

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 33 OF 2022**

SEVERINA LIBENT KANYABURUGO1ST PLAINTIFF

VERSUS

ATTORNEY GENERAL.....1ST DEFENDANT

THE KINONDONI MUNICIPAL COUNCIL.....2ND DEFENDANT

TATU THEOPHILY UCHUNGU.....3RD DEFENDANT

MUSTAFA MRINGO.....4TH DEFENDANT

BENYANI BASUSU BABEI.....5TH DEFENDANT

FAUSTINE MASSAWE.....6TH DEFENDANT

SALUM MAZOEA.....7TH DEFENDANT

JUDGMENT

Date of last Order: 30/10/2023

Date of Judgment: 14/11/2023

A. MSAFIRI, J.

The plaintiff hereinabove have instituted this suit against the defendants as shown above. The plaintiff claims to be the lawful owner of Plot No. 117, Block Z, Magomeni held under CT No. 102299 which was issued on 21st May 2007 and that she developed the suit plot and pays land rent.

The plaintiff's claims against the defendants are that; she claims a perpetual injunction against the 2nd defendant not to allocate the suit plot to the 3rd defendant and an order to stop the 3rd defendant from

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encroaching on to the suit plot, the plaintiff also claims against the 4th defendant, Tshs.26,880,000/=, 5th defendant, Tshs 13,440,000/=,6th defendant, Tshs. 13,440,000 being outstanding rent from November 2013 to February 2022.

Hence the plaintiff prays for judgment and decree against the defendants jointly and severally as follows;

1. A declaration that the plaintiff is the lawful owner of the suit premises referred to as Plot No. 117, Block Z, along Fundikira Street/ Magomeni Makuti, Kinondoni Municipality, Dar es Salaam, held under CT No. 102299.
2. An order against the 2nd defendant not to divide the Plot and to remove the beacon reference No. DPC 359, planted by the 2nd defendant in the suit premises.
3. A permanent injunction against the 3rd defendant from encroaching on the suit premises.
4. An order prohibiting and restraining the 7th defendant from interfering over the ownership of the suit premises.
5. An order against 4th,5th and 6th defendants to pay the plaintiff the outstanding rent of Tshs. 53,720,000/= and any accumulated rent thereof.

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6. The 4th, 5th, and 6th defendants to pay interest on the principle amount at the commercial rate of 25% from the date due until the date of judgment.
7. An order for eviction against 4th, 5th, and 6th defendants if they fail to pay the outstanding rent.
8. Costs of this application (sic).
9. Any other relief this Honourable Court deem just and equitable to grant.

The 1st, 2nd and 3rd defendants lodged their defense by filing their written statements of defence in which they vehemently denied the claims of the plaintiff. The 1st and 2nd defendants filed their amended joint WSD in which they denied claims of the plaintiff and put her to strict proof. They prayed for the suit to be dismissed with costs.

The 3rd defendant also filed her WSD and vehemently denied the plaintiff's allegations. She claimed that she is the lawful owner of Pot No. 322 Block J situated at Mlandizi/ Fundikira Street in Kinondoni District, Dar es Salaam. She averred that the said plot is totally independent to Plot No. 117 Block "Z" Magomeni and that the issue of ownership against the 3rd defendant was already concluded in Civil Case No. 187 of 2000. She also prayed for the dismissal of the suit with costs.

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The hearing proceeded in absence of the 4th, 5th, 6th, and 6th defendants after they were duly summoned and for the reasons known for themselves, they chose neither to appear in Court nor filed their defence.

Before the commencement of the trial, three issues were framed and adopted by the Court as the issues in dispute. They are;

- i. Whether the plaintiff is the lawful owner of the suit premises.*
- ii. Whether there was a subdivision of the suit premises.*
- iii. To what reliefs are parties entitled to.*

During the trial, the plaintiff was represented by Ms. Genoveva Kato, learned advocate. The 1st and 2nd defendants were represented by Ms. Rose Kashamba, learned State Attorney and the 3rd defendant was represented by Mr. Mathew Kabunga, learned advocate. After the close of the hearing on all parties, with leave of the Court, the 3rd defendant filed the final submissions which this Court have taken in consideration while determining this suit. The other parties chose not to file the final submissions. Furthermore, after hearing in courtroom, the Court visited the locus in quo and the findings will be analysed in determination of the evidence.

