

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 43 OF 2022**

ABDIRAHMAN MOHAMED MUSSA PLAINTIFF

VERSUS

THE HONOURABLE ATTORNEY

GENERAL 1ST DEFENDANT/NECESSARY PARTY

ROBERT CHARLES OTEYO a.k.a ROBERT MOSES

**a.k.a ROBERT CHARLES (as personal legal
representative of CHARLES MOSES, the deceased)..... 2ND DEFENDANT**

DAR ES SALAAM CITY COUNCIL..... 3RD DEFENDANT

JUDGMENT

Date of last Order: 14/9/2023

Date of Judgment: 30/10/2023

A. MSAFIRI, J.

The plaintiff Abdirahmani Mohamed Mussa have instituted a suit against the defendants namely the Hon. Attorney General (1st defendant as necessary party), Robert Charles Oteyo a.k.a Robert Moses a.k.a Robert Charles (As Personal Legal Representative of Charles Moses, the Deceased)(the 2nd defendant) and Dar es Salaam City Council (the 3rd Defendant).

The plaintiff claims to be the lawful and registered owner of a suit property under Certificate of Title No. 58045 located on Plot No. 1650, *Alls*

Block A, Buguruni Area, Ilala, Dar es Salaam. He claim to have acquired the suit property by purchase from one Simba Khamis (a personal Legal Representative of Hamis Kanzira, deceased) in the year 2007. Thereafter he erected a house on the suit property without any interruption until 2014 where there ensued execution proceedings between Charles Moses and Kessy Omary in respect of Civil Case No. 78 of 1989 before the Resident Magistrate Court of Dar es Salaam at Kisutu (herein referred as RMS Court Kisutu). In the said case, a warrant of attachment in respect of the suit property was issued.

Following that the plaintiff instituted objection proceedings at the same RMS Court Kisutu in Misc. Application No.132 of 2014 where the court lifted the warrant of attachment. The plaintiff then in 2019, became aware of the Civil Case No.2003 which was filed at the RMS Court Kisutu and was between Charles Moses and Ilala Municipal Council. The suit was the execution process seeking to demolish the suit property. The plaintiff then lodged objection proceedings against the demolition through Misc. Civil Application No.151 of 2019 at RMS Court Kisutu. The said objection proceedings were dismissed and hence the plaintiff instituted this instant suit seeking for the following reliefs;

1. A Declaratory order that the plaintiff's disputed property held under Certificate of Title No. 58045 located on Plot No. 1650, Add.

Block "A", Buguruni Area, Ilala Municipality (now Dar es Salaam City Council) is not liable to attachment, demolition, eviction, disposition by public auction or and any form of execution whatsoever in relation to execution of a decree of the Court of Resident Magistrate Court of Dar es Salaam in Civil Case No. 54/2003 to which the plaintiff was not a party;

2. A declaratory order that, a pending execution order in Civil Case No.54/2003 and all subsequent orders against the plaintiff's suit property are all illegal;
3. An order for payment of general damages to be assessed by this Honourable Court;
4. Costs to be paid by the defendants;
5. Any reliefs this Honourable Court may deem fit to grant.

The defendants filed their written statements of defence in which they denied each and every claim by the plaintiff and put him to strict proof. In their defence, the 1st and 3rd defendants averred that the suit property was illegally obtained on the grounds that at the time the Title of ownership was obtained by the plaintiff, compensation had not been paid to the 2nd defendant and hence the said Certificate of Title issued on the suit property was void ab initio. They prayed for the dismissal of the suit with costs.

The 2nd defendant in his defence raised the claim that the Title of ownership by the plaintiff was obtained through fraudulent means as the vendor who sold the suit property to the plaintiff had no better title over the suit property. He also prayed for the dismissal of the suit with costs.

In the suit, the plaintiff was represented by Mr. Mpaya Kamara, learned advocate, assisted with Mr. Alex Balomi, learned advocate and Mr. Mahmoud Mussa, learned advocate. The 1st and 3rd defendants were represented by Ms. Careen Masonda, learned State Attorney and the 2nd defendant appeared in person.

