

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 95 OF 2022**

PAUL MEENDA MUSHI.....PLAINTIFF

VERSUS

JUSTIN KYAMTOIJO TINEISHAMO.....1ST DEFENDANT

PETER KAMBARAGE NYERERE(Administrator of
the Estate of late John Julius Nyerere).....**2ND DEFENDANT**

THE COMMISSIONER FOR LANDS.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

JUDGMENT

22/02/2024 & 20/03/2024

A. MSAFIRI, J.

The plaintiff Paul Meenda Mushi have instituted a suit against the four
(4) defendants namely hereinabove.

The plaintiff claims to be the lawful owner of Plot No. 507/2/1 and
507/2/2 Block C, Mikocheni which were previously known as Plot No.
504/2 Block C Mikocheni. (herein the suit plot). That he acquired the suit
plot on 18th July, 1977 and it was originally described as Land measuring
285 M, Block C Mikocheni, Kinondoni District Dar es Salaam. That on 27th
February, 2015 the 1st and 2nd defendants started to claim ownership of
the suit plot and solicited the 3rd and 4th defendants to demolish the
structures which the plaintiff had already developed on the suit plot. *Atls.*

Following that the plaintiff prays for judgment and decree against the defendants as follows;

1. A declaration that the plaintiff is the lawful owner of Plots no. 507/2/1 and 507/2/2 Block C, Mikocheni, Kinondoni Dar es Salaam.
2. A declaration that the 3rd defendant purported allocation to the 1st and 2nd defendants is unlawful and unjustified.
3. A declaration that the 1st and 2nd defendants have no right to the said plot.
4. An injunction to restrain the 1st and 2nd defendants or workmen or others working for or in favour of the said 1st defendant from demanding the suit land and disturbing plaintiff occupation of the land.
5. General and punitive damages to be assessed by the court.
6. Costs of the suit.

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. They prayed for the dismissal of the suit with costs.

In the suit, the plaintiff was represented by Mr. Adrian Mhina, learned advocate, assisted with Mr. Edwin Urassa, learned advocate. The 1st defendant had legal services of Mr. Dennis Kahana, learned advocate. The 3rd and 4th defendants were represented by Ms. Lilian Machange, learned State Attorney. The 2nd defendant appearance in court was on and off. He filed his written statement of defence. At one time he was represented

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by one Mr Kassim Mussa, learned advocate who appeared several times including during the First Pre-trial Conference. After mediation, the 2nd defendant entered appearance in court on 29/3/2023 and was represented by the advocates Anne Mtono and Esther Mbago. On that date the matter was set for Final Pre Trial Conference to be conducted on 24/4/2023. However, neither the 2nd defendant nor his advocates entered appearance in court on the scheduled day. The Final Pre-Trial conference was adjourned due to the absence of the 2nd defendant and was set on 29/5/2023, again the 2nd defendant failed to appear. This court therefore strike out his defence and entered ex-parte hearing against the 2nd defendant.

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

- 1. Who is the lawful owner of the suit property?*
- 2. To what reliefs are parties entitled to.*

In proving his case, the plaintiff brought five witnesses who testified orally. The plaintiff himself testified as PW1 and stated that he purchased the suit plot in 1974 from the native owners who used to farm on the area and they agreed to sell to him a piece of land which measured a half an acre. That after purchase, he requested and was granted a short term

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offer in 1976. And that in 1977 he got a long term offer. He produced the long term offer which was admitted collectively as exhibit P1.

PW1 stated further that he started construction of the structures on the suit plot whereby he erected two houses. That he later got information that the suit plot was allocated to Tanzania Housing Bank (THB). That he made inquiry to the office of Street Government and they confirmed that the plot was allocated to THB. That he and his neighbours occupying the plots near him were all summoned by Kinondoni Municipal Council where they were told that they have trespassed into THB's land.

