

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

LAND CASE NO. 43 OF 2016

ONGUJO WAKIBARA NYAMARWAPLAINTIFF

VERSUS

BEATRICE GREYSONDEFENDANT

JUDGMENT

25/11 & 11/12/2020

RUMANYIKA, J.

With respect to Plot No. 93 Block 2 Mtoni Kijichi, Temeke Municipality (the disputed plot), against Beatrice Grayson Mbaga (the defendant), Ongujo Wakibara Nyamarwa (the plaintiff) prayed for a declaratory order that the defendant was a trespasser and the plaintiff lawfully owned it. Apart from costs of the suit, in his favor the plaintiff also prayed for an order of vacant possession and general damages. Whereas Mr Wabeya learned counsel appeared for the plaintiff, the defendant had services of Messrs Robert Gabriel and I. Rasul, learned counsel.

Pw1, Ongujo Wakibara Nyamarwa (52) stated that following advertisement for sale by the Ministry of commonly known "20,000 Plots Project", he procured the disputed plot for shs 7.9 million (as per copy of the exchequer receipt). That say within the first 30 days he was dully allocated the bare plot, which one, at times one Alex Mtundu encroached



but the plaintiff won the war and battle (High Court Land Case No. 140 of 2012, Dar es Salaam – Copy of Judgment, Exh. "P1") only that irrespective of his requests, still the copies of the respective letter of offer and certificate of title were, together with the records not yet released (copy of the letter – Exh. "P2") that say within a month time he had thereat erected and finished the house, a fence, and drilled a water well also at the same he never ever defaulted land rent or property tax since.

Pw2, Adelfrida Kamilius Lekule (31) stated that she worked with the office of Assistant Commissioner for Lands, Dar es Salaam as a Legal Officer that the disputed land formed part of the "20,000 Plots Project" and, according to record the plaintiff lawfully owned it as having applied on 15/06/2010 he was duly allocated and issued a certificate of title (copies of a Special Application Form No. 19, a letter of offer, and a certificate of title admitted as Exh. "P3") collectively. That the defendant had a copy of sale agreement and developed the plot yes, but her claims for compensation were dismissed because she was not even proved having had been one of customary rights occupants thereof (not even identified/recognized by any local authorities). That is all.

Dw1, Beatrice Greyson Mbagha (43) stated that she purchased the disputed plot for shs. 2.5 million on 26/06/2004 from one Mwinjuma Shabani Maembe (the vendor) and plot had 9 coconut, 18 cashew nut and mango trees (copy of the sale agreement and attachments – Exh. "D1") collectively then she planted and grew another 7 coconut and 3 cashew nut trees, she erected a 2 room house in 2005 and dug a water well but as late as year 2010 the plaintiff encroached it also claiming title and erected a wall fence and house in 2015. That just as the defendant had instituted a

suit and she waited for expiry of the statutory 90 days' notice, the plaintiff also sued her. Here she was. That orally though, at times some land officers admitted the mistakes and promised to allocate her alternative plot.

Dw2, Shaban Mwinjuma Maembe (born in 1943) stated that he was founder therefore from time in memorial occupant of the disputed land, one Manji his stone throw neighbor, therein between for some reasons his land having had been acquired by the government. Dw2 further testified that on 26/06/2004 he sold part of his land to the defendant and it was witnessed both by the local chair and some neighbors (Exh. "D1" dully identified).

Dw3, Khalid Abdallah Shamasi (52) currently the local Mgeninani street chair, also for the period of 2004 – 2009 he stated that initially, but just at the border of the commonly known "20,000 Plots Project the defendant and some others owned a squatter area. That previously Dw2 owned a portion thereof. That there was, until year 2009 no land acquired by the government ever known to him nor had the disputed land ever been abandoned by any one. That land regularization in favor of the defendant was stuck pending finality of the suit.

Dw4, Greyson Mbagga (83) the defendant's father stated that the defendant purchased the disputed plot for shs. 2.30 million and too he witnessed the sale agreement (Exh. "D1" dully identified) but say 6 years later, the plaintiff just encroached it.

Dw5, Nusura Gilbert Nzowa, (38) since 2015 director of the Human Right Freedom Social Welfare Tanzania of Chemichemi, Mbagala, Dar es Salaam, he stated that having had the defendant reported the dispute to them, they inquired it with the Director Temeke Municipal Council who acted promptly but against the defendant (copies of the letter and reply admitted as Exhs. "D2" and "D3") respectively then they referred the dispute to the Commissioner for Lands who, also in writing letter with Ref, No. LD/293199/42 of 18/12/2019 responded as such (copy admitted as Exh. "D5") only one having advised the parties to go for amicable settlement in the meantime plaintiff stopped.

At least undeniable facts were, but not limited to; **(a)** that the plaintiff had the disputed plot allocated to him by the respective land authorities necessary, but not a party(s) to this case **(b)** that by way of sale the defendant purchased the disputed plot from Dw2. Given the two facts above observed, the points therefore couldn't be whether Dw2 had good title to pas onto the defendant but rather whether upon allocating to the plaintiff the former was entitled to compensation of any kind.

As one conceded, by virtue of the said "20,000 Plots Project" the area may have just been declared and dully surveyed fine, but as stated by the defendant who was more or less reliably supported by Dw3 (the local leader) that at no given plot in time was ever abandoned which evidence was not sufficiently challenged, and, if anything, according to Pw2 upon acquiring the stone throw plot in neighborhood (Manji's) one had been had been compensated not only she went out empty handed but also in the instant case the defendant was denied of right to own the property.

Moreover only for reasons known to him, if at all whoever that compensated the other outgoing occupiers might be it amounted to double standard. Leave alone the equally undisputed fact that only a portion of the defendant's plot was simply taken away and allocated to the plaintiff. It means therefore that indeed there existed some customary right owners who's interest and rights should have been taken on board for compensation much as it is trite law that unless compensation was promptly and adequately paid to the outgoing occupier, granted right of occupancy never extinguished deemed right of occupancy. I would increasingly hold that compensation shall also cover loss of expectations and future use of the land much as right to own property is not just a mere requirement of common law but both equality and equity. Now hat like Pw2 put it, there were some exhaustive developments effected by the defendant it means therefore that from its inception the plaintiff was duty bound to always observe third party interest but he didn't. The plaintiff cannot therefore plead right of a bonafide purchaser reasonably under the circumstances.

With all that considered, the plaintiff's case is bound to fail. It is dismissed with costs. If the need persisted one may wish to ask for allocation of encumbrance free alternative plot else he accordingly compensate the defendant.

For avoidance of doubts therefore, I shall order; (a) as it now stands the plaintiff is not lawful owner of the disputed land (b) the plaintiff is, with immediate effect ordered to give vacant possession of the disputed

land (c) the plaintiff pays the defendant shs. 300,000/= only being general damages (d) the defendant shall have costs of the case. It is so ordered.

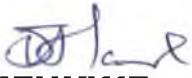
Right of appeal explained.



S. M. RUMANYIKA
JUDGE
30/11/2020

The Judgment is delivered under my hand and seal of the court in chambers this 11/12/2020 in the presence of Mr. Wabeya, learned counsel for the plaintiff and Mr. Iddi Rasuli Rashid, learned counsel for the defendant.




S. H. SIMFUKWE
DEPUTY REGISTRAR
30/11/2020