring ownership, the rectification was conducted; as a result, the plot was divided and registered in the names of the 2nd defendant and Her Excellency, the President of the United Republic of Tanzania. Therefore, she had no good title to claim as a bona fide purchaser. Her application for allocation and registration of the plots in dispute was not affected by the Commissioner for Lands and the Registrar of Title.

Based on the above findings, the issue of bona fide purchasers also is of no help to the plaintiff in this suit.

As discussed above, the evidence on the tracing principle is weak on the plaintiff's side. In contrast, on the defendant's side, the evidence was heavy.

Therefore, as the law provides, the registration of the 2nd defendant as a holder of Title Deed No DSMT 1007123, issued on 12 November 2020, is conclusive proof of her ownership. This finding is fortified by the decision of the Court of Appeal in **Amina Maulid Ambali & Two Others vs. Ramadhani Juma**, Civil Appeal No. 35 of 2019 (unreported), where it was held that;

"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."

Flowing from above, issues such as the tax invoice issued by the Tanzania Revenue Authority and the taxes payable when the plaintiff was initiating the transfer of the Title deed from the 1st defendant to herself, as testified by PW4, were immaterial because, **one**, the transfer was never completed, **two**; there was a rectification of the title deed sought to be transferred, **three**; the Registrar of Title issued the C.T to the 2nd defendant

in respect of plot No. No.31 and **four**, plot No. 4 was never allocated to the plaintiff as it was placed under the custody of Her Excellency, the President of the United Republic of Tanzania.

Therefore, sailing with the principle in **Paulina Samson Ndawavya vs. Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017 (unreported), which provide that;

"It is equally elementary that since the dispute was in the 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."

It is my view that, based on the above rival testimonies, the plaintiff fails to prove that she lawfully owns Plots No. 4 and 31 Block "B" Ununio. In contrast, the 2nd defendant successfully proved that as the administrator of the estate of Bi. Madina that she lawfully owns Plot. No 31 Block "B" Ununio with C.T No. DSMT 1007123. Further, Plot No. 4 of the same block was neither owned by the plaintiff nor the 2nd defendant. This is as per the testimonies of PW3 and DW5, who testified that after rectification, the Plot was put under the name of the Excellency, the President of the United Republic of Tanzania.

Turning up to the second and last issue on reliefs sought by the plaintiff as enumerated in his pleadings. For clarity, I will deal with each relief claimed.

In the first, second, third and fourth reliefs, since I have found, as I elaborated above, that the plaintiff is not the lawful owner of the suit plots and that the certificate of Title No. DSMT1007123 for plot No. 31 was issued lawfully to the 2nd defendant. Therefore, the reliefs are not maintainable; in fact, it is the plaintiff who is the trespasser, especially on Plot No 31, legally owned by the 2nd defendant.

Further, the Court cannot issue a perpetual injunction in favour of the plaintiff against the 2nd and 3rd defendants while she is not the owner of the suit plots.

For the 5th, 6th and 7th players, i.e. regarding damages, I have the following observations;

Since the plaintiff illegally occupied the suit plots, she does not deserve compensation. Illegal occupation amounts to trespassing, which is not a new phenomenon in our jurisdiction. The Court of Appeal in **Princess**

Nadia (1998) Ltd vs. Remency Shikusiry Tarimo and two others,

Civil Appeal No. 242 of 2018 (Tanzlii), held that;

Since it was proved that the appellant was a trespasser, she had no right to benefit from her wrongful act. At worst, the appellant assumed the risk arising from her unlawful occupation in the premises.

Equally applied in this suit, the plaintiff cannot benefit from her continued occupation of the suit plots, while the 2nd defendant is the holder of the title deed of Plot No. 31.

Before I conclude, I wish to comment quite briefly on the final submissions filed by the parties. In the final submissions filed by the counsel for the plaintiff, one new and fresh issue was introduced. That new issue was not contained either in the evidence of witnesses, or it was not framed as an issue of the suit. The issue is on the process and procedure of filing the suit against the dissatisfaction in the process of the rectification of the land/ title deed.

On this, I wish to remind the parties that it is improper to introduce new evidence/issues during the final submissions. These are not evidence at all, as already held by the Court of Appeal in **Sunlon General Building**

Contractors Ltd and two others vs. KCB Bank (T) Ltd, Civil Appeal

No. 253 of 2017 (Tanzlii), that;

"It is a trite position that final submissions are not evidence."

Further, the rationale of the final submission is elaborated in the cited case of **Sunlon** (Supra) while quoting **Southern Tanganyika Game Safaris and another vs. Ministry of Natural Resources and Tourism and another** [2004] 2. E.A 271, where the Court held that;

"Final submissions are only intended to guide the court in resolving the framed issues."

The International Criminal Court ("the ICC") in the case of the **Prosecutor vs. Jean-Pierre Bemba Gombo**, ICC-01/05-01/08 3/17 dated 19 January 2018, also elaborated the rationale of filing final submissions when it held;

"At the conclusion of the recent appeal hearing, the Appeals Chamber invited the Parties and participants to make additional written observations, not exceeding 15 pages, if, in their view, those additional observations would help in a better understanding or clearer refutation of a point already before the Chamber, or if there was lingering concern that a point may not clearly have been understood".

From above, it is quite clear that the final submissions are not evidence at all; they intend to guide the court on points already before the court to resolve the framed issues.

However, since it will not change the outcome of the suit, I will discuss it briefly and cautiously as follows;

Under Section 26 (5) of the Land Act, a person aggrieved by the decision of the Commissioner for Lands, including in case of refusal of allocation of Land, is supposed to appeal to the Minister responsible for Land.

On the other hand, a person aggrieved by the decision of the Registrar of Title on rectification under Section 99 of the Land Registration Act may appeal to the High Court under Section 102 (1) of the same Act. According to sections 100 and 102 (3) of the same Act, the Registrar must give a decision and reason(s) for a decision in writing, and that decision must accompany the appeal petition.

That process will give a Court a "*momentous occasion*" to determine the decision regarding rectification. I will end here without going deeper to determine the issue for the reason I alluded to earlier.

In the final analysis, the plaintiff's evidence did not prove the claims on a balance of probabilities; the suit lacks merit. But since the 2nd and 3rd defendants did not plead ownership by way of the counterclaim and as is elementary law which is settled in Courts that it will grant only a relief which has been prayed for - see: **James Funke Gwagilo vs. Attorney General [2004] T.L.R. 161**, I proceed only to dismiss the suit with costs.

I order accordingly.




K. D. MHINA
JUDGE
27/09/2023