I will determine each of the three framed issues by first analyzing the evidence which was presented before this Court by parties to the case.

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To establish her claims, the plaintiff brought two witnesses who are the plaintiff herself who testified as PW1 and Justus Mujulizi Tihairwa who testified as PW2 and tendered a total of seven (7) exhibits.

The 1st and 2nd defendants summoned one witness by the name of Bernard Nicolaus Mbwangi, (DW1). The 3rd defendant also brought one witness only, Tatu Teophil Uchungu who is the 3rd defendant and who testified as DW2.

The plaintiff testifying as PW1 stated that she has a land property at Magomeni Makuti which she had owned jointly with her late husband since 1976. This is the now plot in dispute. That she and her husband Libent Libery Kanyaburugo acquired the suit plot in 1976 and they were granted by the TANU Party. That the plot was an open, unsurveyed space used as a garbage dumping area and it was mostly occupied by thugs, vagabonds, and food sellers. That TANU decided to sell the plot for the safety purpose so that her husband would clear the area. She tendered a sale agreement which was admitted as exhibit P1. PW1 stated that she and her husband cleared the plot and set a business of garage and distilled water.

PW1 stated that she know the 3rd defendant Tatu Uchungu, that she is her neighbour who moved to the area after her, the plaintiff having bought the suit plot and lived there for more than ten years. That the 3rd

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defendant has asked the plaintiff's husband to give her some piece of land off their suit plot but the plaintiff's husband refused as the area was small.

That the 3rd defendant started to build a foundation on her area and when doing that, she encroached into the plaintiff's area and took off a piece of area from the plaintiff's plot. That the plaintiff husband stopped the 3rd defendant from digging a foundation in their area (suit plot) and the 3rd defendant filed a Criminal Case No. 1266 of 1991 and charged the plaintiff's husband of criminal trespass. That after hearing, the court decided in the plaintiff's husband. She tendered a copy of the said judgment and it was admitted as exhibit P2.

PW1 said further that in 2000, she and her husband built a house on the plot where they put shop frames. That, later they made an application requesting to survey the suit plot and after complying with the required procedures, they were granted the Title of ownership of the suit plot. She tendered the Certificate of Occupancy (herein the Title) which was admitted as exhibit P3. She stated that at that time, she did not detect any defect in the Title.

PW1 stated further that in 2015 there was a project to extend (widen) Magomeni/Mlandizi road. That the project involved partly demolition of the houses located on the project area hence the owners of those houses were summoned for survey, assessment and compensation. That among

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those houses was the house of the plaintiff. That there were meetings where the owners of the houses met with the coordinators of the project and the Street Government leaders.

PW1 stated that she was called in a meeting by Salum Mazoea, (the 7th defendant) who was the Street Chairman and one responsible for identifying the occupants/ owners of the houses within the project area. She said that she went to the meeting and found the 3rd defendant, the 7th defendant and other people. That the 7th defendant asked her to show the proof that she was the owner of the suit plot and she showed him the Title. That, the 3rd defendant claimed that the suit plot is her lawful plot. She claimed the size of $\frac{3}{4}$ of the suit plot and she the plaintiff remained with only $\frac{1}{4}$ of the suit plot.

PW1 said later she met with the project surveyor and showed him her Title but the surveyor said that the map does not show the plot which is stated in the Title. That she came to note that the map on her Title CT No. 102299 which showed the location of the plot was not properly drawn and it was misleading. That the map did not show that the Plot No. 117 was along Fundikira/Mlandizi Street. She informed the 2nd defendant about the error on the map but the 2nd defendant failed to take necessary steps to rectify the map, hence PW1 issued the letter of complaint to the

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Director, Kinondoni Municipal Council. The letter was admitted as exhibit P4.

