IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

<u>AT DAR ES SALAAM</u>

LAND APPEAL NO. 288 OF 2021

(Originating from the Judgment and Decree in Land Application No. 322 of 2011 at District Land Housing Tribunal for Kinondoni at Mwananyamala delivered on 30 September 2021, Hon. R. Mwakibuja, Chairman)

DEO THOMAS..APPELLANT

VERSUS

MEEDA RAJABU...1ST RESPONDENT

BAKARI ALI KIPOTO...2ND RESPONDENT

J U D G M E N T

Date of last Order:28/07/2023
Date of Judgment:31/07/2023

K. D. MHINA, J.

This is the first appeal. It stems from the decision of the District Land and Housing Tribunal (**the DLHT**) for Kinondoni at Mwananyamala, whereby Deo Thomas, the appellant, vide Land Application No. 322 of 2011, sued the respondents for recovery of a surveyed parcel of land described as Plot No. 261 Block "4" with Title No. 110197 located at Mivumoni area within Kinondoni District in Dar es salaam (the suit land) which was allegedly trespassed by the respondents.

At the DLHT, the declaratory orders sought by the appellant were;

i. The applicant be declared the lawful owner of the suit land Plot No. 261 Block "4" with Title No. 110197 located at Mivumoni area within Kinondoni District in Dar es Salaam.

ii. *The respondents be declared as trespassers*

iii. *Order for the eviction of the respondents from the suit land.*

iv. *Costs and any other relief this court deem fit to grant.*

The brief facts which led to the institution of Application No. 322 of 2011 at the DLHT are that the appellant alleged that on 23 November 2007, upon fulfilling all legal requirements, he was granted a certificate of right of occupancy in respect of the parcel of land with Title No. 110197 for Plot No. 261 Block "4", located at Mivumoni area within Kinondoni District for residential purposes.

He further alleged that between June and July 2009, the respondents trespassed into the suit land, constructed a foundation of the house, and built a mud house where the 2nd respondent unlawfully was residing. The efforts to stop those actions proved futile.

Therefore, this background prompted the appellant to rush and seek redress at the DLHT.

On their side, the respondents' story was that the 1st respondent was a lawful owner as she was allocated the suit land in 2005 by the Ministry of Land and Human Settlement ("the Ministry") as compensation for their land, which the Government acquired for the construction of the road. Her ownership of the disputed land was acknowledged by the Ministry vide letter with reference number LD/233569/31 dated 06/09/2011 titled "YAH: KIWANJA NA. 261 KITALU "4" MIVUMONI, addressed to the appellant. After

the trial, the DLHT was satisfied that the 1st respondent proved her claims of ownership and declared her as the lawful owner of the suit land. The reasons for that decision, briefly, were;

One, the 1st respondent customarily owned the plot in dispute, whereby the project to construct a road found she already owned and resided in that land; therefore, she was allocated that plot.

Two, according to Exhibit D2, the letter from the Ministry, it was declared that the appellant was mistakenly granted a certificate of right of occupancy (title deed), and he was requested to surrender the same for rectification so that the plot be registered in the name of the 1st respondent. The appellant was informed that he would be allocated an alternative plot.

Aggrieved by that decision, the appellant approached this Court by way of appeal and raised three grounds as follows: -

> *1)The Trial Chairperson erred in law and fact by holding that the appellant was not a lawful owner of Plot No. 261 Block "4" with Title No. 110197 located at Mivumoni area, despite ample evidence to prove ownership.*
>
> *2) The Trial Chairperson erred in law and fact in declaring the respondents as lawful owners of the disputed property without evidence.*
>
> *3) The Trial Chairperson erred in law and fact in failing to evaluate evidence on record properly, thus reaching an erroneous judgment.*

The appeal proceeded by way of written submissions, and the appellant had the services of Ms. Salha Saleh Mlilima, learned counsel, while the respondents appeared in person, unrepresented.