PW1 testified that THB came to the suit property in 1995 and claimed to be the owner of the suit plot and demand for vacant possession but the plaintiff and his neighbours refused to vacate the premises. That the disputing parties met at the office of Street Government and after discussion, it was agreed that the suit plot be surveyed. The Surveyor was instructed and after the survey, six plots were established. That PW1 got back his developed land and started to construct apartments which he completed the two apartments in 2013. He named his neighbours as Abdul Boma and D'Souza.

PW1 said that the late Tineishemo who is the father of the 1st defendant was his neighbour who has a business stall near the plaintiff's plot. That the claims of the 1st defendant that part of his plot was

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D'Souza's plot and that D'Souza gave it to late Tineishemo are untrue. That the 1st defendant went to the Ministry for Land and complained that the plaintiff's plot belongs to his late father who got it from D'Souza. That the Ministry for Land, without making any inquiry believed that the plaintiff was a trespasser. That the Ministry went and demolished the whole structures at the suit plot. That his tenants who were occupying the apartments were forcefully evicted and the apartments demolished. He said further that when he went at the scene, he was arrested by the Police and charged for forceful entry. That after hearing, the Resident Magistrate Court at Kisumu found him not guilty and set him free. He produced the judgment of the said matter which was received by the court for judicial notice.

PW1 said further that the late Tineishemo was his neighbour and he had built his residential house near the suit plot. And that there was never any dispute between them. He prayed for declaration that the Commissioner for Lands did not lawfully allocate the suit plots to Tineishemo and John Nyerere (the 2nd defendant). And that the 1st defendant who occupies Plot No. 507/2/1 and the 2nd defendant who occupies Plot No. 507/2/2 be evicted from the respective plots.

PW1 stated that he lawfully owns the suit plots and he has been paying land rent. He produced the payment receipts which were admitted *All.*

as exhibit P3 collectively. He said that the letter of offer exhibit P1 has never been revoked by any Government authority.

In cross examination by the council of the 1st defendant, PW1 said that he was allocated a piece of land which has a size of 2850 square meters in Block C. He admitted that the sizes of the areas of the 1st and 2nd defendant does not add to 2850 square meters. He said that his claim is that the plot which was allocated to Tineishemo belongs to him and the Certificate of Title to that area was wrongly issued.

In cross examination by the counsel for the 3rd and 4th defendants, the plaintiff PW1 insisted that his letter of offer has never been revoked by any authority. He was shown the judgment of RMS Court Kisutu and admitted that it says the offer was revoked and the land allocated to THB but was quick to point out that the judgment was wrong. He also said that his plot was No. 507/2 and the proof is on the survey map.

PW2 was one Liberty Nelson Mosha. He testified that he was once a Chairman of Mikocheni B Street Government from 2004 – 2009. He said that there was dispute on the suit plot whereby the THB staff claimed the area to belong to them while the area was already occupied by other people. That he arranged for a meeting between the two disputing parties i.e. the THB ex staff and Mikocheni residents who were already occupying the disputed area.

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PW2 stated that he met with the two disputing parties at the Street Government Office and they later went to visit the disputed area. That they found that the area was already being occupied by people who were living there namely Nurdin Mushi, Abasi Aboud Bomba, Paul Mushi and Remi Shirima. That, he asked those residents on how they acquired the said area. That Abasi Bomba and Paul Mushi said they have ownership documents which they showed to the Street Government leaders.

The witness stated further that the Street Government leaders decided that the occupiers of the disputes areas should not be evicted save for Shirima who has trespassed. That the parties to the dispute agreed to hire a Surveyor who conducted survey of the disputed area and came out with new plots from the former map. That among the people who acquired the new plots was the plaintiff, Paul Mushi.

PW2 stated that the late Tineishemo was his neighbour and friend and that they were sharing a fence. That the late Tineishemo was never within the disputed area (THB's area) and that he has never received any complaint from the late Tineishemo about the disputed area. That the late Tineishemo has never been involved in the dispute between THB ex staff and the occupiers of the land in dispute. The witness said he knows the plaintiff Paul Meenda Mushi.

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In cross examination by the counsel for the 1st defendant, PW2 admitted that he did not see Paul Mushi's ownership documents.

