

TANZANIA / JUDGMENT

annamaria mustafa shirima vs agines maganga kadeya 2023 tzhclandd 16994 6 october 2023

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION] AT DAR ES SALAAM LAND CASE NO. 233 OF 2023 ANNAMARIA MUSTAFA SHIRIMA PLAINTIFF VERSUS AGINES MAGANGA KADEYA DEFENDANT JUDGMENT- EXPARTE 25/09/2023 to 06/10/2023 E.B. LUVANDA,J A claim by the Plaintiff nameiy Anna Maria Mustafa Shirima against the Defendant one Agines Maganga Kadeya is for a deciaratory order that the Defendant is not entitled to enter, use or do anything on Plot No. 329 Block "E" Mbezi Kinondoni - Dar es Salaam (suit plot); an injuncion restraining the Defendant or servant or agent entering the suit piot; general damages; interest and costs. It was the evidence of Anna Maria Mustafa Shirima(PW1) testified that on 12/03/1985 she was alocated land by the Ministry of Lands Plot No. 842 Block "E" Mbezi Medium Density as per a ietter of offer along with a sketch drawing exhibit P4. TTiat sometimes in 2018 engaged her estate iawyer M 8i A Advocates to apply to the Ministry of Lands for issuance of the title deed In respect of the said plot, whereafter verification by the Ministry of Land was made via a letter dated 21/02/2018 exhibit P6 to Kinondoni Municipality, it was confirmed that a suit plot belong to her, as per a letter dated 08/10/2018 exhibit P7. That after various follow up it come to her knowledge that the above suit plot No. 842 Block "E" Mbezi Medium Density was re surveyed by the Ministry of Lands In her absence or without notice and divided into two, plots, that is Plot No. 329 and 330 with title number 44713, but unfortunately the same were mistakenly allocated to her neighbour F.M Farm Company Limited while his land which he was actually possessing Is Plot No. 278 and 279 Mbezi Beach, arguing that after the Ministry of Lands revealed the above mistake, the above plots were reversed via a letter dated 15/07/2020 exhibit P8. She testified that there after the Commissioner for Land proceeded to Issue title deed to her in respect of one Pot No. 330 Mbezi Medium Density(as per a letter dated 03/08/2020, exhibit P9) without availing reasons as to why plot No. 329 Mbezi Medium Density which was extracted from Plot No. 842 above, was not issued a title deed to her. PW1 stated that after various followup to the office of Commissioner for Lands regarding issuance of another title deed of the other plot, there was no formal response rather she was informally told that title deed can only be issued upon removal of the trespasser in the above plot No. 329. PW1 stated that by that time there was no person In actual possession of her plot, but sometimes at the end of December, 2022 a group of people who were unknown to her

trespassed the above plot on the side of her, house and started erecting building unlawful. That the Ministry for Lands advised her to take legal action against the Defendant, In order for a title deed to be Issued to her In respect of a trespassed plot. The Issues for determination are; One, whether the Defendant trespassed the Plaintiffs land; Two, what reliefs are parties entitled. As It transpired In the testimony of PW1 asserted that her Initial plot No. 842 Block E Mbezi was a space standard of Medium Density containing around 1,600 square metres. However, this fact as to a size or space of a plot was not pleaded In the plaint. The alleged size of 1,600 square metres Is neither stated In the letter of offer nor In the sketch plan attached to the letter of offer exhibit P4. The alleged sketch drawing do not depict any measurements be Its size or space standard of a plot No. 842 It was not stated as to when the alleged re survey or sub division to create the two plots No. 329 and 330 with titled number 44713, was done. It was not stated the alleged sub division was done by who, whether KInondoni Municipal who Issued letter of offer exhibit P4 or Ministry of Lands, and at whose accord either at the Kinondoni Municipality or Ministry of Lands own initiative or were moved by the alleged F.M Farm Company Ltd, to whom the alleged title deed No.44713 alleged was erroneously issued in her favour. PW1 alleged that F.M. Farm Company Limited is her neighbor. However in a sketch plan attached to the letter of offer exhibit P4, the alleged F.M. Farm Co. Ltd or her predecessor Ms. Tanzania Coastal Shipping Co. Ltd (as per exhibit P9) their name are not reflected either. PW1 alleged that she was denied title deed in respect of Plot No. 329 alleged to have been sub divided from her plot No. 842 Block "E" Mbezi Medium Density. However there is no documentation whatsoever from the Ministry of Lands acknowledging the said sub division. In other words, the Plaintiff was merely alleging. PW1 also alleged that she was told that, the Ministry of Land will not issue title deed in respect of Plot No. 329 Mbezi Beach until when she manage to evict the so called trespasser. In her testimony she allege she was told to that effect Informerly. However, in a very recent letter exhibit P12, the Assistant Commissioner for Lands Dar es salaam Region avoided completely to assert any fact Inferring or connoting or portraying a message that the Plaintiff was allocated or Is a proprietor of Plot No. 329 Block "E" Mbezi. In her testimony, PW1 alleged that the Ministry of Land issued her a title deed in respect of Plot No. 330 Mbezi Beach Density, and with held a title deed in respect of Plot No. 329 Block "E" Mbezi Medium Density. According to her testimony the reason for refusal or withholding title deed for Plot No. 329 Block "E" is because and or untii she (PW1) manage to evict the so called trespasser. The Plaintiff avoided to say exactly as to when a title deed in respect of Plot No. 330 Medium Density was issued to her, neither attached Its copy and let alone to tender it in evidence. Presumably it was by design to conceal a fact that a refusal for the issuance of titie deed in Plot No. 329 Block E was because of tresspassers, or until when are evicted. While PW1 alleged in her testimony that a trespass by a group of people who invaded her plot occurred sometimes at the end of December, 2022, this fact is at variance with a fact stated by the Assistant Commissioner for Lands in Dar es Salaam Region in his letter dated 11/05/2023 where at paragraph two stated that on the site inspection which was done by his office on 19/08/2022, his office revealed that there is another citizen anonymous developing the suit plot. This create doubt to the testimony of PW1. Again in a letter exhibit P9, the Commissioner for Lands at the title referred as, I quote, "YAH:KMANJA NAMBA (842)330 KITALU "E"MBEZIJI3INIDAR ESSALAAM" At the last paragraph, the Commissioner for Lands, said, I quote. "Kwa msingi huo, hatutaweza