Upon conclusion of the hearing of this suit on all sides, with the leave of the Court, the parties filed their respective final submissions and which I commend them for their coherent and well analysed submissions which this Court have considered in this judgment.

Before the commencement of hearing, four issues were framed by the Court for determination. These are;

1. Whether the plaintiff is the lawful owner of the suit property as described in the Plaint.
2. Whether the disputed property (also suit property) is liable to the attachment, demolition, eviction, or any other form of execution.

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to which the plaintiff was not party to the Civil Case No. 54 of 2003.

3. Whether the suit land was acquired fraudulently.
4. To what reliefs are parties entitled to.

I shall determine the issues by going through the evidence adduced by the parties.

In proving his case, the plaintiff brought two witnesses, himself who testified as PW1 and one Sultan Salim Kingalu who testified as PW2. The two witnesses gave their testimony through witnesses' statements which were adopted by the Court. Also the plaintiff's side presented a total of nine (9) exhibits.

In his evidence PW1 testified that he is the lawful owner of the suit property which he bought from Mr. Simba Khamis who was the administrator of the estate of the late Hamis Kanzira. He said that he was introduced to Simba Khamis by one Sultani Salum Kingalu. That before the sale and purchase, accompanied by Sultani Kingalu, he went for a search at the office of the Registrar of Titles, Ministry for Lands where it was revealed that the property was in the name of Simba Khamis, the administrator of the estate of the late Hamis Kanzira. He said he had misplaced the search report.



That he purchased the suit property on 15th May 2007 from the said Simba Khamis, the administrator. That after purchase, he processed for the consent by the Commissioner for Lands, a registration by the Registrar of Titles and paid all statutory fees. That he and Simba Khamis went at Buguruni Primary Court where Simba Khamis affirmed an affidavit to confirm the sale of suit property to the plaintiff. That finally on 25th May 2007, he and Simba Khamis signed the sale agreement and deed of transfer of right of occupancy. He said that throughout the years he have been paying the requisite land rents. He tendered the original Certificate of Title on the suit property which was admitted as exhibit P1, he also tendered an affidavit of ownership by Simba Khamis which was admitted as exhibit P2, he tendered the official search which was done at the Ministry for Lands, it was admitted as exhibit P4, he tendered the land rent payment receipts which were admitted collectively as exhibit P5, he tendered the sale agreement, transfer deed and certificate of approval which were admitted in Court as exhibit P7 collectively.

PW1 stated further that after purchase of the suit property, he constructed a residential house on the plot where he now lives with his family. He tendered the photographs of the disputed property which were admitted in Court as exhibit P9. That it took him about four years from

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2007 to construct the house on suit property but did not encounter any interruption, resistance or obstruction from any one.

PW1 stated that he lived peacefully in the said house until 2014 when there was execution proceedings between Charles Moses vs. Kessy Omary in Civil Case No. 78 of 1989 at the RMS Court Kisutu to which he was not a part. However a warrant of attachment was issued in respect of his property despite the fact that the official records show that the suit property was in his name as per official search exhibit P4. That in objecting the attachment he lodged Misc. Civil Application No. 132 of 2014 at the same RMS Court Kisutu and the matter was delivered in his favour and the attachment was lifted. He tendered the ruling on the said case which was accepted by the court for judicial notice as Judicial Notice-1.

He said that later he came to know of another decision/order of RMS Court Kisutu in Civil Case No. 54 of 2003 in execution proceedings which he was also not a party. That he became aware of the said decision/ order in July 2019 and he decided to lodge another objection through Misc. Civil Application No. 151 of 2019 in the RMS Court Kisutu objecting the inclusion of the suit property in execution of decree No. 53 of 2003. The Court decided against the plaintiff and dismissed the objection. He tendered the said decision which was admitted for judicial Notice as Judicial Notice -2. *Alle*

He said further that his property, the suit property is in danger of being demolished by the 2nd and 3rd defendants under the pretext of executing a decree of a case to which he, the plaintiff, was not a party.