That she keep on pursuing her complaint at the 2nd defendant but she was unsuccessful. That later she found that the surveyor and mapping officers have installed beacon which divided the suit plot into two hence creating two plots. That the beacon took off some part of the suit plot which is her area. That she went to complain at the Mapping Office and met with one Bernard Mbwanji who was the Head of that Office. That Mr. Mbwanji told her that her house is located at Mchinga Street. But she insisted that her house is located at Mlandizi and Fundikira Street. Hence she decided to sue the 3rd defendant and join the Municipal Council, the 2nd defendant.

On the 3rd defendants' claims, she insisted that the 3rd defendant is not the lawful owner of the suit plot and even the latter know that and that is why at one time the 3rd defendant requested the plaintiff to allow her to construct a brick fence joining her wall which she agreed. She tendered the said letter which the 3rd defendant wrote to the plaintiff. The letter was admitted as exhibit P7.

She stated further that the 3rd and 7th defendants introduced themselves to the plaintiff's tenants telling them that the 3rd defendant is the lawful owner of the suit plot so they refused to pay her the rent. The

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tenants who refused to pay the rent are Mustafa Mringo, (4th defendant), Basusu Babeli(5th defendant) and Faustine Massawe (6th defendant). PW1 tendered the lease agreements of the said tenants which the Court admitted collectively as exhibit P5. She said she claim from the said three tenants a total rental fee of ten years from 2013-2023.

PW2, was the second and last witness for the plaintiff whereby he stated that he was a friend of the late Libent Kanyaburugo, who was the husband of the plaintiff. That in 1970, Libent and his wife the plaintiff were living at Magomeni area. He said that he know the suit plot belong to the late Libent and his wife the plaintiff. That the late Libent told him that he has bought the suit plot and showed him the sale agreement and he also saw the area in dispute which Libent told him he has purchased. That he witnessed the development which Libent Kanyaburugo and his wife did on the suit plot. That they built the house with business frames.

PW2 stated further that he knows Tatu Uchungu, the 3rd defendant who is the neighbour of the Kanyaburugo on the suit plot. That he came to know the 3rd defendant after she instituted a case against Kanyaburugo claiming the ownership of the suit property. He insisted that he has knowledge that the suit plot is owned by the late Kanyaburugo and his wife the plaintiff.

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The 1st and 2nd defendants denied vehemently the claims against them. They called one witness Bernard Nicolaus Mbwangi, DW1 who stated that he is employed by Kinondoni Municipal Council as a Land Surveyor. He said that he got a letter from the fellow Land Officer inquiring about the survey of Plot No.322 Block J Magomeni and whether it is the same as Plot No. 117 Block 'Z' Magomeni. That he made investigation and found out that there is no any similarities on the two plots. That Plot No. 117 Block Z Magomeni is located about 210 meters away from Plot No. 322 Block J Magomeni. He tendered the survey map which show the location of the two plots. The map was admitted as exhibit D1.

DW1 stated further that the survey on Plot No. 322 is incomplete but Plot No.117 was surveyed and issued with a Title. He said that the plot in dispute is Plot No. 322 Block J and it has a size of 447 sqm it has no any Title. But Plot No 117 Block Z has a size of sqm 228 and is surveyed and registered with a Title.

On cross examination by the counsel for the plaintiff, DW1 admitted that he was the one who planted a beacon on the suit plot after receiving a request from the 3rd defendant and that it was the demarcation process. That their office worked on the request without knowing that there is a case on the suit plot. That when their office knew about the pending case

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in court about the suit plot, it stopped the demarcation process that is why the plot is unsurveyed until now. He admitted that the process of acquisition of Title starts at the Municipal Council hence if there is any error then the Municipal will also be responsible for that error.

Also while cross examined by the counsel for the 3rd defendant, DW1 identified the letter he wrote to the fellow Land Officer which was copied to both the plaintiff and 3rd defendant. The letter was admitted as exhibit D2.

The 3rd defendant testified as DW2. She said that she has lived at Magomeni Makuti since 1995 and she know the plaintiff as the person who claims that her plot is hers. She said further that the suit plot is located at Magomeni Makuti as Plot No. 322. That she got the suit plot from the late Mzee Ramadhani in 20th November 1989 and bought at Tshs.100,000/= . She tendered a sale agreement which was admitted as exhibit D3.