PW3 was one Suleymani Ally Sagong'ho who said that he was Street Executive Officer of Mikocheni B Street from 2013-2015. That he know the plaintiff as he was a resident of Mikocheni B. He said he know Justin Tineishemo as he was also the resident of Mikocheni B but he does not know one John Julius Nyerere. He testified that during his term as Street Executive Officer, he received a complaint from Justin Tineishemo that Paul Mushi(the plaintiff) has demolished his hut and destroyed his properties. That he informed the Street Chairman and summoned Paul Mushi to attend at the Street Office but the discussions did not take off as the Street Chairman was not present. That, Tineishemo forwarded his complaint to the Kinondoni Municipal Council where he, PW3 was summoned by the Municipal Engineer. He said that the hut of Tineishemo which was demolished by the plaintiff was nearby the plaintiff's apartments.

That, after that the said Engineer Mahinya came accompanied with about 12 people and went on to demolish the plaintiff's apartments. That as a Street Executive, he was not served with any notice of demolition from any authority. That, after demolition, he came to know that there was land disputes between the plaintiff, 1st and 2nd defendants on the

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same area. That before that, he never knew that there was any land dispute between the parties and he knew that the disputed area belonged to THB people.

In cross examination by the counsel for the 1st defendant, PW3 said that the plaintiff showed him his original Letter of Offer and it shows he owns Plot No.500, Block B. He said he did not know the size of the plot. When he was cross examined by the State Attorney, he maintained that the plaintiff's area is Block B, Plot 500. He was shown exhibit P1 but failed to point the said Plot 500, Block B on the document.

PW4 was one Hussein Khalfan Hussein. He gave evidence that he is a Land Surveyor working under the Ministry for Lands but his station is at Kinondoni Municipality. He said that there was a Plot which was owned by THB and it was known as Plot No. 504, Block D Mikocheni, Dar es Salaam. He produced a photocopy of the survey map which shows subdivision of Plot No. 507 Block C, Mikocheni Municipality, Dar es Salaam. The same was admitted as exhibit P4.

He said further that the map has six plots which are plots No. 507/1 up to 507/6, Block C Mikocheni, Kinondoni Dar es Salaam. He said that initially the area was a demarcated Plot No. 504, Block C but when it was surveyed, that number was changed from Plot No 504 Block C Mikocheni to Plot No. 507 Block C Mikocheni. *Alle*

He said that later, Plot No. 507 Block C was divided into six plots which are Plots No 507/1, 507/2, 507/3, 507/4, 507/5 and 507/6. In cross examination, the witness said that exhibit P4 is the map of THB area. He said that he don't know who requested for the subdivision of Plot No. 507 Block C.

PW5 was Nelson Edgar Said, who said that he is a Chairman of Mikocheni 'B' Street since 2019 until now. He said further that when he was handed over the office of Street Government of Mikocheni, there was various documents in the said office and among them were the documents concerning Plot No. 504 and the THB dispute. He produced the two letters from Kinondoni Municipal Council which they were admitted as exhibit P5 collectively.

Having closed the plaintiff's case, the defence started adducing their evidence whereby the 1st defendant testified as DW1. He denied to trespass the plaintiff's land located at Mikocheni B. He said that as the administrator of the estate of his late father one Jason Kyamtojo Tineishemo, he is the owner of plot located at Mikocheni B. He said that the plot he owns is different from the plot which is being claimed by the plaintiff in the suit. He said further that his plot is plot No. 507/2/1 Block C Mikocheni which is different from a piece of land which is described as land measuring square meter 2850 Block C, Mikocheni. He proceed to

Adle.

produce the original Title of ownership which was admitted in court as exhibit D1. That the Title is for 99 years from 01/01/2015. He produced letter of appointment as administrator of the estate of the late Jason Kyamtoijo Tineishemo. The same was admitted as exhibit D2. That he was appointed in 2010 and the late Kyamtoijo passed away in 1996. That after the appointment he followed up on the assets of his late father and among them was the Plot No. 507/2/1 Block C, Mikocheni. That he made necessary payments on the said land and he produced the invoices, receipts and acknowledgement of payments which were admitted collectively as exhibit D3. That Plot No. 507/2/1 Block C, Mikocheni has a size of square meters 1063. He said he has known that Plot since 1989 when their family moved to live in Mikocheni near the said Plot.