In cross examination by the counsel for the 1st and 3rd defendants, the plaintiff was led to tender the ruling of case No. 54 of 2003 on basis that he has admitted to have knowledge of the said ruling in paragraphs 5, 11, 12 and 13 of his plaint. The Court admitted the ruling as exhibit D1. When asked on whether he made any inquiry before purchasing the suit property, the plaintiff admitted that he asked Simba Khamis about the property. He said that he didn't know about any dispute on the property. That he asked neighbours who told him that the owner of the property is Simba Khamis. He admitted to have not asked on whether the suit property has any dispute in court.

He agreed that Charles Moses was his neighbour and they lived in the same street. PW1 admitted that he has never made any inquiry at the Street Government about the property. He then said he went to the ten cell leader who told him that the property is owned by Simba Khamis. He did not remember the name of the said cell leader.

PW2 was Sultan Salum Kingalu who testified that he has lived in Buguruni area, Ilala, Dar es Salaam since 1966 to date. That he knows *Ally*.

both the plaintiff (PW1) and the 2nd defendant. And that he also knew Charles Moses now deceased that he was the father of the 2nd defendant. PW2 stated further that he was the one who assisted the plaintiff to purchase the suit property as he was the one who found the vendor, Simba Khamis and introduce him to the plaintiff. That he accompanied the plaintiff to see the suit property and later he again accompanied the plaintiff for official search to the offices of Registrar of Titles.

That after the selling processes, the plaintiff constructed the house on the suit plot for about four years and upon completion, he started living there with his family. That at all this time neither the 2nd defendant nor his late father one Moses Charles who was living nearby the plaintiff, interrupted or obstructed the plaintiff. He concluded that the plaintiff is the lawful owner of the suit property. In cross examination, PW2 stated that he don't know whether there was dispute in Court over the dispute property. That he has lived at Buguruni since 1966 hence if there could have been any dispute, he could have known.

On their part, the 1st and 3rd defendants had one witness only, Edith Emilia Mganga who testified orally as DW1. She stated that she works at the Dar es Salaam City Council as a Land Officer. She said that the suit property Plot No 1650 Block "A" Buguruni is among plots which resulted

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from the revocation of Plot No. 401 Block A Buguruni. That the said plot was revoked for public interest.

She briefly narrated the history of Plot No. 401 Block A that originally it was owned by a foreigner who had a factory there. Later the said foreigner Karim Rajabalijan Mohamed fled the country amid the charges of organized crimes and left the area. That one businessman Charles Moses requested to be allocated the suit property and he was directed to pay some money by Ilala Municipal Council as compensation. He paid the sum and was allocated the area and was issued with Certificate No. 34866.

That after allocation, a dispute arose from the people who were residing on the area complaining that Charles Moses has been allocated much bigger piece of land. That the complaints resulted into revocation of the Title and the plan of the area i.e. Plot No. 401 Block A Buguruni and Certificate No. 34866. That the area was then resurveyed but Charles Moses refused his area to be surveyed but other areas were surveyed and new plots were formed which are Plots Nos. 1644-1656 Block "A" Buguruni.

DW1 stated that after resurvey, there was even bigger dispute whereby various cases were instituted. That on Plot No. 1650 Block "A"

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which is the suit property, various cases were instituted. That one of the cases were Civil Case No. 54 of 2003. In this case Charles Moses sued the Ilala Municipal Engineer. That in that case the court decided that the resurveyed plots should not be allocated until Charles Moses has been compensated. The said decision of the court was admitted as exhibit D1 and was delivered on 02/8/2004.

DW1 testified further that before the said court decision, the suit property has already been allocated on 01/7/2004 and the ownership was under Simba Khamis, as administrator of Hamisi Kanzira who sold the suit property to Abdirahman Mohamed Mussa. She said that the transfer of Title should never have been effected until the compensation has been done. That the Title on the suit property was issued on 01/7/2004 and the transfer of Title was registered on 27/9/2007.