DW2 stated further that she paid land rent on the plot and the receipts on the said payments were admitted as exhibit D4. That after that in 1990 she went in United Kingdom for studies and came back in 1992. When she came back, she started constructing a foundation on her plot but Libent Kanyaburugo, the plaintiff's husband demolished the said

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foundation, put the iron sheets to surround the suit plot and began construction of frames which still exists up to date.

DW2 said that after that, in 28th August 2000, she instituted a case No. 187 of 2000 at the Resident Magistrate Court of Dar es Salaam at Kisutu (herein as RMS Court Kisutu) praying for possession of the suit plot. She tendered a plaint on the said case which was admitted as exhibit D5. That the judgment was ex- parte where the decree declared her the 3rd defendant as the lawful owner of Plot No.322. The decree on that case was received by the Court for judicial notice.

She testified that in 2015, there was project of road extension by the Government and assessment was done on the involved plot. That when the surveyors assessed and measured the suit plot, they discovered that there are two plots i.e. Plot No.322 and another small plot beside it which belonged to the plaintiff. That, in actual fact the suit plot belongs to her, the 3rd defendant. She insisted that the whole of plot No. 322 belonged to her and the plaintiff does not own any piece of land in the area.

She prayed for the Court's order that her plot (suit plot) be surveyed and registered and that the rightful place of the plaintiff is Plot No. 117 Block "Z" not her plot No. 322 Block J.

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In re-examination, DW2 stated that the survey on the suit plot did not continue to the final after the plaintiff went to the Municipal Council and complained then the survey process was stopped.

After that the Court visited the locus in quo on 05th October 2023 in attendance of the parties and their advocates. Also the Court re-summoned DW1 the land surveyor for more clarifications on his evidence which he testified in Court for the Court's understanding of the location of the two plots i.e. the suit plot which is Plot No. 322 Block J and Plot No.117 Block Z.

Having gone albeit briefly through the whole evidence which was adduced in this suit, now I will determine the issues. I will start with **the first issue which is whether the plaintiff is the lawful owner of the suit premises.** In determining this, first it is important to know where is the suit premises which the plaintiff is claiming to belong to her. According to the pleadings of the plaintiff in her plaint, the suit premises is plot No. 117 Block Z located at Magomeni.

However, according to the evidence which was adduced by all parties to this suit, the plot which is the source of the dispute between the plaintiff Severin Kanyaburugo and the 3rd defendant, Tatu Uchungu is the plot described as plot No. 322 located at Mlandizi and Fundikira Streets, Magomeni and not the plot No. 117 Block Z located at Magomeni. The

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witness of the 1st and 2nd defendants DW1 who is the surveyor, told the Court that the plots are separated and different plots and they are located away from each other for the distance of about 210 meters.

I said earlier that, this Court visited the locus in quo to ascertain the location of the suit premises which is the source of the dispute between the plaintiff and the 3rd defendant. This Court found that the two plots i.e. No. 117 Block Z and Plot 322 Block J are two different plots. It shows clearly that the suit premises which each of the disputed party claims to own is Block No. 322 Block J. The Court also observed that each party have her own part of land on the area which is not party of the dispute. The Court observed that the parties are neighbours on the suit premises each with her own parcel of land. That the source of dispute is the area which is between them. Therefore the Court is of the view that what is in dispute is the ownership of Plot No.322 Block J.

At the locus in quo, DW1 asked to show the location of Plot No.117 Block Z which was purportedly allocated and registered in the name of the plaintiff. DW1 showed a different area which seems to be occupied by other completely different people. Also the witness DW1 seems not to know the exact location of Plot No. 117 Block Z but just guessed the location which has other houses and well away from the area in dispute.

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At the locus in quo, the Court observed that, the plaintiff has her part of the undisputed area which there is her house. Also the 3rd defendant have her own part of undisputed area where there is her house. What is in dispute is the area between them.

Therefore, according to the evidence, each of the disputed party owns her own part of land on the area but each of the party claims the ownership of the area between them, each claiming that her opponent has trespassed to her land.