kuenddea na hatua za kukumi Ukisha kiwanja namba 330 Kitalu "E" eneo la Mbezi! mpaka hapo hatua za urejeshaji wa miliki llyotolewa kwa F.M. Farm Co. Ltd zitakapokamiiika". In the said letter there is no mention of Plot No. 329 Block "E" Mbezi as among the plot which was allocated to the Plaintiff or whose issuance of title deed is pending the so called process for Ms. F. M. Farm Co. Ltd to surrender title No. 44713. It is to be noted that in the plaint, the Plaintiff had attached her letter dated 06/12/2021 asking the clarification of a letter of the Commissioner for Lands exhibit P9, and essentially the Plaintiff was asking the Commissioner for Lands to allocate her both two plots and grant her right of occupancy in respect of both plots. There was no reply forthcoming from the Commissioner for Lands, and the Plaintiff avoided to tender into evidence her letter dated 06/12/2021. To my opinion a case before this court is all about allocation of land Plot No. 329 Block "E" Mbezi and grant of right of occupancy thereto, which to my conviction is an exclusive domain of the Commissioner for Lands. This Court do not have power to allocate land to someone neither can grant right of occupancy over a land to someone. In law, refusal by the Commissioner for Land to allocated land or grant a right of occupancy, a remedy and proper recourse is to appeal to the Minister responsible for Lands. According to the provision of sections 26(1) and 29(l)(c) of The Land Act, 114 R.E. 2019, the Commissioner for Land is responsible for determining any application for a right of occupancy and issuing a certificate of right of occupancy. Also under paragraph (e) of subsection (4) to section 26 the Commissioner may reject the application for a right of occupancy. Section 26(1) provide, I quote, XI) The Commissioner shall be responsible for determining any application for a right of occupancy under section 29" The remedy for any action including refusal to allocate land is found at subsection (5) to section 26, I quote, X5) Any person aggrieved by a decision made under this section shall appeal to the Minister' Therefore, this Court is not a proper forum for determining the action by the Commissioner for Lands in this matter where by implication there is refusal to allocate the suit plot also is reluctant or unwilling to issue a certificate of occupancy in respect of that plot to the Plaintiff for undisclosed reasons. One could ever wonder in the circumstances of the facts above, the Plaintiff is suing the purported trespasser without suing or joining the Commissioner for Lands who technically refused to allocated land Plot No. 329 Block "E" Mbezi to the Plaintiff, also Is unwilling to grant right of occupancy to the Plaintiff. Surprisingly also the Plaintiff did not even both to summon the witness from either the office of Commissioner for Lands, or department of Mapping and Survey to explain regarding the alleged re survey and sub division. Regarding a fact that the Plaintiff's suit plot being approximately 1,600 square metres, is also sceptical. According to The Urban Planning (Planning Space Standards) Regulation GN. No. 93 of 2018, Schedule which provide for urban planning space standard, provide, I quote and bold portion of interest to me. Item 1 General standards, Standards for residential areas- detached house and maisonettes, (I) Special area and unplanned settlements (special case) plot size 90 to 300 (ii) High density plot size 301 to 600 square metres; (iH) Medium density plot size 601 to 800 square metres; (iv) Low density 801 to 1200 square metres and

- (v) Supper low density plot size 1201 to 2000 square metres' Therefore, the alleged 1600 square metres is not a planned standards for residential areas under a space standard of medium density which was allocated to the Plaintiff, rather fall under supper low density. In other

words, this Court might have been now invited to grab some one land or the land which was not allocated to the Plaintiff. At any rate the Plaintiff failed miserably to prove her case. The suit is dismissed on its entirety. NDA "/s o ;kjdge /, 6/10/2023 z. '3? I.,l. .^JJjl^iyjJ Judgment delivered through virtual court attended by the Mr. Hance Mrindoko Advocate learned Counsel for the Plaintiff and in the absence of the Defendant although notice was issued to her vide Mwananchi News Paper ISSN 0856-7573 No. 8451 dated 03/10/2023, at page 25. VJ LU !ANt3^ DGE H 06/10/2023 7^ r7 10

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