DW1 said he knew the plaintiff through several claims he meted against him. That the plaintiff have filed various cases against the 1st defendant claiming to be the owner of the disputed plot. He said that the instant case is the fourth case. He insisted that the suit plot which the plaintiff claims against him is unknown to him. He prayed for the dismissal of the suit with costs.

In cross examination by the counsel for the plaintiff, DW1 admitted that Plot No. 507/2/1 has been pleaded in the Plaint and it is similar to the one pleaded in his WSD. He admitted that when he was requesting for the

Title of ownership, he has no any other supporting documents. He admitted that there was a dispute between him, the 1st defendant and the 2nd defendant but they agreed to subdivide the disputed land after the reconciliation discussions which were led by the Permanent Secretary, Ministry for Lands. When he was cross examined by the counsel for the 3rd and 4th defendants, the 1st defendant said that his late father got the disputed land from purchasing it from one Jasinto D'Souza.

DW2 was Kajesa Minga. He was the witness of the 3rd and 4th defendants. He said he was a lawyer working at the Office of Assistant Commissioner for Land, Dar es Salaam and Pwani Zone. He said that his office received the complaint from Paul Meenda Mushi about the ownership of Plot No. 507/2/1 and Plot No. 507/2/2 Block C Mikocheni. He said that according to the records, initially there was Plot No. 504 Block C which was granted to THB in 1985. That THB was granted a Title which was registered with No. 30907. Later THB was put under receivership in 1995. The Receiver requested the Commissioner for Lands to make subdivision of Plot No 504 Block C Mikocheni and allocate it to five employees of THB.

In the process, the subdivision of Plot No. 504 Block C was done which led into forming of six plots (6). In those six plots there came out Plots No. 504/1, 504/2, 504/3, 504/4, 504/5 and 504/6. That while in the *Attg.*

process of allocation of the plots, the Ministry for Lands discovered that on the subdivided land there was an individual who has already developed the area and erected a building. That the Office of the Commissioner for Lands allocated that piece of land to that individual whose name was D'Souza.

DW2 stated further that the Office of the Commissioner discovered that there are two Plots with same Number 504 therefore the said office together with the Office of the Director of Mapping and Survey, rectified the one Plot No. 504/1-6 and renamed it to be Plot No.507. Therefore the six plots were renamed as Plots 507/1, 507/2,507/3,507/4,507/5 and 507/6. That the other Plot No. 504 is not part of this dispute.

He testified that, after the said subdivision and renaming of the plots, there was a complaint from one John Julius Nyerere whereby he claimed that he was allocated by the Municipal Council a Plot No. 402 Block C Mikocheni, but it was later discovered that the area claimed by Nyerere was formerly Plot No. 504 which later was changed to Plot No. 507.

That, following that discovery, the Office of the Commissioner for Lands and the Office of the Director of Survey and Plan summoned one D'Souza and Nyerere who was both disputing over the same Plot and after reconciliation, the disputed Plot No. 507/2 was subdivided into two plots namely Plot No. 507/2/1 which was allocated to Justin Kyamtoiyo

Alle

Tineishemo as the administrator of the late Jason Kyamtoijo Tineishemo. That the late Tineishemo got the plot having purchased it from the previous owner D'Souza. And that Plot No. 507/2/2 was allocated to John Julius Nyerere.

DW2 was shown exhibit P1 a letter of offer of the plaintiff but stated that the Office of the Commissioner has no record of the said Letter of Offer.

