

TANZANIA / JUDGMENT

dorothy methew kakamba vs tabora municipal council 2 others 2023 tzhc 22394 13 october 2023

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TZHCDECIDED
13 October 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE DISTRICT REGISTRY
OF TABORA (LAND DIVISION) AT TABORA LAND APPEAL NO. 5 OF 2022 (Arising from the
District Land and Housing Tribunal for Tabora in Land Application No.52/2016) DOROTHY
METHUEW KAKAMBA..... APPELLANT VERSUS TABORA MUNICIPAL
COUNCIL BARAKA STEPHEN MACHA RESPONDENTS YASIN HASSAN

JUDGMENT

Date of Last Order: 10/10/2023 Date of Judgment: 13/10/2023 MATUMA, J. This is a very straight forward Land dispute whereas the appellant and 2nd respondent herein are disputing over the ownership of plot no. 248 Block JJ Kanyenye Tabora Municipality. I call it a straight forward dispute because each party is in possession of a Certificate of Occupancy on the same plot. It is therefore a double allocation matter. The appellant was the first to be allocated such plot as her ownership traces its origin from the original ^wnetxine Hamisi Athuman Msonga who obtained the Certificate of title with effect from 1983. He later on the 16th April, 1998 transferred the right of occupancy to the appellant herein. The disposition was approved on 21st April, 1998 and the appellant became a new owner of the plot. See exhibit Pl the Certificate of Occupancy. On the other hand, it was alleged that one Hassan Yasin on 17/6/1987 was allocated the same plot. Upon his death Yasini Hassani the 3rd Respondent herein being administrator of the estate of Hassan Yasin sold such plot to Athumani Omary Haji on 30/08/2005. On the manner not apparent on record, on 10th April, 2013 one Yassin Hassan Jumanne as administrator of Hassani Yassin sold the same plot to Baraka Stephen Macha now the second respondent who processed and finally obtained Certificate of Occupancy on the same lot as from 25th April, 2013. The appellant alleged that when she went to develop her plot she found a fence which became the source of this dispute as it transpired that it was the 2nd respondent who was making some developments thereon without her knowledge and or consent. After a full trial, the trial chairman suspected that the appellant's Certificate of occupancy might have been obtained fraudulently. He thus declared the 2nd respondent as the lawful owner of the plot against the appellant hence this appeal. The appellant has preferred three grounds of appeal but his advocate Mr. M.K. Mtaki argued them in

two major complaints to the effect that; 2

- i) The trial chairman erred to declare the 2nd respondent lawful owner of the suit land on the ground that the appellant's title deed over the suit land was fraudulently obtained. ii) That the title deed of the appellant over the suit land having existed since 1983, the trial chairman erred in law to declare the 2nd respondent a lawful owner thereof whose title deed existed since 1987 without that of the appellant being revoked. At the hearing of this appeal the appellant was represented by advocate M.K. Mtaki, the 1st respondent was represented by Mr. Gureni Mapande and Mr. Samwel Mahuma learned State Attorneys and were in assistance of Theodora Chuwa (Solicitor of the 1st respondent). Mr. Kanani Chombala learned advocate represented the 2nd respondent while the 3rd respondent was absent without any notice. Mr. M.K. Mtaki learned advocate submitted the two grounds faulting the trial chairman to have ruled out that the appellant's Certificate of title was fraudulently obtained despite the apparent fact that it was the appellant's title deed which was the first to be obtained through its original owner Hamisi Athumani Msonga. The learned advocate argued that there is no evidence on record to support the conclusion of the trial tribunal that the appellant's title deed was fraudulently obtained. To the contrary, the learned advocate argued that it is on record through the evidence of the Registrar Officer in the Land office Mr. Emily Msonga (PW3) that the two Certificates of title were not forged nor 3 fraudulently obtained. They are all genuine but the problem is double allocation. The learned advocate for the appellant concluded his submissions by calling this court to find and determine that since the appellant's title deed was the first to be issued, the subsequent certificate to the 2nd respondent was invalid as it was held by the Court of Appeal in Patricia Mpangaia & Another versus Vicent K.D. Lyimo (as the guardian of Emmanuel Lyimo), Civil Appeal no. 149 of 2020 by the priority principle. Mr. Gureni Mapande and Kanani Chombala learned counsels for the 1st and 2nd respondents respectively essentially did not dispute that the matter revolves around double allocation and that it is the appellant's Certificate of title which was issued in the first instance. They thus argued this court to use wisdom by referring back this matter to the Land authority for them to deal with it in the manner they used to deal with issues of double allocation. In addition, there of Mr. Kaanani Chombala was of the view that the trial Chairman did not conclude that the appellant's title deed was fraudulently obtained but he merely suspected it because of the missing of land forms for effective transfer of land which are land forms no. 29, 30 and 35. He also argued that despite the fact that the appellant's certificate was the first to be issued it became approved on 21/04/1998. Since both parties are not in dispute that this is a double allocation matter and in fact it is so confirmed by PW3 supra, the determination of this appeal needs no long route. It should go through the guidance of the Court of Appeal in Patricia Mpangala's case supra. The Court of Appeal in that case held that when there is double allocation to land;
- i) The offer or title given to a person when there is a valid substituting or title to another person is invalid. ii) After the land authority has given a certificate of title to a person, it remains with no ownership over that land to offer to another person. In the instant matter it was Hamisi Athumani Msonga who was given the title over the suit land since 1983 and later

