

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

LAND CASE NO. 28 OF 2018

JOHNSON LEONARD MUHURURU.....PLAINTIFF

VERSUS

COMMISSIONER FOR LANDS.....1ST DEFENDANT

**PERMANENT SECRETARY, MINISTRY OF
LANDS, HOUSING AND HUMAN**

SETTLEMENT DEVELOPMENT.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

Date of Last Order: 30.07.2021
Date of Judgment: 30.08.2021

JUDGMENT

V.L. MAKANI,

The plaintiff in this case is JOHNSON LEONARD MAHURURU. He is praying for this court to give the following orders:

- a) That the 1st defendant be ordered not to remove the name of the plaintiff from the register of titles/documents in respect of Plot no. 2242 Block "L" Mbezi Beach Dar es Salaam.*
- b) The court issues a perpetual injunction against the 1st defendant requiring him not to remove the name of the plaintiff from the register of titles/documents and not to*

transfer the said title in respect of Plot no. 2242 Block "L" Mbezi Beach Dar es Salaam.

c) A declaration that he plaintiff is the lawful owner of Plot no. 2242 Block "L" Mbezi Beach Dar es Salaam.

d) An order that the 1st defendant return/handover the title deed to the plaintiff in respect of Plot no. 2242 Block "L" Mbezi Beach Dar es Salaam.

e) Costs

f) Any other relief this court may deem to grant.

This case has been met with several applications filed by the parties hence the delay. There was an application for temporary injunction in Misc. Application No.256 of 2018 by the plaintiff against the defendants which was withdrawn on 07/10/2020. There was also Misc. Application No.525 of 2018 for which the plaintiff prayed to proceed ex-parte because the defendants failed to file their Written Statement of Defence (**WSD**). This application was granted on 07/06/2019. The Registrar of Titles filed Misc. Application No. 495 of 2019 seeking to be joined as an Interested Party. The application was dismissed on 30/10/2019 for want of prosecution. The matter therefore proceeded ex-parte against the defendants.

In the course of preparing the judgment my mind went back to the basic principles of a suit, that is, whether the suit is within time, jurisdiction and cause of action. And I found myself hesitating to proceed on account of the issue of cause of action against the defendants. I had to revert to Counsel to address and assist the court on this issue.

In his written submissions on this issue Mr. Luguwa on behalf of the plaintiff stated that there is cause of action as against the defendants because according to paragraph 9 and 10 of the plaint, there is the question of ownership of the suit property which concerns the Commissioner for Lands. He said despite the fact that the office which deals with entries of deregistration of the names of owners of land is the office of the Registrar of Titles, but he was of the view that in this case the Office of the Commissioner for lands has the custody of the Certificate of Title of the plaintiff and the Commissioner is the one who implicated the plaintiff with the criminal offence alleging forgery of documents pertaining to the procedure as to acquisition of the suit land in the name of the plaintiff.

I have given a detailed thought about this issue, I have noted and I agree with the plaintiff that there is a cause of action as against the Commissioner in terms of the procedure leading to the ownership of the property namely Plot No. 2242 Block "L" under Certificate of Title No.123369, Kilongawima Mbezi Beach Dar es Salaam (the **suit land**). The issue of registration shall be covered during the determination of the issues as framed.

The matter proceeded ex-parte and two witnesses testified in support of the plaintiff's case. These were the plaintiff himself (**PW1**) namely, Johnson Leonard Muhururu; and SGT (rtd) Jacob John Peter (**PW2**)

The issues framed for determination were as follows:

- a) Whether the plaintiff acquired the land in issue legally.*
- b) Whether the defendants were justified to remove the name of the plaintiff from the register.*
- c) To what reliefs are the parties entitled.*

In his testimony **PW1** said the suit land belonged to Christopher Mwalyosi. He said he went to the suit land with his friend one Nyalufunjo and they did not find the owner. So, they decided to go the local authority office (*Ofisi ya Serikali ya Mitaa*) and they met the

Chairman and his secretary one Mr. Ibrahim and Mzee Chapchap respectively. These leaders told the plaintiff that they knew the suit land and that Christopher Mwalyosi had bought the suit land from one Christopher Swai and there was a Sale Agreement to that effect (**Exhibit P1**). He said after seeing **Exhibit P1** he requested for another Sale Agreement to be prepared and that was between Christopher Mwalyosi and himself (**Exhibit P2**). **PW1** said he went back to his workstation in Tabora and left the suit land under the care of Benedict Misenyi. He said he wanted to start construction in 2012. So, he underwent all the procedures and on 03/10/2012 he received a letter from the Commissioner for Lands (**Exhibit P4**) that all was well, and survey was conducted. He said on 18/02/2013 the Commissioner called and he told him to bring all documents pertaining to how he obtained the suit land. The documents were submitted to the Commissioner vide a letter **Exhibit P6**. He said after the said procedures he was given Certificate of Title No.123369 (**CT**) for Plot No. 2242, Block L, Mbezi Beach.