DW1 testified that, following the decision of the court in Civil Case No 54 of 2003, Charles Moses intended to process for execution but Ilala Municipal Engineer lodged an appeal at High Court in Appeal No.11 of 2007 against Charles Moses. She tendered the ruling of the said appeal which was admitted as Exhibit D2. In the ruling, the High Court ordered Ilala Municipal to pay compensation to Charles Moses. It was dated 08/02/2008. That until now the said ruling and order of the High Court has never been set aside by way of appeal, review or revision. And that *Alls.*

until to date, Charles Moses has never been compensated, hence the ownership of the suit property is not valid until the compensation has been paid as per the order of the Court.

She explained that Charles Moses is to be compensated in his area as his area was the only one which was not valued.

The 2nd defendant testified himself and he was the only witness. Testifying as DW2, he stated that he is the administrator of the estate of the late Charles Moses Abulwa a.k.a Charles Moses. He tendered a letter of administration which was admitted as exhibit D3. He said that the late Moses Charles was his father and he was the owner of Plot No. 401 Block A, Service Trade, Buguruni, Dar es Salaam before it was revoked. That his late father told him that he acquired the said plot by purchasing it from one Karim Rajabhali Mohamed.

DW2 said that initially the area in dispute was unsurveyed but it was surveyed by his late father after purchasing the area. That after survey, he was issued with Title No.34866, Plot No.401 and it was in 1986/1987. That later in 1991, the Title was revoked after the report of the Commission which was appointed to make inquiry on the area in dispute and advise the Government. That, however previous to the revocation, Charles Moses has instituted a case against one Kessy Omari in 1989 on

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the claims that Kessy Omari was given money by Hamisi Kanzira who was the guard of the godown in the area owned by Charles Moses and used the money to construct a hut on the said area of Charles Moses. Later Hamisi Kanzira told Charles Moses that he has bought the hut and started to live therein.

DW2 testified that the court decided that the built hut was inside the Plot No. 401 the property of Charles Moses and the court ordered that Omary Kessy be evicted from the hut. That however, the one who was actually staying in the hut with his family was Hamisi Kanzira and when he passed away, his son one Simba Hamisi and his mother continue to live in the hut. That the said Simba Hamisi instituted a Civil Case No. 78 of 1989 against Omary Kessy and Charles Moses. That Simba Hamisi was seeking to be declared the owner of the suit property but his case was dismissed on grounds that he could not show how he got the disputed area. DW2 tendered the said ruling of the court which was admitted as exhibit D4. He also tendered a ruling of the Revision No.78 of 1989 which was admitted as exhibit D5.

DW2 said that Charles Moses filed for revision in this Court which is Land Revision No. 14 of 2006 and it was granted as prayed. He tendered the decision of the said revision which was admitted as exhibit D6.

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DW2 testified further that the plaintiff have been sold the suit property by Simba Hamisi who acquired the Title of the same while there is court's decision which pronounced that Simba Hamisi has no any documents to prove ownership of suit property. That it is not shown how Simba Hamisi entered and occupied the revoked plot.

He said that in Civil Case No. 54 of 2003, the RMS Court Kisumu decided in favour of Charles Moses and ordered for compensation before revocation of his area therefore the 2nd defendant claims compensation of Plot No. 401 Block "A", Buguruni which he has not been paid until now. He insisted that the plaintiff has filed this suit because of Simba Hamisi who has contravened the Court's decisions and orders.

Having albeit briefly, gone through the oral and documentary evidence adduced by parties to the suit and their witnesses, now I move on to determine the **first issue which is whether the plaintiff is the lawful owner of the suit property which is said to be held under Certificate of Title No. 58045 located on Plot No. 1650, Block A, Buguruni Area, Ilala, Dar es Salaam.**

As correctly observed by both counsels for the plaintiff and for the 1st and 3rd defendants in their respective final submissions, it is the requirement of the law that the one who alleges must prove. The counsel

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for the plaintiff cited the case of **Godfrey Sayi vs. Anna Siame as legal representative of the late of Mary Mndolwa**, Civil Appeal No. 114 of 2014 (unreported) where the Court of Appeal held that;

It is a principle of law that generally in civil cases, the burden of proof lies on the party who alleges anything in his favour. We are fortified in our view by the provisions of Law of Evidence which among other things states that 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. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".