transferred it to the appellant herein. In that respect the land authority had no ownership of that plot to offer it to Hassan Yasin and subsequently thereof to the 2nd respondent. The subsequent Certificate of title was therefore invalid. But again, it is undisputed by both parties that in accordance to the official search exhibit P3, the Land Register reads the appellant as the lawful owner of the suit plot up to date. The 2nd respondent despite the fact that his title had no legal effect by the priority principle, he is not recognized in the Land register. For him to be registered as the lawful owner thereof, it would need to erase the appellant from the register. There is no any justifiable cause to cause the appellant whose title deed over the suit land is better than the 2nd respondent to be erased from the Land register to insert the 2nd respondent therein. I also agree with Mr. M.K. Mtaki learned advocate that the trial chairman erred to rule out that the appellants title deed was fraudulently obtained. Those were speculative views withputany evidential support on record. It was held in the case of MateruJ. Foya vs R Sospeter 1988 5 TLR 102that is wrong for the trial court to invoke speculative views to affect the decision. Mr. Kanani Chombala tried to justify the trial chairman's conclusion because he was of the view that the missing of some documents for transfer of the property from Hamisi Athumani Msonga to the appellant and the lack of some receipts of payments for the transfer thereof were justifying circumstances for the trial chairman to doubt the appellant's title deed. On this I agree with Mr. Mtaki learned advocate that by the time the transfer was made by Hamisi Athumani Msonga to the appellant, land forms no. 29, 30 and 35 were not in existence as they were introduced in 1999 through the enactment of the Land Act no. 4 of 1999. On the issue of payments, the transfer deed is well endorsed and stamped to the effect that stamp duty of Tshs. 100/- and Tanganyika stamp duty of Tshs.22490/= were dully paid. That is sufficient evidence for payment of the requisite fees which paved way to the approval of disposition. Therefore, the trial chairman's conclusion had no any justification. If at all, there was any need to suspect the title deeds in the instant matter, it was the 2nd appellant's title which was surrounded by suspicious facts due to the fact that;-

- i) The letter of offer to Hassan Yasini when closely examined the Block no. J.J is seen to be altered. It appears to have been Block "L" but "L" was changed to be "J" and subsequently thereon another "J" was added to read Block "JJ" which is exactly the appellant's block. ii) Through sale agreement dated 30/08/2005 the 3rd respondent sold the suit land to Athumani Orfrari Haji on behalf of his brother Abdallah Omari Haji for Tshs. 3,000,000/= whereas he paid Tshs. 2,500,000/= as advance payment. On 24/09/2005 the balance of Tshs.500,000/= was paid and dully endorsed but at all that times the sold plot was referred to as block "L" just as it is seen in the altered offer. The Ward Executive officer of Kanyenye ward endorsed the final payment and I quote; "Leo tarehe 24/09/2005 Ndugu Athumani Omary amemaliza kulipa pesa Hiyobaki kwa ununuzi wa nyumba Hiyoko Mtaa wa Maua kata ya Kanyenye plot no. 248 Block "L"jumla ya Tshs. 500,000/= laki tano tu..." iii) Various receipts of Hassan Yasini for payment of property tax and Land Rent referred his landed property as block "L" and not "JJ". iv) Unfortunately, Yassin Hassan Jumanne sold the suit land Plot no. 248 Block "JJ" to the 2nd Respondent without explanation as to how Plot No. 284 Block "L" turned into being plot

no. 248 Block "JJ". He sold it purporting to be administrator of the estate of Hassan Yasini without explanation as to how the first side to Athumani Omary Haji on behalf of Abdallah Omary Haji was distinguished. With all these facts which are apparent on record, it was the 2nd respondent's Certificate of title to be doubted because it traces its origin on unclear title deed between the property on block "L" and "JJ" and the fact that prior to the 2nd appellant the same seller had sold the same property to another person whose facts are silent on record however the contracts are incorporated in exhibit D2 the 2nd respondent's Certificate of title. 7 During cross examination the 2nd respondent admitted that block "L" and "JJ" are two different blocks and it is on record that the two blocks are in existence in the locality in the meaning that the late Hassan Yasin was offered Plot no. 248 block "L" and not plot no. 248 Block "D" but his siblings in an untold manner encroached into plot no. 248 Block "JJ" and sold it to the 2nd respondent without establishing their title thereof. Having said all these I now find that this appeal has been brought with sufficient cause and I accordingly allow it. The appellant is declared the lawful owner of the suit land plot no. 248 Block "JJ" at Kanyenye Tabora Municipality and the subsequent title deed given to the 2nd respondent is invalid with no any legal effect. In the premises the trial court's judgment is hereby quashed and the decree thereof is also quashed, The appellant is awarded costs of this appeal as well as costs in the trial tribunal against the respondents jointly and or severally. Right of further appeal is explained to whoever aggrieved. 8 Court; Judgment delivered in the presence of Mr. Akram Magoti advocate for the appellant, Mr. Gureni Mapande State Attorney for the 1st respondent, Mr. Kanani Chombala advocate for the 2nd respondent and in the absence of the DGE 13/10/2023 9

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