This Court has established that the suit premises is Plot No. 322 and not Plot No.117 Block Z.

The plaintiff said she and her husband the late Kanyaburugo bought the suit premises in the 1976. She produced exhibit P1 as a proof that she bought the same from TANU, branch of Zizi la N'gombe. The defence has contested the illegality or authenticity of the document exhibit P1 on the reason that the document had no official stamp of that office namely TANU, Zizi la Ng'ombe branch. However, this Court is satisfied that the document is authentic for the reason that the contents of the document creates a probability that the document is genuine. According to the contents, TANU office sold the area located at the junction of Fundikira and Mlandizi which is the suit premises to the plaintiff and her husband. The plaintiff went on to occupy the area for years and later she requested

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for survey of the area. I am satisfied that the plaintiff have established on balance of probability how she got the area which is now the suit premises.

It is in evidence that the plaintiff requested to the 2nd defendant, the Kinondoni Municipal Council for survey of the plot in dispute and the survey was carried on as requested in 2005. However, in the registration of the plot after survey it seems that there was an error on the map where instead of a map on registered plot No 117 to show that it was along Fundikira/Mlandizi Street which is where the area of the plaintiff is located, the map showed complete different location and fuelled the long time dispute between the parties which started way back in 1980's.

I have discovered from the evidence that the plaintiff is not the owner of Plot No. 117 Block Z but she was erroneously issued with the Title of the area which is not hers. The evidence shows that the plaintiff's area is located at Plot No. 322 and not on Plot No. 117 as per the Title which was issued to her and admitted in Court as exhibit P3.

At Plot No. 322, which is the suit premises, the plaintiff neighbours the 3rd defendant. DW1, the Land Surveyor admitted that the suit premises involves two people, the plaintiff and the 3rd defendant.

The contents of exhibit D2 shows that the plaintiff cannot be the owner of Plot No. 117 Block Z. There was a letter from the Director of Kinondoni.

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Municipal Council addressed to the Land Officer, Kinondoni Municipal which explained that, there were inspection of the two plots, No 117 Block Z and No 322 Block J and it was discovered that those are the two different Plots.

However, the plaintiff had requested for the survey of her area located at Mlandizi/ Fundikira, the survey was done but with an error which was done by the survey and registration authorities, the plaintiff was issued with Plot number which was not hers and was not located on her area.

The evidence shows further that the 3rd defendant also claims the ownership of the suit premises and claim that she bought it on 20th November 1989 from one Mzee Ramadhani. Exhibit D3 shows that the 3rd defendant bought Plot No. 322 located at Mlandizi/ Fundikira Street. It was witnessed by the Chairman of the C.C.M Magomeni Makuti branch. Exhibit D.4 shows a collection of rent payment receipts where the 3rd defendant was paying rent on House No. 322. There is exhibit D5 which is a plaint where the 3rd defendant instituted a suit RM Civil Case No. 187 of 2000 against Libent Kanyaburugo, husband of the plaintiff, praying among other reliefs, a declaration that he is the lawful owner of the whole Plot No. 322 Mlandizi/ Fundikira Street. On the Decree of the said case, the judgment was entered in favour of the 3rd defendant (who was then

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the plaintiff). According to the judgment, the 3rd defendant was declared as owner of the whole of No. 322 Mlandizi/ fundikira Street, Magomeni Makuti, Dar es Salaam.

However, the pertinent question is what is the whole of No.322 Mlandizi/ Fundikira Street? Does it include the area which is also currently occupied by the plaintiff which according to the Court's observation, does not fall within the area claimed by the 3rd defendant?

The Court has also judicially noted the contents of exhibit P2 which is the judgment of Criminal Case No. 1266/91 at Ilala District Court where the accused was Libent Kanyaburugo. The said Kanyaburugo was charged for trespass on Plot No.322 following the charges filed by Tatu Uchungu, the 3rd defendant in 1991. It was the observation of the District Court that the 3rd defendant (then the complainant) bought the plot which the portion of it falls under the area in dispute. The District Court went on to declare the accused as the lawful owner of the premises and the complainant was advised to sue the vendor Mzee Ramadhani in civil court. The 3rd defendant indeed instituted a civil case not against Mzee Ramadhani but against the accused Libent Kanyaburugo.