The similar observation was made by the same Court of Appeal in the case of **Ernest Sebastian Mbele vs. Sebastian Mbele and others**, Civil Appeal No. 66 of 2019(Unreported), the case which was referred to me by the counsel for the 1st and 3rd defendants in their final submission.

Basing on that requirement of the law, it is the duty of the plaintiff who has to prove his case on the balance of probability. In the proving that he is the lawful owner of the suit property, the plaintiff have produced documentary evidence which establishes that he is a registered owner of the suit property. The plaintiff produced in Court, the original Title of *Alle*.

ownership, exhibit P1 which shows that he holds a Title No. 58045 on Plot No. 1650 Block 'A' situated at Buguruni in Dar es Salaam containing 178 square meters and that the first registered owner was Simba Khamis, Administrator of Hamis Kanzira of Dar es Salaam. The Title was issued in 2005 to the first owner and the transfer of ownership to the plaintiff was done in 2007 by the Land Registry, Dar es Salaam. The plaintiff have been paying requisite land rent throughout the years. All this is supported by the exhibits which were produced in Court by the plaintiff i.e. exhibit P1 (Title Deed), exhibit P2 (the affidavit of the previous owner Simba Hamisi Kanzira, confirming the sale), exhibit P5 collectively (the receipts on assessment and payment of land rents on the suit property).

Basing on the evidence produced in Court by the plaintiff, I am satisfied that currently, the ownership of the suit property is on the plaintiff. I therefore subscribe to the observation which was made by this Court in the case of **Alex Msama Mwita vs. Kinondoni Municipal Council, The Commissioner for Lands and Attorney General**, Land Case No. 450 of 2016, HC Land Division at DSM(Unreported). At page 9 of the cited case this Court held thus;

"It is trite law that the ownership of landed property in a surveyed/planned area is proved by the Certificate of Title or at least Letter of Offer.

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Section 2 of the Land Registration Act defines owner as follows; Means, in relation to any estate or interests the person for the time being in whose name that estate or interest is registered”.

That being the position of the law, in the instant suit, the person for the time being registered as the owner of the suit property is the plaintiff Abdirahman Mohamed as it shows in exhibit P1 the Certificate of Occupancy.

I have considered the evidence of the defendants who have contested the legality of ownership of the suit property by the plaintiff. It is the evidence of DW1 and DW2 who were the only witnesses of the defendants that the suit property located at Plot No. 1650 Block A Buguruni Area originates from Plot No. 401 Block A Buguruni Area. That the former Certificate of Title No.34866 on the said Plot No.401 was issued to Charles Moses, the deceased who is the father of the 2nd defendant. However the said Title was revoked by the President of the United Republic of Tanzania in 1991. According to the law, Charles Moses was entitled to compensation which it is was confirmed by both DW1 and DW2 that the compensation was not paid to date.

The defendant stated further that Charles Moses instituted Case No. 54 of 2003 against Ilala Municipal Engineer which ordered Ilala Municipal

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Council to compensate Charles Moses. That the Court ordered that the allocation should start running after compensation exercise is complete.

I have read the Ruling of the RMS Court Kisumu in RM. Misc. No. 54 of 2003 which is exhibit D1. It was stated in the Ruling that the revocation of Title on Plot No.401 was lawful. The court held further at page 3 of the Ruling as follows;

*"it was the duty of the Municipal Council to ensure that adequate compensation is effected before the incoming occupier start utilizing the premises. Failure to do that renders the whole situation chaotic, **the defendant ought to have settled the matter of adequate compensation before indulging in allocating incoming occupiers before buying off the outgoing occupier. The act is a negligent one and have to be responsible for any consequence of the omission**" (emphasis mine).*

On the above observation of the court in its ruling, it is crystal clear that Ilala Municipal Council has already allocated the land in dispute before even Charles Moses have sued them in court, the act which has resulted into an endless disputes.

