

TANZANIA / JUDGMENT

20150226 TZHC Dar es Salaam

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM . LAND CASE NO. 234 OF 2008 · REV: PETER PETER JUNIOR PLAINTIFF VERSUS THE DISTRICT EXECUTIVE DIRECTOR · BAGAMOYO DISTRICT COUNCIL·.... ;.....·..... DEFENDANT Date of the Last Order: 18/ 11/2014 Date of the Judgment: 26/2/20_14 JUDGMENT- B.R. MUTUNGI, J. Rev. Peter Peter Junior, the plaintiff in this matter cJnd ' . , . _also to be referred to as PW 1 is· praying for Judgment and . · Decree as against the Defendant (The District Executive Director Bagamoyo District Council) as follows:-

1. That the plaintiff be the rightful and lawful owner of. the . disputed land
2. That the defendant is the trespasser 1
3. That the plaintiff carries on with his projects .
4. Permanent injunction restraining defendant from - interfering with the plaintiff's enjoyment of his land
5. Compensation be paid by the defendant to the plaintiff for the destruction of block houses which were constructed by the plaintiff at the cost of Tshs. 30 million
6. General damages of Tshs. 10 million ! 7. Costs of this suit be paid by the defendant , 8. Any other relief(s) as this honourable court may deem fit and just to grant. ; In his testimony the plaintiff explained to the court that in J1/Y, 2006 he had bought a piece of land from one Sammy S~lemoni _and Muhsin Sharif. Later in 2009 he added yet · ar:iother portion of land (1 ½ acres) from one Joseph ~ . . Mkindo. He had paid 3,000,000/= in total for both pieces of i I :_ land. To his surprise his land was invaded by the defendant · o0 the pretext that they were constructing/building a ·slaughter house which was a public project. The plaintiff 2 immediately went to the Director to lodge his complaint. Having gone through the plaintiff's documents, the Director · promised him to allocate him on alternative .area. This was . from the mere reason that the area had already been earmarked for development. Despite the plaintiff keeping cool awaiting to be allocated on alternative plot nothing· was done. He decided· to seek for redress by instituting a case in this court. He was granted an injunction directing the defendant from carrying out any activities on the suit land but this fell on the defendant's

- deaf ears. The defendant proceeded to demolish two bandos on the suit land, they uprooted the trees and cropwiding was scattered all over the area. They also proceeded to build the slaughter house. The defendant went at length and criminally charged the plaintiff. In the plaintiff's opinion, he told the court that all this was maliciously done to harass him so that he let go the disputed land. In support of his words the plaintiff tendered, the two sole agreements (Exhibit P1), a Judgment showing that he had already been declared by a competent court to be the legal owner (Exhibit P3), a police report (Exhibit P4) the stop order (Exhibit P5) photographs showing the damage (Exhibit P6). The plaintiff's witness PW2, MBEL WA SAI D MBEL WA narrated that the plaintiff is his neighbor in the disputed area. He knows that the plaintiff had bought the disputed piece of land from the indigenous people. He recalled that there was a time the defendant had come to take away his land. PW2 became furious and went to an extent of threatening to kill the defendant's officials. PW2 further explained that what saved the day were the threatening words he had lashed out to the defendant's officials. As a result the defendant turned to the plaintiff and invaded his land and proceeded to build a slaughter house without his consent. PW3, FIKIR MWALIMU MKINDA explained that he was a member of the committee which dealt with the building of the slaughter house. PW3 explained that the slaughter house was actually built on the plaintiff's land. In his understanding he thought the plaintiff had been compensated for the area. PW3 further explained that there are a lot of people complaining as the defendant acquire about 16 acres of land. He further mentioned all the plaintiff's neighbours including the prisons. PW 4, LEONARD GEOFFREY, testified to the effect that he was the secretary of the village in issue. He remembers in the year 2006, the plaintiff had bought a piece of land from Musin Sharif and Sammy whereby he and he witnessed this sale. As the leaders of the area they proceeded to summon the plaintiff so that he is introduced as one of them in the village. They even gave him a letter and minutes to proceed with the title process (Exhibit P2). In 2007 the village got funds to build a slaughter house but they had no space to do so. What followed was for a contractor who came invading the plaintiff's land and demolished two Bonda therein. As leaders, they notified the contractor that the area belonged to the plaintiff. The contractor at first stopped, but later using a lot of force proceeded to build the slaughter house as he had the support of the defendant. PW5, HASSAN HOJA, clarified that he is among the plaintiff's neighbours. He witnessed the defendant's officials who had invaded the plaintiff's land and built a slaughter house therein. The defendant did demolish the two "banda" which were in the plaintiff's land. On the other side of the coin, the defendant's witness, DW1, KHALID SELEMANI TAMBULEGINI CI land officer working with the District Council of Bagamoyo testified to the effect that the disputed land belonged to the prisons. Same time in 2002 the sitting president by then the Minister for Foreign Officers and Member of Parliament, for Bagamoyo prayed for land to build a slaughter house for his people from the prisons. The prisons directed the request to be made in writing of; which was done by the defendant. The prisons readily replied and agreed to give them a piece of land (Exhibit P1). The defendant proceeded with the survey process which too was finalized. There after the defendant started building the slaughter house which is still in use to date. PW 1, further elaborated

