

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

LAND CASE NO. 287 OF 2023

NGWENGWE CHRISTOPHER BULULAPLAINTIFF

VERSUS

JONAS MASHAKA MADALE1ST DEFENDANT

HAWA LEONARD MLUNYA.....2ND DEFENDANT

SEPCO DEBT COLLECTION & AUCTIONEERING

COMPANY LIMITED.....3RD DEFENDANT

LOCUS DEBT MANAGEMENT LIMITED.....4TH DEFENDANT

EXPARTE JUDGMENT

Date of last Order: 23/5/2024

Date of Judgment: 31/5/2024

A. MSAFIRI, J.

The plaintiff instituted the suit against the defendants. He claims that he is a lawful owner of the properties found on two pieces of land located at Mbezi Makabe, kwa Pesapesa, Ubungo Municipality, Dar es Salaam City. (Herein the suit premises). He claims that he purchased the two pieces of land on 30/10/2019 and built two houses on the properties.

The plaintiff claims that the 1st and 2nd defendants are claiming ownership of the two pieces of land and that they have instructed the 3rd & 4th defendants to forceful evict the plaintiff and his tenants from his two

Atls.

houses (suit premises). Therefore, the plaintiff prays for Judgment and Decree against the defendants as follows:-

- a) A declaration that the notice for vacant possession or forceful eviction of the two suit properties/pieces of land (two houses) located at Mbezi Makabe, kwa pesapesa, Ubungo Municipality, DSM City, measuring 25x30 sqm and another measuring 25x25 sqm, is illegal and ineffectual.
- b) A declaratory order that the plaintiff is the owner of the two suit properties/pieces of land (two houses) located at Mbezi Makabe, kwa pesa pesa, Ubungo Municipality, Dar es Salaam City.
- c) An order for permanent injunction restraining the 1st, 2nd, 3rd and 4th defendants and their agents, servants or any other person drawing rights from them, from evicting or claiming ownership of the two disputed houses located at Mbezi Makabe, kwa pesa pesa, Ubungo Municipality, Dar es Salaam City.
- d) Payment of TZS 200,000,000/= as general damages.
- e) Interest at Court's rate on the decretal sum from the date of judgment till full payment of decretal sum.
- f) Costs of the suit be borne by the 1st, 2nd, 3rd and 4th defendants.
- g) Any other relief (s) and or orders (s) that this Honourable Court may deem fit and just to grant. *Act*

In this suit, the plaintiff was represented by Mr. Nehemia Nkoko, learned advocate. The 1st, 2nd and 4th defendants were served but refused the summons. The affidavit of service to that effect was produced in Court and forms part of record.

The 3rd defendant entered appearance represented by one Mwinyi Salum Mkambala, the Director. She even filed her written statement of defence. However, after filing her defence, she never entered appearance in Court again despite several summons being issued to her. After that the Court had no option but to struck out her written statement of defence and entered an exparte order against all defendants.

Before the exparte hearing, the Court framed two issues as follows:-

1. Whether the plaintiff is the lawful owner of the two pieces of land located at Mbezi Makabe, kwa pesapesa, Ubungo Municipality, Dar es Salaam City (the suit property).
2. To what reliefs are parties entitled to.

At the hearing, the plaintiff summoned three (3) witnesses including himself. Testifying as PW1, the plaintiff stated that, the reason for instituting this suit is that sometime in August 2023, he received a summons from the office of Street Government of Mbezi Makabe. The

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summons directed him to report at the office of Ubungo District Commissioner.

That he went at the District Commissioner office and found Mashaka Jonas Madale (1st defendant), Hawa Leonard Mlunya (2nd defendant) and the Auctioneers from the 3rd and 4th defendants. That the said defendants were intending to sell his two houses both located at Mbezi Makabe kwa Pesapesa.

PW1 testified further that he got ownership of the two-suit premises by purchasing them in a public auction. He said that he bought the first house on 30/12/2019 in a public auction where he emerged the highest bidder and bought the same at a price of TZS 15 Million. That the auction was conducted by Maseto Auctioneers Debt Collection. That he deposited the required amount at Akiba Commercial Bank and he was given a Certificate of Sale by Maseto Auctioneers.