Despite my observation on this, it is the defendants' argument that since there is a ruling/order of the court that Charles Moses has to be

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compensated and the allocation (of the suit land) to begin to run once the said compensation was done, then the Title which was being held by Hamis Simba and eventually transferred to the plaintiff on the suit property was illegally made. I am not in agreement with the defendants that the Title on the suit property was illegally made. My reason to differ with the said position is that;

The Title on the suit property was issued by the mandated authority, the Commissioner for Lands who acting on behalf of the President of the United Republic of Tanzania, have power to issue or revoke the Titles as per the legal procedures set. It was said that the Title of occupancy on Plot No.401 was revoked by the President. The survey and forming of Plot No.1650 was legally done following the revocation of the previous Plot No. 401.

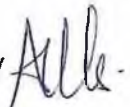
The allocation of Plot No. 1650 was done before the court order in Case No. 54 of 2004 but this present Court was not told whether the Title on the suit property has ever been revoked by the Commissioner for Land hence making exhibit P1 illegal. Furthermore, the court order did not specifically ordered the revocation of exhibit P1.

It was the court order that the allocation to start running after the compensation is done but this did not forthrightly revoked the Titles issued *Alls.*

before the order as there are procedures for revocation which is to be done by the authority which is the Commissioner for Lands. I have gone through strings of the rulings and court orders made at various times on this dispute and I am convinced that none of the rulings/orders has ever revoked the Title of ownership by the plaintiff on the suit property. (Refer Exhibits D1, D2, D4, D5, and Judicial Notice 1-3).

I have also considered the defendants' evidence that the plaintiff ought to have done inquiry on the suit property before the purchase in order to satisfy himself on whether the property has no encumbrances. That, by failure to conduct search before the purchase, the plaintiff cannot claim to be the bonafide purchaser.

I will discuss this basing on the evidence adduced by both parties. It is in evidence that the plaintiff conducted the search after purchase of the suit property and after he became aware of the cases filed in RMS Court between Charles Moses and Ilala Municipal. On search, it was reported that the property is registered in the name of the plaintiff and has no encumbrances. This as per the search report which was admitted as exhibit P4. It was done on 02/6/2014.

Yes, the property being the registered land, the plaintiff was supposed to conduct search before buying the same. However, to my 

view this does not invalidate the Title of occupancy which as already said, was issued by the mandated authority after the plaintiff and the previous owner have 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 Title accordingly.

Hence since there is a valid registered Title, then the issue that the search was not done previously is not fatal unless there is evidence that the said Title was unlawfully acquired, which I have already found that the Title was lawfully issued.

In the circumstance, I make 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 where the issue of registration of Titles was discussed. 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 of titles to the property, for the register itself is a conclusive proof of the title** (emphasis added).*

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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.

The defendants have averred that Simba Khamis, the previous owner had no Title to pass to the plaintiff. However, exhibit P1 shows that Simba Khamis as administrator of Khamis Kanzira was the registered owner of the suit property before he sold it to the plaintiff. Khamis Simba was issued with the Certificate of Title No. 58045 by the Commissioner for Lands. As said earlier the registration and grant of a Title is a matter of long process and there is a procedure to be adhered before the final act of issuance of Title to the applicant for registration. The procedure involves land authorities which includes the Local Government authority of that area which in the instant case it is Ilala Municipal Council.

When she was being cross examined by the counsel for plaintiff, DW1, a Land Officer from Ilala City Council, identified the Title of Occupancy and stated that the draft of the said Title was initially made at Ilala Municipal, then the Municipal sent it to the Commissioner for Land, who approved it and sent it to the Registrar of Titles for final registration. From the evidence of DW1, Ilala Municipal Council was one of the land authorities which made and later issued the Title on the suit property. At

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the time the Ilala Municipal was processing the draft of the said Title and sent it for approval to the Commissioner for Land, it was aware of the dispute over the revoked property Plot No. 401 and later the suit property Plot No. 1650 but nevertheless went on to process the said Title.

As per the court's observation in the Case No. 54 of 2003, the acts of Municipal Council was one of gross negligence which fuelled the disputed which was already there over the property. Although DW1 was quick to put that the file on the suit property at their office did not show that there was court order stopping the process, I find this explanation to be baseless. This is because the Ilala Municipal was the defendant in the case at RMS Court Kisumu, then it was well aware of the dispute.