that a village has powers to allocate land which is village land. In this case the land was in the Township outside the jurisdiction of the village, so if there was any sale in 2006 this had to have the consent of the prisons and not otherwise. Any sale contrary to the foregoing is a nullity. DW2, OMARI JAFARI MADEGA a land surveyor with the Bagamoyo District Council came to tender the surveyed map of the disputed area and demonstrated of how the disputed area had been demarcated and allowed to be a slaughter house or area (Exhibit 02). DW2 further explained that, the disputed area belonged to the prisons but was later given to the defendant for public use hence the construction of the slaughter house. DW3, AGUSTIN SANGALALI working with the prisons testified that he was the one who surveyed the Kigongoni prisons area in Bagamoyo way back in 2004 and registered in 2008. In 2002 he had been instructed by the prison's commissioner to go and set aside 15 acres from the Kigongoni land and hand it over to the defendant, as they had requested the same to build a slaughter house. It was not ten acres as claimed by the plaintiff. The area can also be seen in the approved plan of 2008 with beacons No. ZAT 361, ZAT 334, ZAT 357 and ZAT 356. In the year 2004 the area was bare land. At the close of the case, each side filed final submissions which in general were cementing their evidence already tendered in court. Who then were the issues framed by the court. There are as follows:-

1. Who is the rightful owner of the disputed land
2. Whether the plaintiff has any claims against the defendant
3. What reliefs are the parties entitled to. Staring with the first issue, it is important to evaluate the evidence of the plaintiff. As already summarized the plaintiff had four witnesses. These came to demonstrate to the court of their knowledge in regards to the suit land. PW2's job was to clarify of how he was a neighbor to the acquired land by the defendant. PW3 as a member in the village committee for development came to clarify to the court of how the defendant had invaded the plaintiff's land PW4 simply told the court that the plaintiff having bought the disputed land had been formally registered with the village. He came to know of this as he was the village secretary by then. In my settled finding all these do not at all prove with constantly of how the plaintiff acquired the land. The foregoing notwithstanding it is the evidence of the plaintiff himself who stated that he bought the disputed land from three different people and produced the two sale agreements as Exhibit (Exhibit Pl collectively). Going through these exhibits the names of the sellers were Samy Selemani and Musin Sharifs. The only information mentioned in the sale agreements is that each sold two acres at an area known as daraja la mokofio, Magomeni village in Bagamoyo District. There is no mention of the size or the boundaries of the disputed area. The plaintiff has also tendered the minutes from the Zanzole, Mogomeni village introducing him to the village. The village land committee was only referring to the two sale agreements which had been brought by the plaintiff having bought the disputed land. It is revealed that the said land was about five acre. It is also mentioned that the village committee visited to the disputed area and came to the conclusion that indeed the plaintiff was the legal owner. It is not clear whether the land that was being

referred to by the village committee is the sale land in dispute. Be as it may be the village committee was not dealing with issue of ownership but was confirming what had been brought before it by the plaintiff having colluded to have bought the same from Muhsin Sharif and