Supporting the appeal, Ms. Mlilima consolidated and argued together the 1st and 3rd grounds and submitted that the appellant proved his case on a balance of probability by submitting all the documents proving ownership of the disputed property. She cited section 2 of the Land Registration Act, Cap 334 R: E 2019, which read;

> *"owner" means, in relation to any estate or interest, the person for the time being in whose name that estate or interest is registered; "Registered land" means land in respect of which an estate has been registered.*

She further submitted that PW1 at the DLHT submitted the certificate of title belonging to the appellant in his name, and the same was admitted as exhibit P1. Therefore, that proved that the Appellant was indeed the owner of that registered property as defined by the statutes.

To bolster her argument, she cited the decision of this Court in **Francis Yustin Kambona** (As the legal representative of the late Maria Yustin Kambona) **vs. Elizabeth Seme and Another,** Land case No. 215 of 2020 (Tanzlii), where it was held that:

"The above provision in law reveals that the prima facie proof of land ownership is by registration. In our country, in most cases, registration is by letter of offer or Certificates of Title.

Also, she cited **Salum Mateyo vs. Mohamed Mateyo** (1987) TLR 111, where it was held that:

".. ...Proof of ownership is by one whose name is registered. Therefore, from the above discussion, the evidence on record on this matter leads me to hold that the holder of the certificate of title is the one who has proof that he is the owner of the suit land."

Further, she referred to the evidence of PW3, a land Officer who testified the disputed property belonged to the Appellant as he had a certificate of title issued by them.

In conclusion, she cited the decision of the Court of Appeal in **Leopold Mtembei vs Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development and another,** Civil Appeal No. 57 of 2017 (Tanzlii), where it was held that;

"We find it apt to emphasise the essence of any land titles system by referring to the observation made by Dr. R.W Tenga and Dr. S.J. Mramba in their book bearing the title Conveyancing and Disposition of Land in Tanzania: Law and Procedure, Law Africa, Dar es Salaam, 2017, at page 330:

"......the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of or a legal interest in a parcel of land. The act of registration confirms transactions that confer, affect, or terminate that ownership or interest. Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title".

And submitted that the above-cited cases show that the appellant was the lawful owner of the disputed property because he has a title.

On the second ground of appeal, Ms. Mlilima submitted that at the DLHT, the respondent did not produce any evidence to show ownership of the said property. She cited **KCU Mataeka vs. Anthony Hyera** (1988) TLR 188, where it was held that:

"Common sense and equity forbid the land allocating authority to re-allocate land within its jurisdiction which is under the possession and development of another without prior consultation to the person in possession of the said land. "

And submitted that the allocating authority could not have given the disputed land to the respondents as it was already allocated to the appellant and had already acquired title. Further, according to PW2, the respondents were already compensated for the land taken from them.

In response, in their joint written submission, the respondents stated that the appellant failed to prove how he acquired ownership of the land in

dispute; the appellant only managed to show ownership through Exhibit P1. Further, all appellant's witnesses failed to testify how the appellant acquired the ownership of the land, while the respondents were able to prove how they acquired and owned the disputed land. To bolster their argument, they cited the decision of the Court of Appeal in **Jacqueline Jonathan Mkonyi and another v. Gausal Properties Ltd,** Civil Appeal No. 311 of 2020 (Tanzlii), where it was held that;

> *"...... we wish to observe that this is not a case of end justifying the means, so we agree that registration of land would not ipso facto prove title in the absence of evidence establishing how one got the title."*

They submitted that through that principle of tracing, the respondents managed to prove how they acquired the disputed land through the testimonies of DW1 that the land she was staying on previously was taken by the Government to construct a road, therefore, he was compensated with the disputed land per Regulation 6 of Land (Compensation Claims) Regulations 2001 through Form No. 69 (Exhibit D1). After allocation, they started to develop the land while enlisting in the procedure to obtain the Certificate of Occupancy for the land.

While pursuing the title, they realised that the land had already been allocated to the appellant mistakenly. The Ministry for Lands tried to resolve the issue by summoning the appellant and his mother, but to no

avail (Exhibit D2). Later the Local Government requested the Respondent to be given ownership documents (Exhibit D3).