In such circumstances then the defendants particularly DW1 cannot accuse the plaintiff of not doing search when he wanted to buy the property because even the file on the suit property at the Municipal did not have any information on the dispute over the suit property then how the plaintiff could have known about the said dispute since he was not party to it?

In their final submissions the 1st and 3rd defendants admitted that the area in dispute was the area subject to notorious disputes which has triggered public interest of almost 300 citizens. The defendants blame the

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plaintiff for not conducting thorough investigation while the same defendants who were aware and in fact, part of the dispute, went ahead and processed the Title of occupancy on the same area!

By this analysis of evidence, I am satisfied that the plaintiff is bonafide purchaser for value who is to be protected by the law. The first issue on whether the plaintiff is the lawful owner of the suit property is answered in affirmative.

Before I determine the second issue, since the third issue relates to the first issue, I will first determine the said third issue which is on **whether the suit land was acquired fraudulently.**

The claims of fraud were raised by the defendants in their pleadings. In their joint written statement of defence, the 1st and 3rd defendants stated that the plaintiff is not the owner of the suit property since the same was dubiously obtained. They stated further that the acquisition of the suit property by the plaintiff was fraudulently done.

The same particulars of fraud were stated in the 2nd defendant's written statement of defence. Briefly the 2nd defendant stated that the letter of offer issued to Simba Hamisi on 01/7/2004 was fraudulently procured as all the applications preferred by him on objection proceedings over the suit property at RMS Court Kisutu were all dismissed. That, the

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said Simba Hamisi has nothing to sell as there was court order that there should be compensation first.

The onus of proving that the Title of ownership of the suit property was obtained fraudulently lies on the defendants. Section 115 of the Evidence Act CAP 6, R.E 2019 provides that;

"In civil proceedings when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him"

Basing on that requirement of law, since it is in the defendants' knowledge that the registration of the Title of ownership on the suit property was by fraudulent means, then it was them who has duty to prove.

It is also trite law that when there is allegations of crime in civil proceedings, the allegations need to be established on a higher degree of probability than that which is required in ordinary civil cases. (see the case of **Omari Yusuph vs. Rahma Ahmed Abdulkadir** [1987] TLR 169).

Also in the Court of Appeal case of **Twazihirwa Abraham Mgema vs. James Christian Basil (as Administrator of the estate of the Late Christian Basil Kiria, deceased)**, Civil Appeal No. 229 of 2018, CAT at DSM(Unreported), where the same quoted with approval the decision in the case of **Ratilal Gordhandabhai Patel vs. Lalji Makanji** 

[1957] E.A 314 where the former Court of Appeal for East Africa stated thus:

"Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required".

In the instant case, beside the claim that the disputed title of ownership was acquired while there was court order that there should not be allocation before compensation to Charles Moses, the defendants did not brought or adduce any evidence be it oral or documentary to establish the fraud claims as per the standard required.

It is this court's views that even if the court order in Case No. 54 of 2003, stopped the allocation of the suit property as claimed, the procurement of the Title by Simba Khamis cannot be named as fraud. I can safely say that if there was non-compliance of court order certainly it was not by Simba Khamis or the plaintiff as they were not parties in the Case No. 54 of 2003 but by Ilala Municipal Council(as then was).

Furthermore, the allegations of fraud does not touch the plaintiff at all, as it was not established how he fraudulently transferred the ownership of Title from Khamis Simba into his own name. It is by evidence

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that the plaintiff's transfer of occupancy from the former owner of suit property went through the legal process and was approved by the mandated authorities.

I find that the defendants have failed to prove the fraudulent acts purportedly done by Simba Khamis and the plaintiff. The third issue is answered in negative.

Now I will come back to determine the second issue which is whether the disputed property (also suit property) is liable to the attachment, demolition, eviction, or any other form of execution to which the plaintiff was not party to the Civil Case No. 54 of 2003.

This need not take much of time. I have read all cases on the suit property and found that none of the rulings and/ or orders have ever declared that Charles Moses was or is the owner of the suit property. It is in the evidence that Charles Moses was the owner of Plot No 401 whose Title was revoked by the His Excellency the President. Even at page 3 of the ruling of the RMS Court Kisumu in RM Misc. No.54 of 2003, the court agreed completely that the revocation by the President was lawful. Hence, by this, Charles Moses had no claim of ownership on the suit property which was later renamed Plot No 1650 now the property of the plaintiff. What Charles Moses claims is compensation, not ownership.