DW3 was Emily Andrew Nelson who testified as a witness of the 3rd and 4th defendants. He said he is a Senior Surveyor and works with the Ministry for Lands. He was shown the survey plans on the disputed plot, exhibits P4 and D1. He said that exhibit P4 was approved in 13/10/2005 and is a former plan which is no longer used by the Ministry as the area was resurveyed and has other survey plan which was approved on 24/11/2014. That in the resurveyed plan, there are seven plots which he named as Plots No. 507/1, 507/2/1, 507/2/2, 507/3, 507/4, 507/5 and 507/6.

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 who is the lawful owner of the suit property?**

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It is the requirement of the law that the one who alleges must prove. This is provided under the provisions of the Evidence Act, Cap 6 R.E 2019. (See Sections 110 and 112 of the Evidence Act). This requirement is emphasized in numerous authorities by the Court of Appeal and this Court. Among the cases are such as 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).

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. The plaintiff claims *Accts.*

to be declared that he is the owner of Plots No. 507/2/1 and 507/2/2 Block C, Mikocheni which were previously known as Plot No. 504/2 Block C Mikocheni and he is entitled to the peaceful enjoyment of the same. He also seeks for declaration that the 3rd defendant's purported allocation of the suit plot to the 1st and 2nd defendants is unlawful and unjustified.

In establishing his claims the plaintiff testifying as PW1 stated that he originally got the suit plot from the native owners back in 1977 where they agreed to sell him the piece of land of size of half an acre. That he processed and was offered a short term letter of offer and later was issued a long term offer. That the suit plot was originally described as a land measuring 2850 square meters, Block C Mikocheni and was later changed into Plot No. 504/2 Block C Mikocheni and finally was changed into Plot No. 507/2 Block C Mikocheni.

The court has admitted the letter of offer exhibit P1 collectively. It shows that on 25/7/1977 Paul Meenda was issued with a 99 years Letter of Offer of a land measuring 2850 square meters Block C, Mikocheni, Dar es Salaam City. It shows further that he had paid the required payments and was awaiting the processing of the Certificate of Occupancy.

However it is in the evidence that later it was discovered that the area in dispute was allocated to Tanzania Housing Bank (THB) and given to the retired employees of THB. By that time, the plaintiff claims he was

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already in occupation of the area with other people which he named as his neighbours. That they were invited for discussions to settle the land dispute whereby the ex-employees of THB were claiming the land in dispute while the said land was already occupied by other people including the plaintiff Paul Meenda Mushi.

Exhibit P2 shows that the land which was initially known as land measuring 2850 square meter is a part of Plot No. 504 Block C Mikocheni. That the land measuring square meter 2850 was initially allocated/given to Paul Meenda through a letter of offer with Ref. No. D/KN/A/9996/1 of 18/7/1977. The letter shows that due to the change of ownership, this Plot No. 504 Block C was allocated to Tanzania Housing Bank by a Letter of Offer with ref. No D/KN/A/22639/1/MNKH of 16/7/1983. Exhibit P2 reveals further that, due to the THB's failure to develop the land, the said Plot 504 was divided into nine (9) plots with numbers 398-406 and it was allocated to several people in different times in 1987-1988.

The letter concluded that it has been discovered that one K. Tineishemo of Dar es Salaam has never been allocated/granted the said area or part of the area. This letter was written by the City Commission of Dar es Salaam City on 09/3/1999 and was addressed to Mr Raithatha, advocate and copied to Paul Meenda.

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According to the contents of exhibit P2, the plaintiff Paul Meenda was allocated the land measuring square meter 2850 which was later part of Plot No. 504 Block C. However the ownership of the plot was changed whereby the plot was allocated to THB. The letter exhibit P2 shows further that although the ownership of THB was revoked after failure to develop the plot, it was not reverted to the plaintiff. Exhibit P2 shows that the Plot was divided into several plots and was allocated to several people. It is not shown in the letter that Paul Meenda was one of those several people who were allocated the divided plots.