- Sammy Selemani. In this case they were not the ones allocating land to the plaintiff. The plaintiff has also brought in evidence Exhibit -P3 the Judgment ward tribunal. The parties there to are Mr. M. Mdkene (complainant) versus Peter Peter Junior (respondent) Case No: 34/2010. It is not clear whether this is the same area as is the disputed land in this case or a different one. The Exhibit P3 is very clear that it . . .
- is a 2010 case yet the issue in dispute transpired in 2006 as alleged by the plaintiff having bought the disputed land, on 28/7/2006. The Exhibit does not even mention the boundaries nor the size of the land that was in issue. Be as it may one cannot relate the Judgment to the disputed land in this case. 10 On the other hand the defendant had witness DW 1 a land officer and DW2 a land surveyor both from the defendant's office. These clearly stated that the disputed land belonged to the Kigongoni Prisons and it is the prisons which gave out a portion of their land in 2002 (15 acres) upon a request from the defendant. The request was due to the move by the now suiting President (Jakaya Kikwete) to give the people in his constituency a slaughter house. As to law the request was dealt with DW3 a prisons officer, explained that indeed he is the one who physically carried out a survey after being instructed by the prison's commission. He went out and identified 15 acres out of the vast bare land that belonged to the prisons. In 2002. The process of surveying started in 2004 and the registered place came out in 2008. DW3 and DW2 went at length to elaborate that the area lies within the beacons ZAT 36 L ZAT 334, ZAT 357 and ZAT 356. This is the same area the plaintiff alleges to have brought his piece of land. To support the defendant's evidence is Exhibit 'DI' collectively showing the saving telegram from the Kigongoni Prisons to the defendant way back in 2002 when the prisons was 11 . . . , i, . . . going to identify the area they were giving away. This was following a request of 2001 from the defendant as shown by Exhibit DI collectively a letter dated 24/1/2001. Considering the foregoing evaluation of the evidence it is crystal clear that on a balance of probability as in Civil Jurisprudence the defendant has proved that the area belonged to the Kigongoni Prisons who had generously given out 15 acres to the defendant to construct a slaughter house way back in 2002. In 2004 the area was already surveyed and left for the public development in this case a slaughter house. ; Even if it is assumed that the plaintiff did indeed buy the disputed land in 2006, he bought land which had already been demarcated in 2002 and surveyed in 2004 issue consequently allocated for the building of a slaughter house. Those who alleged to have sold him the land were intact not the owners worse still they were not summoned to testify. It is to be noted that in Civil action the question of ownership is not established by more plain word, - but clear and cogent evidence that will resistably and 12 . specifically . point to the source of acquisition and occupation of the property under contest. In my settled decision the rightful owner of the disputed land is the defendant and this goes to answer the first issue.

Turning to the second issue this need not detain me · much. Having find that the plaintiff has no colour of right over the disputed land he can in no way came up with any claims against the defendant .. His stay or occupation. On the said land makes him a trespasser lastly, the plaintiff had enurnerated a lot of reliefs in his plaint, now that it has been .forned that he had no right over the disputed land all these reliefs and prayer collapse automatically. In the up not the suit is dismissed for lack of merits v1ith - costs. Right of Appeal Explained. B.R. MUTUNGI JUDGE 26/2/2015 13 Read this day of 26/2/2015 1n presence of plaintiff 1n person and Mr. BakariJuma for def_endant. B.R. MUTUNGI JUDGE 26/2/2015 14

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