He said further that he was issued with a copy of the letter from the local Government dated 23/12/2019 which was giving Maseto Auctioneers permit to conduct an auction. The letter, (a photocopy) was admitted in Court as Exhibit P1. The plaintiff said that the letter was a photocopy because the original one was submitted to the Ubungo District Commissioner Office. PW1 also produced the Certificate of Sale which the court admitted as Exhibit P2. *Alls*

He said that when he purchased the first house it was incomplete and he reconstructed it into residential house with two units and rented it/leased it. That he started reconstruction of the houses immediately in 2020 after purchasing the suit premise, but none of the defendants came forward claiming the suit premise.

He testified further that he purchased the second suit plot on 29/10/2021 also in a public auction after he was declared a winner/highest bidder. That the said house is also located at Mbezi Makabe kwa Pesapesa. He purchased the same for TZS 30 Million which he deposited into NMB Bank account at Kariakoo Branch. After that, he was issued with a Certificate of Sale and also was given a copy of a letter from Ubungo District Commissioner office which permit the auction to be conducted. The permit and the Certificate of Sale were admitted as Exhibits P3 and P4 respectively. That the house was handed over to him on 29/10/2021 and he, PW1 immediately started reconstruction of the same.

He averred that at all the time during the auction, the purchase and reconstruction, none of the defendants came forward claiming interest or ownership of the suit premises. PW1 stated that he met the defendants at the office of the District Commissioner after having already completed construction of the two houses.

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He prayed for the declaration order that he is the lawful owner of two houses (suit premises) located at Mbezi Makabe kwa Pesapesa, the first premises with size 25 x 30 meters, and the second premises with 25 x 25 meters.

PW2 was one William Mwakatobe who said that he is a registered auctioneer from Maseto Auctioneers and Co Ltd. He said that he knows Ngwengwe Christopher Bulula (Plaintiff) as a client whom he had sold a house by public auction. That the house is located at Mbezi Makabe kwa Pesapesa. He told the Court that, before conducting an auction, he served the 14 days' notice through the Street Government office. That, after that he served 14 days' Notice in a Newspaper.

After that he requested for permit to conduct an auction from the District Commissioner office at Ubungo which was granted, then on 30/12/2019, the auction was conducted where the plaintiff emerged the highest bidder. That, the plaintiff deposited the purchase money TZS 15 Million at Akiba Commercial Bank, Ubungo Branch. After the Bank has confirmed the payment, the Auctioneer issued a Certificate of Sale to the plaintiff. PW2 stated that on 30/12/2019, they handed over the purchased house to the plaintiff. *AMs.*

The witness identified in Court Exhibits P1 and P2. PW2 insisted that all the lawful procedures were followed, the auction was lawfully conducted and the plaintiff is the lawful and bonafide purchaser of the suit premises.

PW3 was one Abba Maulid, who stated that he works at Steam Generations Recoveries Ltd which has its offices at Dar es Salaam. He testified that he knows the plaintiff as his client when he conducted a public auction and the plaintiff emerged a winner in the said auction.

That the auction was conducted on 29/10/2021 and it was for the sale of the house located at Mbezi Makabe kwa Pesapesa Street. He said further that all the legal procedures for conducting an auction was complied with.

That first he issued a 21 days' Notice to the borrower one Mashaka Jonas Madale and a copy of it was sent to the Street Executive Officer of Mbezi Makabe. Another copy was issued to the District Commissioner office, requesting for permission to conduct a public auction. PW3 said that they received the requested permit and then they advertised the auction by public announcement on 28/10/2021. That on next day 29/10/2021 at 09:00 the auction started where the plaintiff emerged the winner. That the plaintiff deposited the purchase money on the same date at NMB Bank and was issued with a Certificate of Sale.

The witness identified Exhibit P3 and P4 as the letter of permit from the Office of the District Commissioner and a Certificate of Sale. He

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maintained that the public auction was conducted by following all legal procedures under the supervision of the Street Government leadership and the District Commissioner's Office. That at all this time there was no objection from anyone, and nobody came out claiming ownership of the sold suit premises.

Having gone through the evidence, I will start determining the first issue which is whether the plaintiff is the lawful owner of the two pieces of land located at Mbezi Makabe, kwa Pesapesa Ubungo Municipality. It is trite law that he who alleges must prove. This cardinal principle is set under Sections 110 and 112 of the Evidence Act, Cap 6 R.E 2022 and has been reiterated in numerous cases both of this Court and the Court of Appeal. In civil cases, the standard of proof is on a balance of probability.

According to the facts in the pleadings and the evidence adduced in Court, the plaintiff bought the two unsurveyed land properties located at Mbezi Makabe, kwa Pesapesa, within Ubungo Municipality.