The plaintiff said he offered the **CT** to his friend one Khalfan Ramadhani Mohamed as the plaintiff had taken a loan from him. There arose a dispute because when the plaintiff wanted to pay back

the loan, he found out that his friend was in the process of transferring the **CT** to his name and so he went to the police. In 08/12/2014 his friend Khalfan Ramadhani Mohamed wrote a letter to the Commissioner for Lands (**Exhibit P7**) requesting him to stop the transfer and return of the **CT** to the plaintiff. He said the **CT** was not returned as there were already complaints about the suit land by Gasper Privatus Tairo and Angelina Tairo. He said they convened a settlement meeting with Gasper Tairo and Angelina Tairo. However, the settlement could not proceed instead Gasper Tairo and Angelina Tairo filed a suit in this court Land Case No. 234/2013 which was struck out with costs. The plaint, ruling and drawn order to the said case are (**Exhibit P8** collectively). The plaintiff said after the case he requested for survey of the suit land by a letter to the director of Mapping and Survey Planning. He said after the striking out of the case by Tairo, he has not seen or heard from him.

The plaintiff continued testifying that on 15/10/2014 he got a letter from the Commissioner for Lands (**Exhibit P10**) requiring him to give explanation on how he acquired the suit land. He said when he went to the Ministry of Lands it was alleged that the documents including the **CT** were forged and he was sent to Kinondoni Police though he

refuted the allegations. His fingerprints were taken for forensic examination on the allegations of forgery. While in Kinondoni Police he received a letter from the Commissioner for lands dated 02/05/2017 and copied to Angelina Tairo (**Exhibit P11**) directing him to present the **CT** or otherwise it would be revoked. He said he did not have the original **CT** he only had the copy. He said he received **Exhibit P11** when he came back from nursing his sick father, he therefore wrote to the Commissioner for Lands requesting the return of the **CT**. He said he wrote on 03/07/2017 (**Exhibit P12**) and he received a response on 17/07/2017 (**Exhibit P13**) saying that it had been established that the documents underlying the procedure of how he obtained the **CT** were forged. He said as of this date he has not received the **CT** and all this time it is in the hands of the Commissioner for Lands. He said he filed a notice to sue the Government (**Exhibit P14**) and the Commissioner for Lands responded vide a letter dated 04/10/2017 (**Exhibit P15**) stating that the plaintiff had not presented the relevant documents, so the Commissioner was removing his name from the register.

According to the plaintiff on 30/04/2018 he collected a parcel from the post, and it was a letter from the Registrar of Titles dated

05/02/2018 giving him notice of intention to remove his name from the register. He said he got an injunction from this court and forwarded it to the Registrar of Titles it was dated 30/05/2018 and a response was on 11/06/2018 admitted as **Exhibit P17** and **Exhibit P18** respectively. He said the response was to the effect that the injunction of the High Court was after the 30 days' notice to remove the name of the plaintiff from the register and that the name that was existing in the register at that time was that of the President of the United Republic of Tanzania. He said he received the notice **Exhibit P16** on 30/04/2018 and the decision of the court in respect of injunction was on 30/05/2018 so it was within the 30 days given. He was of the view that the Registrar of Titles had removed his name even before the notice. He prayed to be granted the reliefs in the plaint.

PW2 was SGT (rtd) Jacob John Peter. He said before his retirement he was in investigation department in the Police Force at Kinondoni Zone. He said he investigated a forgery on landed property following a report received from the Commissioner for Lands and the suspect was the plaintiff. He said he took the plaintiff's statement at Police Oysterbay and the plaintiff told him that he was following up several

plots namely, Plot No. 219 Block G Tegeta, Plot No. 222 Block G Tegeta and Plot No. 2242 Blok L Mbezi Beach. He said he went to inspect the plots in the company of the plaintiff and upon return he took the statement of the plaintiff on how he took forms from the Municipal Council to be signed by the Chairman of *Serikali za Mitaa*. He said he asked for the alleged documents from the Municipal Council and one Jacob Ngowi gave his statement about the plots. He He tendered the letter to the Municipal Council requesting for the forged documents for investigation **Exhibit P20** and the response from Kinondoni Municipal Council (**Exhibit P21**), the form (*Uhakiki wa Milki*) dated 22/05/2012 (**Exhibit P22**), and the affidavit of the plaintiff dated 22/05/2012 (**Exhibit P23**).