In the analysis of the whole evidence, I have observed as follows;
First, the plaintiff has bought a suit premises in the year 1976 with her husband. Later in 2000 she requested for the plot to be surveyed. It was

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surveyed but the Title Deed which was issued to her contained fatal errors on the Deed Plan which resulted into the plaintiff being issued with a Title which shows a different location instead of the one the plaintiff was occupying.

Second, the 3rd defendant bought her area in 1989, hence it is clear that she found the plaintiff and her husband already on the area. The Court has observed that the area which the 3rd defendant purchased from Mzee Ramadhani, took off a portion into the plaintiff's area and this is the source of the dispute. This Court finds that since the 3rd defendant was the one who found the plaintiff on the area then it was she who encroached the area of the plaintiff which comprises the suit premises.

The plaintiff stated in her evidence that the 3rd defendant bought and moved to the part of her area ten years after she and her husband has already been in occupation of the suit premises. The defendant never admitted that fact. When she was questioned about the presence of the plaintiff on the suit premises, she said that the plaintiff was occupying a small piece of land beside the 3rd defendant's area.

In the judgment of Ilala District Court, it shows that, the 3rd defendant was complaining that the accused, the husband of the plaintiff have trespassed for about six paces into her area, the fact which was admitted by the 3rd defendant.

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Exhibit P7 is a letter from the 3rd defendant dated 14th September 2010 whose contents were directed to the plaintiff informing the latter that she is joining her wall with the plaintiff's building. The letter was stamped by the Chairman of the Street Government, Makuti A, Magomeni. This letter shows more than anything else that the plaintiff owns a land at the suit premises hence the 3rd defendant could not claim to own the whole area of plot No. 322 while she was here asking her neighbour the plaintiff to build some bricks in her area which join their places.

From the above observation, it is my finding that the plaintiff is the lawful owner of the suit premises. The fact that the Title exhibit P3 shows another location is a result of mistake or errors on the authorities which surveyed the plot and issued the defective Title. The plaintiff then cannot lose her portion of land which is found at the suit premises because of the error which was not contributed by her in any way.

The second issue is whether there was a subdivision of the suit premises. The Land Surveyor DW1 stated that the suit premises is a demarcated area meaning that the survey process started but was not finished due to the dispute on the premises. Therefore as of now, the suit premises is un-surveyed and there is no Title on the said premises. It is in the evidence by DW1 that Tatu Uchungu, that, the 3rd defendant made *Alle*.

request to the Kinondoni Municipal to survey the suit premises. However the survey was not done completely due to the dispute on the area.

DW1 stated further in the survey process which was never completed, he planted a beacon but denied to create a double allocation on the premises. The plaintiff claims that the beacon planted by DW1 has created two plots and also created double allocation crisis over the area causing suffering and inconvenience to the plaintiff.

DW1 planted a beacon on the suit premises while in the process of survey of the suit premises. However, he said that the survey was not completed, the area is still un-surveyed and hence cannot be seen in the area map. This is proved by exhibit D1 which is the map of Magomeni area. In the map, Plot No. 322 does not exist as it is un-surveyed. In the circumstances this Court finds that there has never been a subdivision of the suit premises. The subdivision could have been done by the allocating authorities by survey process. Since the survey have not been done to the area, then there is no evidence that there was a subdivision.

DW1 admitted to have planted a beacon on the suit premises, but since the survey was never completed and the land registered accordingly, the beacons remain ineffective until the survey on the area is completed. Hence the second issue is answered in negative.

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The third issue is on the reliefs which the parties are entitled with.

The plaintiff has prayed to be declared the lawful owner of the suit premises referred to as Plot No. 117, Block Z, along Fundikira Street/ Magomeni Makuti, Kinondoni Municipality, Dar es Salaam, held under CT No. 102299.

