

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

LAND CASE NO. 39 OF 2023

ASILE ALLY SAID.....PLAINTIFF

VERSUS

NASSORO BINZOO.....DEFENDANT

JUDGMENT

9th to 12th October, 2023

E.B. LUVANDA, J

Asile Ally Said (Plaintiff herein) is issuing Nassoro Binzoo (Defendant herein) over the house Plot No. 47 Block L Muhoro Street Kariakoo Dar es Salaam alleged trespassed by the latter, who is renting and collecting rent from tenants.

In his written statement of defence, the Defendant pleaded that he is a manager and caretaker of a suit premises and is acting as such through a special power of attorney granted to him by Mr. Islam Edha Abdallah Nahdi.

On evidence Asile Ally Said (PW1) stated that she is the owner of a suit house on explanation that she purchased a suit plot in 2007 from Abdul Wahid Maalim Mzee Mwita who handed over the original letter of offer,

where PW1 transferred it into her name as per a letter of offer exhibit P1. PW1 stated that after purchase, she demolished the existing small building and applied for a building permit to construct a five storey building, as per building permit No. 0761 exhibit P3.

A fact that PW1 constructed a new building was supported by Omari Bakari Ngolingo (PW2). PW1 stated that she procured tenant Salma Pharmaceuticals Limited who rented a building from 01/06/2011 as per a lease agreement exhibit P4. PW1 stated that she is currently underway processing certificate of occupancy in respect of the suit premises as confirmed by the office of the Assistant Commissioner for Lands Dar es Salaam Region, as per a letter dated 01/07/2022, exhibit P2.

On defence, Islam Edha Abdallah Nahdi (DW1) who donated a special power of attorney exhibit D5 to Bisher Binzoo (DW2), claimed ownership of the suit house on the explanation that it was solely purchased through fund or money he used to send to his wife (PW1) and his mother in law, asserting that a house was purchased by his mother in law. DW1 claimed that a suit house is a family house, without regard in whose name is registered, arguing all was done under trust, being spouse, lawful wedded husband and wife as per a marriage certificate exhibit D1.

DW1 accused PW1 for maltipractice and used illegal mechanism to dispose matrimonial properties including evicting tenants in the suit premises, where DW1 entered or registered a caveat as per a letter exhibit D4. DW1 explained that he referred their matter for reconciliation at Quadhi as per a letter exhibit D3.

Issues framed for determination: One, whether the Plaintiff is the lawful owner of Plot No. 47 Block "L" Muhoro Street Kariakoo Dar es Salaam; Two, whether the Defendant has trespassed on Plot No. 47 Block "L" Muhoro Street Kariakoo Dar es Salaam; Three, what reliefs are the parties entitled.

For the issue number one, as per the recap above, the claim of the Plaintiff is supported by documentary evidence for ownership, a letter of offer of right of occupancy exhibit P1, which reflect that the Plaintiff acquired the suit premises at her maiden name. Also a letter by the Assistant Commissioner for Lands Dar es Salaam Region, exhibit P2 vindicating that a certificate of right of occupancy is underway to be issued (in the name of Asile Ally Said, to whom a letter exhibit P2 was addressed), and the process will be accomplished after submission of capital gain clearance certificate.

Therefore the argument of the learned Counsel for the Defendant that the suit property is a family or matrimonial house, has no bearing at all. Even the marriage certificate exhibit D1 tendered by DW1 could not by itself substantiate that a suit house is a matrimonial one or family house as alleged by DW1. Above all, at one time on cross examination DW1 stated that a suit house is his personal property, later changed a story saying he was a financier, then said it is family house. DW1 alleged to have financed purchase by sending money either to PW1 or his mother in law. But DW1 could not tender any document for money allegedly used to credit into the account of PW1. DW1 is not aware even the actual purchase price, said it was purchased at Tshs 150,000,000/= while a transfer of right of occupancy Form No. 35 annexure RAA/AAS/PLAINT-A reflect consideration of Tshs 75,000,000/= a same figure mentioned by PW1. On cross examination, DW1 said he could not recall the offer bears whose name, but later conceded a fact that in a caveat he registered to the Registrar of Titles exhibit D4, indicated that the title is registered in the name of PW1.

To my view a mere fact that PW1 purchased a suit house while her marriage with DW1 was still subsisting, or in good terms, cannot be a

ground to say that house is a matrimonial asset. By the way this Court is predominantly dealing with ownership.

It is the law that the one on whose name a certificate of title is registered, is regarded as the owner of particular registered land.

In the case of **Nicholaus Mwaipyana vs. The Registered Trustees of Little Sister of Jesus Tanzania**, Civil Appeal No. 276 of 2020 CAT at Mwanza (cited by the learned Counsel for the Plaintiff) at page 13 re stated the position in **Amina Maulid Ambali & Two Others vs. Ramadhani Juma**, Civil Appeal No. 35/2019 CAT at Mwanza at page 6 to 7, the apex Court ruled,

"In our considered view, when two persons have competing interests in a landed property, the person with a certificate of title thereof will always be taken to be a lawful owner unless it is proved that the certificate was not lawfully obtained"

Suffices to say PW1 has proved to have a good and personal title over the suit land. In that regard, DW1 had no mandate whatsoever at his own accord and capacity to assign DW2 to manage the suit property on any how. The special power of attorney exhibit D5 is of no legal effect, because the donor had no title to donate to the donee (DW2). This is

because the suit house belong and is a personal property of his (DW1) ex – wife (PW1).

The above adumbration take into board issue number two as well. Therefore, the first and second issue are answered in the affirmative, to the effect that the Plaintiff is the lawful owner of the house on Plot No. 47 Block "L" Muhoro Kariakoo, and the Defendant is adjudged a trespasser.

As to the reliefs, the Plaintiffs claimed among others for general damages, costs and immediate handover of all lease entered in 2023 between the Defendant and available occupiers in the suit property. But to my view, I don't think if such type of reliefs can work or are appropriate to grant in the situation of this case where PW1 alleged that all her minor children Saad Islam, Said Islam and Saud Islam, (the first born come after 2011) are all living with DW1 in Uganda who is taking care for everything in maintenance including paying school fees, as per the testimony of PW1 at cross examination. In view of that, the Plaintiff will take over from the date of this judgment in the management of house and tenants in occupancy. Other reliefs are not suitable to grant.

The permanent injunction is issued against the Defendant not to deal, interfere or collect rent from the date hereof.

The suit is granted. No order for costs.



E.B. LUVANDA
JUDGE
13/10/2023

Judgement delivered through video conference neither Mr. Abubakar Salim learned Counsel for Plaintiff nor Mr. Mwita Waissaka learned Advocate for Defendant attended.



E.B. LUVANDA
JUDGE
13/10/2023