He said a forensic examination of the signatures of the plaintiff, Samwel Julius Asman (*Mwenyekiti was Serikali ya Mtaa*) and Paul Richard (*Mjumbe wa Serikali ya Mtaa*) were conducted. He said he was the one who collected the samples of the signatures (**Exhibit 24**), the Fomu ya Uhakiki and the affidavit of the plaintiff and forwarderd them to the Forensic Bureau through a letter dated 18/03/2017 (**Exhibit P25**). On 24/04/2017 the Examination Report (**Exhibit P27**) was received vide a letter (**Exhibit P26**). The finding

of the Examination Report was that the signatures and the handwriting on the disputed document that is the *Fomu of Uhakiki* were not of the plaintiff or Paul Richard but of Samwel Julius Asman. He said the report was forwarded to the RCO for further action.

Mr. Luguwa filed final submissions on behalf of the plaintiff. After the analysis of the evidence Mr. Luguwa pointed out that **Exhibit P20** which was a letter from the Commissioner for Lands did not rectify the memorial, but it revoked the **CT** which was issued to the plaintiff. Mr. Luguwa gave the procedure leading to revocation as that under section 45 of the Land Act CAP 113 RE 2019 in that, the president cannot revoke a right of occupancy save for good cause (section 45(2) of the Land Act. That conditions to be considered by the Commissioner for Lands before taking an action is to in respect of breach of a condition in the right of occupancy (section 45(4) of the Land Act). He further said where breach is of gravity the procedure is for the Commissioner to serve notice of revocation, cause a copy to be served on the person with interest on the land and notify the Registrar of the service of the notice which shall be recorded on the Land Register (section 48(1) of the Land Act). The notice takes effect ninety days after it has been served on the occupier and as soon as

it has come to effect then the Commissioner recommends to the president to revoke the said right of occupancy (section 48 (2) and (3) of the Land Act. He said the effects of revocation are found in section 49 of the Land Act. He went on saying that de-registering a right of occupancy cannot be done as casually, and further that the procedures were flouted.

Mr. Luguwa said the notice was under section 99(1)(f) of the Land Registration Act CAP 2019. He said there is a difference between the revocation of the CT and subsequently registering it in the register and rectification of the Land Register under section 99 of the Land Registration Act. He said the Office of the Registrar of Title is a quasi-judicial authority. It has powers to hear the cases touching on registration of memorial as provided for under section 105 of the Land Registration Act. He said the Registrar has the power to hear a matter and call attendance of witnesses and come to a decision in writing. An aggrieved party may appeal to the High Court in respect of the decision of the Registrar (section 102 of the Land Registration Act). Mr. Luguwa said they has never been any matter before the Registrar of Title touching on fraud. The Commissioner for Lands has made an application to the Registrar to rectify the register so that the plaintiffs'

Certificate of Title is revoked and the right of occupancy reverts to the president.

Relying on section 110 of the Evidence Act CAP 6 RE 2019 Mr. Luguwa said the plaintiff has proved that he is the owner of the suit land having bought it from Christopher Mwalyosi. He said the plaintiff purchased the suit land in 2004 and he has maintained a servant's quarter at the suit land. He prayed for the reliefs prayed in the plaint be granted.

As correctly stated by Mr. Luguwa above, it is trite law that whoever desires a court to give judgment in his/her favour; he/she must prove that those facts exist. This is under the sections 110 (1) (2) and 112 of the Law of Evidence Act CAP 6 2019. These provisions place the burden of proof to whoever desires the court to give judgment as to any legal right or liability dependent on existence of facts which he/she ascertain. In the case of **Abdul Karim Haji vs. Raymond Nchimbi Alois & Another, Civil Appeal No. 99 of 2004** (unreported) the Court of Appeal held that:

".....it is an elementary principle that he who alleges is the one responsible to prove his allegations"

Also, in the case of **Anthony M. Masanga vs. Penina (Mama Mgesi) & Lucia (Mama Anna), Civil Appeal No. 118 of 2014 (CAT)** (unreported) where it was further held that the party with legal burden also bears the evidential burden on the balance of probabilities.