It is the principal of the law that the Court will only grant the party what the party has asked or has pleaded. I totally agree and I am bound by this principle. However I believe that there are circumstances which the Court might find itself need to depart from the said principle. This depends on the circumstances surrounding the matter based on facts, evidence and findings of the Court.

I believe that the circumstances of the case at hand necessitate the Court to decide and grant the reliefs basing on the findings of the Court which might be different from what the plaintiff is praying in the reliefs. It is the finding of this Court that the suit premises is not Plot No. 117 Block Z but the suit premises is on Plot No. 322 Block J, a demarcated, un-surveyed area. This is the area which is owned by the plaintiff and this is the area which is the source of dispute between the plaintiff and the 3rd defendant. This Court has found that the plaintiff is the lawful owner of the said suit premises. Being the lawful owner, she is entitled to request *Allo.*

the planning authorities to resurvey the suit premises and issue her the correct certificate of occupancy on the said land. Also being in possession of the defective Title, in alternative, she has right and obligation to notify the issuing authority, here being the Commissioner for Land and or the Registrar of Titles to have the defective Title cancelled or corrected.

Since the plaintiff is the lawful owner of the suit premises, the 2nd defendant cannot survey and or divide the suit premises by the request of the 3rd defendant. The 3rd defendant can only request survey on her part of land which is not in dispute. Hence, unless requested otherwise, the 2nd defendant is to remove the beacon reference No. DPC 359 planted on the suit premises.

On the prayer of permanent injunction on the suit premises, the Court has observed that the 3rd defendant has her own piece of land which is beside the suit premises, the property of the plaintiff. Therefore, a permanent injunction is entered on the 3rd defendant from trespassing or encroaching the suit premises.

On a restrain order against the 7th defendant, the Court has failed to see how the 7th defendant has interfered on the ownership of the suit premises. The plaintiff have claimed that the 7th defendant Salum Mazoea who was the Street Chairman of the area was telling her tenants to stop paying her the rent and that he told the tenants that it is the 3rd defendant

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who is the owner of the suit premises. However, this Court finds that the plaintiff have failed to establish her claims.

On the plaintiff's claims on the 4th, 5th and 6th defendants, in her evidence the plaintiff said that she claim a total of rent fee of ten years from 2013-2023. The plaintiff tendered the lease agreements which were admitted as exhibit P5 collectively. I have read the lease agreement between Severina Kanyaburugo and Benyani Basusu Babel (5th defendant). It shows tenancy started on 01/11/2012 and it was set to end on 30/10/2013. There was no evidence to show that the tenancy was renewed for another term until 2023. Hence the claims of the payment of ten years rent fee from 2013 to 2023 was not proved. The same is for the tenancy of Faustine Stephen Masawe (6th defendant). His tenancy started on 01/11/2010 and was to end on 30/10/2011. There was no evidence that the lease was renewed to the current year 2023 where the tenant purportedly refused to pay rent fee. There was no evidence on Mustafa Mringo (4th defendant) on his tenancy.

It was the duty of the plaintiff who alleges that the said tenancy refused to pay her the tenancy rent, to prove her allegations. This is trite law under the provisions of Sections 110 and 115 of the Evidence Act, Cap 6 R.E 2022.

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I find that the plaintiff have failed to establish her claims on the 4th,5th,6th, and 7th defendants hence she is not entitled to any reliefs she claims against them.

Having found that the plaintiff is the lawful owner of the suit premises, I also find that the defendants are not entitled to any relief as they did not file any counter claim.

It is hereby ordered as follows;

- i. It is declared that the plaintiff is the lawful owner of the suit Plot which is referred inhere as Plot No. 322 Block "J" (un-surveyed area) which is located along Mlandizi/Fundikira Street, Magomeni, Kinondoni Municipality, Dar es Salaam.
- ii. The 2nd defendant is ordered to remove the beacon reference No. DPC 359, planted by the 2nd defendant in the suit Plot.
- iii. A permanent injunction against the 3rd defendant from encroaching on the suit Plot.
- iv. Each party to bear their own costs.

It is so ordered.

Right of appeal explained.



A. Msafiri

A. MSAFIRI
JUDGE

14/11/2023