

TANZANIA / JUDGMENT

irene madeja mlola vs masudi iddi shomari

2020 tzhclandd 2235 7 september 2020

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC. LAND CASE APPLICATION No.235 OF 2020 (Arising from execution of a decree in Land Case No.90 of 2010) IRENE MADEJA MLOLA..... DECREE HOLDER/APPLICANT VERSUS 1 MASUDIIDDI SHOMARI..... st JUDGMENT DEBTOR/RESPONDENT MAH YA ALLY M SAG ATI 2 @IDD MGAZA SHOMARI..... nd JUDGMENT DEBTOR/RESPONDENT 3 SHOMARY OMARI..... rd JUDGMENT DEBTOR/RESPONDENT Date of last Order: 27.07.2020 Date of Ruling: 07.09.2020

RULING

V.L, MAKANI, J This application is by IRENE MADEJA MLOLA. She is seeking for the following orders:

1. That this Honourable Court be pleased to issue an order and/or recording adjustment of the decree to the satisfaction of the decree in Land Case No.90 of 2010.
2. That in consequence to the orders in (a), the entry on the Land Register, Dar es Salaam Land Registry in respect of Certificate of Title No. 186152/75, Land office No.46191, Plot No. 184, Regent Estate Area, Kinondoni Municipal, Dar es Salaam transferring its ownership to applicant, be struck off the register.
3. Each party to bear its own costs in the cause.
4. Any other order this Honourable Court may deem just to issue. The application is made under Order XXI, Rule 2(1) and (2) and section 95 of the Civil Procedure Code, 1966 [CAP 33 R.E 2002] (the CPC) and any other enabling provision of the law; and is supported by the affidavit of the applicant. The 1st respondent responded by swearing and filing a counter-affidavit, the second respondent did not file his counter affidavit while the 3rd respondent was reported as dead by both parties. The brief background is that, the applicant was the successful party in Land Case No. 90 of 2010 where she was declared the lawful owner of the property registered under Certificate of Title No. 186152/75, Land office No.46191, Plot No.

184, Regent Estate Area, Kinondoni Municipal, Dar es Salaam (the suit property). The applicant made the necessary transfer procedures and her name was entered in the Register at the Lands Registry as the owner of the suit property according to the court order. Mr. Malimi, Advocate appeared for the applicant while the 1st respondent appeared in person. Submitting in support of the application, Mr. Malimi prayed to adopt the contents of the applicant's affidavit and informed the court that this matter has been proceeding ex-parte against the 2nd respondent even in Land Case No. 90 of 2010 and that the 3rd respondent is deceased and was the uncle of the 1st respondent. He said that the applicant is seeking to adjust the decree in Land case No. 90 of 2010 as well as seeking to have the entry in the Land Registry in respect of the suit property reflecting the transfer of ownership to the applicant be struck off and the property revert to the person registered prior to the transfer to the applicant. He said that the applicant was declared the bonafide purchaser of the suit property in Land case No. 90 of 2010. He said though the applicant is duly registered as the owner of the suit property, but the applicant and the 1st respondent on behalf of the 3rd respondent have stated that the decree/judgment in Land case No. 90 of 2010 has been satisfied and therefore, the applicant has no claim against the judgment debtor. Mr. Malimi said that the applicant and the 1st respondent have agreed to adjust the decree whose consequences would entail that the entry in the register be struck out and that the decree holder would no longer be the owner of the suit property and the suit property would be reverted to the owner before the entry of the applicant as the owner. He said that the owner prior to the entry was IDDY MGAZA SHOMARI who is also the father of the 1st respondent and brother of the 3rd respondent. He said that the 1st respondent's affidavit is echoing the understanding between the applicant and the 1st respondent. He prayed for the application to be granted and each party to bear own costs as this is more or less an agreement. In reply the 1st respondent said that the 3rd respondent is his uncle, but he is now deceased. He said his uncle was the administrator of the estate of the late IDDY MGAZA SHOMARI who is his father. He insisted that what has been said by Mr. Malimi is what they have agreed with the applicant, that the suit property be registered back to the name of his late father. That they just want the adjustment of the decree and correction in the register at the Land registry. Both the applicant and the 1st respondent are in agreement that the decree in Land Case No.90 of 2010 be adjusted and the suit property be reverted back to the owner prior to the transfer to the applicant who is IDDY MGAZA SHOMARI. In essence the 1st respondent concedes to this application. Order XXI of the CPC provides: "(72 Where any money payable under a decree of any kind is paid out of court or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree and the court shall record the same accordingly).

- (2) The judgment debtor also may inform the court of such payment or adjustment and apply to the court to issue a notice to the decree-holder to show cause, on a day to be fixed by the court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment

should not be recorded as certified, the court shall record the same accordingly." Parties having agreed to the adjustment of the decree and correction in the Register of Lands to the satisfaction of the decree in the Land Case No.90 of 2010, the court cannot refrain from granting this application. In that respect therefore, the application is granted, the decree in Land Case No.90 of 2010 is hereby adjusted so that the suit property, namely, Plot No. 184 with Certificate of Title No. 186152/75, Land Office No. 4619, Regent Estate Area, Kinondoni, Dar es Salaam, reverts back to the owner prior to the entry of the applicant as the owner. In other words, the suit property returns back to the owner prior to the transfer thereof to the applicant. Subsequently, the entry in the Land Register in Dar es Salaam Land Registry in respect of the transfer of the suit property to the applicant is hereby struck off the register. Considering the circumstances of this application, each party shall bear own costs. It is so ordered. 07/09/2020

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