The plaintiff has averred that he bought the two disputed land properties at a public auction, the one conducted in 2019 and the other conducted in 2021. That, the plaintiff became aware that the 1st defendant took a loan from NMB Bank PLC and on default, a piece of land which was secured for the said loan was sold in public auction on 29/10/2021 to recover the loan. In addition, the evidence shows that the 2nd defendant

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also was advanced a loan by Akiba Commercial Bank and mortgaged one of the suit property. That, she failed to repay the money, hence the mortgagee move on to exercise the right of recovery by selling the collateral in public auction. The plaintiff emerged the winner in both auctions and managed to purchase both landed properties.

It is in evidence by PW1, PW2, PW3 supported by exhibits P1, P2, P3 and P4 that the public auctions were legally conducted and the legal procedures for conducting a public auction were adhered.

Section 135 of the Land Act, Cap 113 R.E 2019, provides for the protection of a person who purchases a mortgaged land from a mortgagee or receiver. Section 135 (5) of the Land Act (supra) provides that; A person referred to subsection (1) (i.e. a purchaser), shall be entitled to possession of the mortgaged property immediately upon acceptance of a bid at a public auction or contract of sale of that mortgaged property.

In the instant suit, the plaintiff has established that he purchased the suit premises in public auction in 2019 and 2021. The premises were in unfinished state. He has renovated/reconstructed the premises and they are now residential apartments with the families living therein.

In accordance with the provisions of Section 135 of the Land Act, the plaintiff is the bonafide purchaser of the suit premises who is entitled and

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has already took possession of the suit premises. It is in evidence that none of the defendants has ever came out to claim the suit premises from 2019, to 2021 when the two houses were sold in auction.

Furthermore, neither of the defendants came out to claim the suit premises at all the time the plaintiff was reconstructing the suit premises until three years later in 2023 when the plaintiff was summoned by the defendants at the District Commissioner's office, the defendants claiming ownership of the suit premises. Basing on the provisions of Section 135 of the Land Act, the plaintiff is entitled to the ownership of the suit premises as he obtained possession of the suit premises in 2020 and 2021 and since then he has been in occupation of the same, enjoying the possession without any interference from anyone. For the above reasoning, I find that the plaintiff is the lawful owner of the two suit premises. The first issue is answered in affirmative.

The second issue is entitlement of the parties in terms of the reliefs. I find that the defendants have no any claim of entitlement over the two suit premises since the plaintiff have established on balance of probability that he is the bonafide purchaser of the suit premises hence the owner of the same.

In his prayers for reliefs, the plaintiff have claimed for payment of TZS. 200,000,000/= as general damages plus interest rate on the decretal sum.

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The plaintiff have simply stated in his claim in the plaint that the defendants caused the plaintiff to be summoned to the District Commissioner Office and was intimidated and threatened to make sure that he vacates the two pieces of land or he will be forceful evicted. The plaintiff also has stated in his plaint that, he has suffered psychological trauma as the 1st and 2nd defendants have instructed the 3rd and 4th defendants to forceful evict the plaintiff and his tenants from his houses located at the two suit premises.



However, in his evidence in Court, the plaintiff did not prove how he has suffered as per his claim. He did not even produced a proof that he was indeed summoned at the District Commissioner Office and how the defendants threatened to evict him. It remained the mere verbal words from the plaintiff which were not supported by any other piece of evidence. Even the said summons or a copy of it was not produced in Court to prove that the plaintiff was indeed summoned to the office of the District Commissioner in 2023.

In the circumstances, the Court did not see any evidence which might lead it to award the general damages of TZS. 200,000,000/= being claimed by the plaintiff. The Court has therefore disregarded this relief. Also the prayer for declaring a notice for vacant possession illegal is disregarded as there is no proof of existence of such notice. *Atle*

After this analysis, this suit is decided in favour of the plaintiff and it is hereby ordered as follows:

1. It is declared that the plaintiff is the lawful owner of the two suit properties/pieces of land (two houses) located at Mbezi Makabe, kwa Pesapesa, Ubungo Municipality, Dar es Salaam City.
2. A permanent injunction order is issued restraining the 1st, 2nd, 3rd and 4th defendants and their agents, servants or any other person drawing rights from them, from evicting or claiming ownership of the two disputed houses located at Mbezi Makabe, kwa Pesapesa, Ubungo Municipality, Dar es Salaam City.
3. Costs of the suit to be borne by the defendants.

It is so ordered.

 
A. MSAFIRI
JUDGE
31/5/2024