The plaintiff produced exchequer receipts which shows that he was paying land rent on the land measuring 2850 square meters Block C Mikocheni. The receipts were admitted collectively as exhibit P3. The receipts shows that Paul Meenda paid rent on 22/10/2009 and on 07/11/2012 respectively. However the other evidence which was adduced by the plaintiff and his witnesses shows that at that time, the suit plot was already allocated to THB and the discussion of THB and the original occupiers were ongoing. Such evidence is Exhibit P2 which was written in 1999 and which shows that according to the change of ownership, the suit plot was allocated to THB in 1983 although it was initially allocated to Paul Meenda in 1977. *Adls.*

This letter exhibit P2 is supported by the evidence of Paul Meenda Mushi in Criminal Case No. 45 /2015 where he was charged for force entry into Plots No. 507/2/1 and 507/2/2 contrary to Section 85 of the Penal Code Cap 16. While he was testifying in defence, the now plaintiff said that Plot No 504 Block C Mikocheni was earlier known as Plot No 2850 square meter Block C, Mikocheni and it was owned by Paul Meenda Mushi. That it was later revoked and was granted to Tanzania Housing Bank. This is shown at page 5 of the judgment of the Resident Magistrate Court of Dar es Salaam at Kisutu in the case of Republic vs Paul Meenda Mushi. This judgment was produced by the plaintiff and was received by this court for judicial notice.

When the plaintiff was being cross examined by the counsel for the 3rd and 4th defendants, the plaintiff stated that the judgment of the Resident Magistrate Court at Kisutu was wrongly written that his offer was revoked and the land granted to THB. He argued that the Offer Letter of 99 years have never been revoked by any authority.

It is in the evidence of the plaintiff and he has also pleaded in the Complaint that he is the owner of Plots No. 507/2/1 and 507/2/2 Block C which were previously known as Plot No. 504/2 Block Mikocheni. This is shown at paragraph 5 of the Complaint. At paragraph 6 of the Complaint, the plaintiff claims to be the owner of land which was originally described as Land

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measuring 2850 square meter and then the description was changed to Plot No. 504/2 Block C Mikocheni and finally it was changed into Plot No 507/2 Block C Mikocheni.

In the evidence adduced in court as PW1, the plaintiff stated that due to the dispute between him and other owners of the suit area as against THB, it was agreed that the land be surveyed and it was divided into six plots whereby he got his land and continue to use it peacefully. However throughout his evidence, the plaintiff did not say which plot was allocated/ given to him after division of Plot No. 504.

There is evidence of PW4 a Land Surveyor that Plot No 504 Block C Mikocheni was a property of THB. That after survey, it was changed to Plot No. 507 Block C Mikocheni. That later the said Plot No. 507 Block C was divided into six plots which are Plots No. 507/1-507/2. However the court was not told which among those plots were allocated or given to the plaintiff. Looking at exhibit P4, it does not help much. It is a survey map which shows a subdivision of Plot No. 504 then it was altered to show it is Plot No 507, Block C Mikocheni. Neither the witness PW4 nor the map exhibit P4 gives a glimpse on which among the divided plots belonged to Paul Meenda Mushi, the plaintiff.

It was DW2 from the Commissioner for Land who attempted to give a light on the controversy of ownership of the suit plot. That his office *Alle*

received complaint from Paul Meenda that he is the owner of Plots No 507/2/1 and Plot No. 507/2/2 Block C Mikocheni. That initially there was Plot No. 504 Block C which was granted to THB. He corroborated the evidence of PW4 that the said Plot No. 504 was divided into six plots which are Plots 504/1 to 504/6. That later those plots were rectified and renamed Plot No. 507 and the six Plots were renamed Plots 507/1 to 507/6. That after that division, one John Julius Nyerere came forward claiming that he was granted a Plot No. 402 Block C Mikocheni. That the Office of the Commissioner went to the site and discovered that the area claimed by John Nyerere was formerly Plot No. 504 which has been changed to Plot No. 507. That the Office of Commissioner for Lands, summoned one D'Souza who owned Plot No. 507/2 and John Julius for conciliation. That after conciliation the said plot was divided into two plots namely 507/2/1 which was granted to Justin Kyamtoiyo Tineishemo as the administrator of Jason. That Jason got it from buying the same from D'Souza, and Plot No. 507/2/2 was allocated to John Julius Nyerere. The witness said that the Office of the Commissioner for Lands has never allocated the disputed land to Paul Meenda Mushi.