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It is my observation that it was wrong to attach or do any form of execution on the suit property which Charles Moses do not claim any form of ownership. His Title on the area was revoked and there is no evidence that the said revocation was ever cancelled and the suit area reverted to Charles Moses.

Charles Moses compensation claim is on the Government, specifically Ilala Municipal Council. The suit property is not owned by Ilala Municipal Council as the evidence shows clearly that the same is lawfully registered in the plaintiff's name. Since the claims of fraud were not proved, and there is no evidence that the current Title on suit property has been revoked, the position as of now is that the suit property is owned by the plaintiff.

It my further observation that, Charles Moses or his heirs, should pursue their compensation claims to the Government.

The third issue is answered in negative.

The last issue is on the parties' relief entitlements.

The defendants did not raise any counterclaim and their claims of existence of fraud in procuring of Certificate of Occupancy of the suit property were not proved at all. I find that the defendants have no entitlement to any relief. 

I find that the plaintiff have established his case on balance of probability and entitled to the reliefs prayed at paragraphs (a), (d), and (e) of the reliefs part of the Plaint.

My reasons for not granting reliefs (b), and (c) as prayed are that; at relief (b), the plaintiff prays for declaratory order that a pending execution order in Civil Case No. 54/2003 and all subsequent orders against the plaintiff's suit property are illegal. I find this prayer to be a repetition of relief (a).

On the relief (c), the plaintiff prays for general damages and left the assessment of general damages to the discretion of the Court, as he did not propose how much to be awarded.

In the case of **Anthony Ngoo and Davis Anthony Ngoo vs. Kitinda Kimaro**, Civil Appeal No. 25 of 2014 (unreported), CAT at Arusha Registry, the Court of Appeal observed that;

".....The law is settled that general damages are awarded by the trial judge after consideration and deliberation on the evidence able to justify the award. The judge has discretion in the award of general damages. However, the Judge must assign a reason....."(emphasis added).

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Basing on the said principle set in the referred case herein above, this Court has to assess the general damages basing on the evidence by the plaintiff. However, I have read the whole evidence of the plaintiff and failed to see how the plaintiff have suffered damages on which the Court could have based its assessment. The Court could not make any assessment because throughout his evidence, the plaintiff did not establish on whether or how he has suffered financially or psychologically by the defendant's acts or omissions. This Court cannot hence make an assessment of damages when the plaintiff have not established any damage.

From the analysis and reasons herein above, the Court hereby orders as follows;

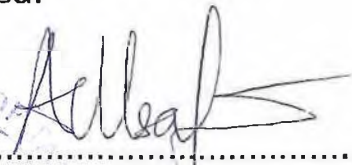
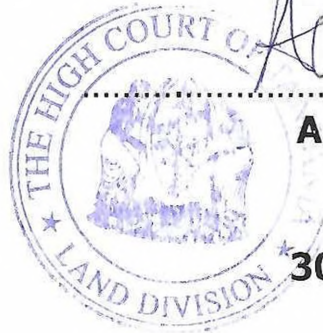
- i. The plaintiff is the lawful owner of the disputed property held under Certificate of Title No. 58045 located on Plot No. 1650, Block "A", Buguruni Area, Ilala Municipality (now Dar es Salaam City Council),
- ii. It is hereby declared that the plaintiff's disputed property held under Certificate of Title No. 58045 located on Plot No. 1650, Block "A", Buguruni Area, Ilala Municipality (now Dar es Salaam City Council) is not liable to attachment, demolition, eviction, disposition by public auction or and any form of execution whatsoever in relation to execution of a decree of the Court of

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Resident Magistrate Court of Dar es Salaam in Civil Case No.
54/2003 to which the plaintiff was not a party,
iii. Costs of this suit to be paid by the defendants.

It is so ordered.

Right of appeal explained.

A. MSAFIRI
JUDGE
30/10/2023