In the present case therefore, the burden of proof at the required standard of balance of probabilities is left to the plaintiff being the one who alleged that he is the owner of the suit land, that the defendant improperly removed his name from the register, and further that he is entitled to the reliefs prayed for. What this court is to decide upon is whether the burden of proof has been sufficiently discharged by the plaintiff irrespective that the matter proceeded ex-parte against the defendants.

I shall consolidate the issues raised and determine them together. It is the plaintiff's testimony that he bought the suit land from one Christopher Mwalyotisi as per **Exhibit P2**. Having surveyed the suit land the plaintiff was issued with a CT. It is the law according to section 2 of the Land Registration Act CAP 334 RE 2019 that the

prima facie proof of ownership of land in a surveyed area is either the CT or Letter of Offer. In the said provision "owner" means:

"in relation to any estate or interests the person for the time being in whose name that estate or interest is registered."

In view of the provision above, any presentation of a registered interest in land is a prima facie evidence that the person so registered is the lawful owner of the said land. The position was reiterated in the case of **Salum Mateyo Vs. Mohamed Mateyo (1987) TLR 111** and also in the case of **Amina Maulid Ambali & 2 Others vs Ramadhani Juma Civil appeal No. 35 of 2019 (CAT-Mwanza)** (unreported).

The suit land is in a surveyed area, and according to the evidence in court by the plaintiff the said CT was presented to the Commissioner for Lands by his friend Khalfan Ramadhani Mohamed when he wanted to transfer the said plot in his name. The plaintiff said all his efforts to get back the CT from the Commissioner has proved futile. Though in his testimony the plaintiff said he had a copy of the said CT but it was not annexed to the pleadings neither was it tendered in evidence. Nevertheless, the assumption is that the CT in respect

of the suit land was granted to the plaintiff because according to the notice of rectification by the Registrar of Titles (**Exhibit P16**) the plaintiff was the owner of the suit land. There is therefore no doubt that the suit land was registered in the name of the plaintiff. According to the letter from the Commissioner for Lands dated 28/05/2018, the plaintiff was informed that his name has been removed from the register unless proved otherwise. And the reasons for the removal were that there were allegations of forgery and the forensic report from the Police was not received by the Commissioner for Lands and/or the Registrar for Titles for ascertaining whether the forms (*Fomu za uhakiki*) for acquisition of the suit land were signed by the proper/genuine people. There is nothing that has been presented in court that the plaintiff is not the owner of the suit land. In the actual fact the notice was just an intention to remove the plaintiff's name from the register, but the actual proof of removal has not been presented. In the result it is without doubt that the plaintiff is the lawful owner of the suit land.

Now was the removal of the name of the plaintiff from the register proper? I will start with the notice itself that is **Exhibit P16**. This was dated 05/02/2018, and according to the plaintiff it was received

on 30/04/2018 and it ought to have taken effect within 30 days from the date of dispatch. However, the letter by the Acting Registrar of Titles dated 11/06/2018 responding to the plaintiff's advocate (**Exhibit P18**) informed the plaintiff that the injunction preventing the rectification on the register pending the final determination of the application could not bar the rectification as it was already completed on 19/12/2017. The said letter states in part as follows:

"Ofisi ya Msajili wa Hati inakiri kupokea barua yako tajwa hapo juu. Pamoja na viambatanisho kadhaa ikiwemo amri ya zuio la Mahakama Kuu (Kitengo cha Ardhi) Dar es Salaam kwenye shauri dogo la ardhi na. 256/2018. Napenda kukufahamisha kuwa amri hiyo ya zuio imesajiliwa kama kizuizi kwenye hati namba 123369 nyaraka FD 197071 ya tarehe 01/06/2018.

*Hata hiyo usajili wa amri hiyo ya Mahakama Kuu haujaw3eza kuzuia usjili wa maombi ya marekebisho katika daftari la Usajili wa Ardhi (**Application for rectification of an Error in the Land Register**) uliofanyika tarehe **19/12/2017** kwa nyaraka na FD 194465 kwa kuwa amri hiyo ikitolewa usajili wa maombi hayo ulikwishakamilika; usajili huo ulioliondoa jina la Johnson Leonard Muhururu na kuingiza katika Daftari la Usajili wa Ardhi jina la Rais wa Jamhuri ya Muungano wa Tanzania ulikamilishwa baada ya Johnson kuwasilisha ndani ya siku 30 toka notisi ilitumwa kwake tarehe **13/02/2018**....."*