It was the evidence of the plaintiff side that the 1st defendant Justin Kyamtoiyo Tineishemo has no initial documents which shows how he got the land previously before he was issued with the Title of Occupancy which

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he has produced in Court and was admitted as exhibit D1. And yes there was no documents which were produced in court to show how one D'Souza got the land which was claimed to have later sold it to the late Tineishemo.

However, the 1st defendant produced a certificate of occupancy which was issued by the Land Authority with mandate to grant or allocate lands. The plaintiff or his witnesses did not show on whether the Title which was admitted as exhibit D1 was issued under fraud or there was forgery of any documents. The Title exhibit D1 was acknowledged by the Office of the Commissioner for Lands through the evidence of DW2. The said Title shows that it was issued on Plot No. 507/2/1 Block C Mikocheni in Dar es Salaam City and it was issued to Justin Kyamtoijo Tineishemo as a personal representative of Jason Kyamtoijo Tineishemo (deceased) for the term of 99 years. It was issued on 02/3/2015.

Basing on that evidence produced in Court by the 1st defendant, I am satisfied that currently, the owner of the Plot No 507/2/1 Block C Mikocheni area is the 1st defendant. 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

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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. 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 Plot No 507/2/1 Block C Mikocheni area, Dar es Salaam City is the 1st defendant as it shows in exhibit D1, the Certificate of Occupancy.

I have considered the evidence of the plaintiff that he was initially the owner of the land described as Land measuring 2850 square meter, Block C Mikocheni Area, Dar es Salaam City. This was supported by exhibit P1 collectively where he was granted a Letter of Offer on the same. He said that the said letter of offer has never been revoked by any authority. However, there was evidence that the said land was later changed to Plot 504 Block C and was allocated to THB which resulted into the dispute between THB people and the plaintiff and other occupiers of that land. *Alb.*

The major question is which land is now owned by the plaintiff after the land measured 2850 square meter, Block C Mikocheni Area, Dar es Salaam City was changed into Plot 504 and was later changed into Plot No. 507 and divided into six plots? Which plots were/ was allocated to the plaintiff? At the pleadings at paragraph 8 of the Plaint, the plaintiff stated that he requested to be issued with a new letter of offer bearing the new description and size of the Plot i.e. Plot No. 504/2 or in the alternative, the said number be inserted in the offer. However during his oral evidence in court, the plaintiff did not say whether he was issued with a new Offer fitting the current description of the claimed Plot or whether the Offer in his possession was altered to insert the description.

As far as this court is concerned beside verbal words of the plaintiff, the documentary evidence he have to prove the ownership of the claimed Plot is the Letter of Offer Exhibit P1 which was issued to the plaintiff on 25/7/1977 on a land described as Land measuring 2850 square meter, Block C Mikocheni Area, Dar es Salaam City. Even if there is no evidence that the letter of offer has never been revoked, the fact remains that there have been major changes since 1977 to date and the plaintiff ought to have proof of documentary evidence to show that he is the owner of the plots he claims to own.

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From the above analysis, I find that the plaintiff have failed to prove that he is the lawful owner of the suit property which according to his pleadings, it is the Plot No. 507/2/1 and Plot No. 507/2/2 Block C Mikocheni which was previously known as Plot No. 504/2 Block C Mikocheni.

The first issue is answered in negative that the plaintiff is not the owner of the suit property.

The second issue is on the reliefs' entitlement by the parties. Since the plaintiff has not proved his claims by the standard of probability, then he is not entitled to any reliefs he has prayed in court. And since none of the defendants have filed any counter claim, the suit is dismissed in its entirety with costs.

It is so ordered.

Right of appeal is explained.



A. MSAFIRI

JUDGE

20/3/2024