Regarding the second ground, they submitted that the respondents proved the ownership based on the balance of probabilities on how they acquired the disputed land, as stated in **Jacqueline Jonathan Mkonyi (Supra)**

In a brief rejoinder, Ms. Mlililima submitted that the claim that the appellant did not state how she got the property was frivolous and vexatious because the evidence on record showed that PW1 acquired land by purchasing from the Ministry of Lands after the sale was advertised. And the same was also supported by PW3, a land officer from the Ministry of Land. Also, PW2, who owned that land previously, testified that after he was compensated, the land was given to the appellant.

Regarding the summons to the appellant to appear before the Ministry (Exhibit D2), Ms. Mlilima submitted that the summons letter never got to the Appellant. Further, it did not show that the Ministry took back the property, nor did it indicate that the ownership was/has been changed to the Respondents.

She went further by citing the decision of the Court of Appeal in **Tanzania National Roads Agency and the Attorney General vs. Abdallah Mgembe and Pili Elizabeth Sindoma**, Civil Appeal No. 307 of

2021(Tanzlii), where it was stated that;

> *"We say so because there is a rebuttable presumption under section 40 of the Land Registration Act that a certificate of title is conclusive evidence that the person therein mentioned has better title. It remains. So, in our view, unless there be evidence in rebuttal to the effect that it was not lawfully procured".*

Further, she cited **Amina Maulid & Two Others vs. Ramadhani Juma, Civil Appeal No. 35 of 2019** (unreported), where it was held as follows:

> *"In our considered view, when two persons have competing interests in a landed property, the person with a certificate of title is always be taken the lawful owner unless it is proved that the certificate was not lawfully obtained."*

She said a similar position was taken in the case of **Leopold Mutembei vs. The Principal Assistant Registrar of Titles and Another,** Civil Appeal No. 57 of 2017 (Tanzlii), where it was observed that a certificate of title was not only conclusive proof of ownership over tire property but more so evidence confirming the underlying transactions that conferred of terminated the respective titles to the persons named therein.

On the second ground, she reiterated what was stated in the submission in chief that the respondent does not have any proof showing their ownership in the said title of the property.

Regarding the cited case of **Jacqueline Jonathan Mkonyi (Supra),** She stated that in this matter, the Appellant has shown how he got the title and ownership of the property to the required standard of proof.

Having objectively gone through the grounds of appeal, the submissions by both parties and the entire records of appeal, I adopted the way the parties argued the first and third grounds together by determining them that way. The two grounds revolve around the issue that the Tribunal declared the first respondent the lawful owner despite the appellant holding the title for the disputed plot. Therefore, the appellant faulted that decision by alleging that the Tribunal failed to evaluate the evidence on record properly.

On this, generally, as per the cited cases of **Francis Yustin Kambona**, **Salum Mateyo** and **Leopold Mtembei** (both supra), the registration of land as per section 2 of the Land Registration Act is *ipso facto* proof of ownership of land. That is a general principle, but it has exceptions.

Those exceptions are;

One, where there is the absence of evidence establishing how one got the title. See **Jacqueline Jonathan Mkonyi (Supra).**

Two, where there is proof that the certificate was not lawfully obtained. See **Tanzania National Roads Agency** and **Amina Maulid (Both supra).**

As alluded to earlier, the reasons for the Tribunal to declare the first respondent as a lawful owner despite the appellant holding the title deed

were that the 1st respondent customarily owned the plot in dispute, whereby the project to construct a road found she already owned and resided in that land; therefore, she was allocated that plot and according to Exhibit D2, the letter from the Ministry, it was declared that the appellant was mistakenly granted a certificate of right of occupancy (title deed), and he was requested to surrender the same for rectification so that the plot be registered in the name of the 1st respondent.