The quote above clearly states that the notice was issued on **13/02/2018** but the rectification on the register was already effected on **19/12/2017** and the name of the plaintiff was removed

from the register and replaced by that of His Excellency the President. It is apparent that the plaintiff got the notice to submit the grounds upon which the rectification was based after the said rectification was done which in my view is improper. The intention of the notice as the letter **Exhibit P16** states was to make the plaintiff aware that there was such a rectification in process and for him to be acquainted with the grounds for his action. But it is apparent from the letter **Exhibit P18** that rectification was completed on 19/12/2017 before the notice and before the plaintiff being heard on the grounds. Even if the plaintiff had acted upon the notice of 13/02/2018 it would not have been effective as the register had already been rectified. In essence therefore, and I hold as such that there was no proper notice as required by the law therefore the alleged rectification of the register by the Registrar was unlawful.

Now, was the revocation legal? Revocation is basically governed by section 45 of the Land Act where there is proof that there is breach of a condition of the right of occupancy. If there is breach the right of occupancy is liable to be revoked by the president (Section 45(1) of the Land Act, but the revocation must be for a good cause (section 45(2) of the Land Act). Where the breach cannot be remedied then

the Commissioner has a duty to serve a notice of revocation to the occupier in a prescribed form, cause copies to be served to all persons having interest to the said land and notify the Registrar of Titles which notice is recorded on the register. The notice takes effect 90 days after it has been served to the occupier (section 48(2) of the Land Act). When the notice has come to effect, the Commissioner for Lands then recommends to the President to revoke the right of occupancy (section 48(3) of the Land Act).

As correctly pointed out by Mr. Luguwa the revocation of right of occupancy is not a simple process. In this present case, the Commissioner for Lands truly initiated notices to the plaintiff that if he does not bring the documents required then his CT would be revoked (see **Exhibits 11, 13 and 14**). However, the said notices were responded to by the plaintiff who presented the documents as directed by the Commissioner (**Exhibit P12**). So, in my considered view, the Commissioner noted a breach, and the said letters were intended to remedy the breach. The last letter states that revocation was on account of forgeries by the plaintiff, while obtaining the CT, and that no forensic reports were received by the Commissioner.

However, the Lands Office Kinondoni were the ones who requested for forensic report and not the plaintiff. After the examination, the Forensic Bureau reported back to Kinondoni Police for their further action. Now the Commissioner's claim that he had no forensic report while they were the ones who requested for one showed laxity on their part. Clearly, the complaint was made by Nathaniel Nhonge Mathew for and on behalf of the Commissioner for Lands in 2015 (**Exhibit P20**) and by 24/04/2017 the report (**Exhibit 26**) was released. So, when on 20/05/2018 (**Exhibit 19**) the Commissioner states that he does not have the report, it means there is negligence on the part of the Office of the Commissioner for Lands. The absence of the forensic report means that the contents therein were unknown and thus its absence cannot in itself be termed a breach with gravity to warrant revocation. The contents of the said report would have been crucial to analyse the basis for each ground of breach if any. In other words, there was no breach by the plaintiff which could not have been remedied by the Registrar. Further, according to the evidence the process of revocation was not complete as there was no approval by the president and the plaintiff had not received notification of the revocation in the gazette or a circulating newspaper (section 49(1) of the Land Act). Further as stated hereinabove, there

was no notification in the prescribed form as required by the law. In such a situation therefore the procedure for revocation cannot be termed lawful and the plaintiff remains the lawful owner of the suit land.

Having established on a balance of probabilities that the revocation was unlawful and so was the de-registration of the name of the plaintiff from the register, it is apparent that the plaintiff is entitled to reliefs; and the court therefore orders as follows:

- a) That the plaintiff is the lawful owner of the suit land, namely,
Plot No. 2242, Block "L" under Certificate of Title No.123369,
Kilongawima, Mbezi Beach, Dar es Salaam.
- b) That the 1st defendant is hereby ordered not to remove the
name of the plaintiff from the register of titles/documents as
owner of Plot No. 2242, Block "L", under Certificate of Title
No.123369, Kilongawima, Mbezi Beach, Dar es Salaam.

c) That the 1st defendant is hereby ordered to return/handover to the plaintiff the Title Deed to the plaintiff in respect of Plot No.

2242, Block "L", Mbezi Beach, Dar es Salaam.

d) The plaintiff to have his costs.

It is so ordered.


V.L. MAKANI
JUDGE
30/08/2021