Having gone through the evidence on record(both appellant and respondents), I don't see any reason to fault the decision of the Trial Tribunal in respect of the 1st and 3rd grounds. The Chairperson of the Tribunal correctly evaluated the evidence on record and reached a proper decision. My reasons for not faulting the Trial decision on the 1st and 3rd grounds are as follows;

Despite possessing the title deed, the allocating authority later discovered that the title was issued to the appellant by mistake as the land in dispute was owned by the 1st respondent. Exhibit D2, the letter from the Commissioner for Lands, which was admitted without any objection, and its contents were not cross-examined, clearly indicates that the title deed was issued to the appellant by mistake. That letter addressed to the appellant read that;

YAH: KIWANJA NA 261 KITALU "4" MIVUMONI

Husika na kichwa cha habari hapo juu.

Ofisi ya Kamishna wa Ardhi imebaini kuwa umilikishwaji wako wa kiwanja tajwa hapo juu ulifanyika kimakosa kwani ukaguzi haukufanyika ipasavyo kubaini maendelezo yaliyokuwepo wakati unamilikishwa.

Kumbukumbu zinaonyesha kuwa kuna mkazi wa asili ambaye alipisha ujenzi wa barabara na kujenga nyumba yake kwenye kiwanja hiki.

Kwa barua hii, Kamishna wa Ardhi ameagiza urejeshe barua ya toleo uliyopewa kwa kiwanja hiki, ili amilikishwe NDG. Meda Rajab Mwijuma (Mkazi wa Asili) na kisha upewe kiwanja mbadala.

Tafadhali zingatia hilo, Ofisi inatarajia utekelezaji wako mapema iwezekanavyo.

Further, the evidence of DW1 on how the title was issued to the appellant was not controverted. The story was that PW1 promised DW1 to assist her in getting the ownership documents of the disputed land, but instead of helping her, PW1 registered the plot in her child's name. In the records (untyped), it is recorded that;

"Mdaiwa na 1 alimuomba PW1 ambae ni rafiki yake amsaidie kufuatilia. PW1 aliahidi kumsaidia na walikuwa wakienda wote Wizara ya Ardhi Lakini PW1 alikuwa akimwambia abaki tu kwenye gari yeye ataingia Wizarani kufuatilia. Baada ya muda PW1 akawa hampi mdaiwa na 1 jibu la kueleweka kuhusu nyaraka zake. Baadae mdaiwa na 1 aliamua Kwenda peke yake Wizara ya Ardhi ili akalipie kiwanja hicho. Alipofika hapo alielezwa kuwa kimeshalipiwa na mdai ambaye ni mtoto wa PW1. Mdaiwa namba 1 alipewa namba ya simu ya aliyelipia kiwanja hicho na

alipotaka kuipiga ikatokea jina la PW1 ndipo alipojua kuwa ni rafiki yake. Alipomuuliza PW1 alikataa kufanya hivyo na aliahidi atafuatilia".

Therefore, from the above discussion, the first and third grounds of appeal lack merits because the evidence on record indicated that the appellant was allocated the land by mistake. Therefore, the Tribunal was right, and this was the fit case to invoke the exceptions to the general rule that the registration of land is *ipso facto* proof of ownership of land. The exception in this matter was that the title was issued by mistake; therefore, it was not lawfully obtained.

Regarding the second ground that the Trial Chairperson erred in law and fact in declaring the respondents as lawful owners of the disputed property without evidence, this should not detain me long, and my reasons are as follows;

According to Exhibit D1, the first respondent was identified as the original owner of the land (Mkazi wa asili). Exhibit D1 was a Land Form No. 69 dated 19 December 2002 informing the 1st respondent of her rights to be compensated for the land taken from her for town/city planning.

According to DW1, she was compensated by being allocated the land in dispute.

Exhibit D2 corroborated her evidence that when the land was allocated to the appellant, the land was already developed by "mkazi wa asili" and that the appellant was issued the title by mistake.

From the above explanations, there was evidence on the balance of probabilities to declare the respondents as the lawful owners of the suit land.

Therefore, the second ground also has no merits.

In the upshot and finally, having scrutinised and re-evaluated the oral and documentary evidence adduced at the trial, I agree with the trial DLHT decision. It properly analysed the evidence and arrived at the correct decision. Therefore, the appeal is not merited, and consequently, I hereby dismiss the appeal in its entirety with costs.

I order accordingly.

K. D. MHINA
JUDGE
31/07/2023