

TANZANIA / JUDGMENT

john baptist medard milinga vs attorney general 3 others 2024 tzhclandd 53 20 february 2024

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE NO. 305
OF 2022 JOHN BAPTIST MEDARD MILLINGA..... PLAINTIFF VERSUS

1. ATTORNEY GENERAL..... 1st DEFENDANT
2. MINISTRY OF WORKS AND TRANSPORTATION..... 2nd DEFENDANT
3. MINISTRY OF LAND, HOUSING& HUMAN SETTLEMENT
DEVELOPMENT..... 3rd DEFENDANT
4. TANZANIA NATIONAL ROADS AGENCY..... 4th DEFENDANT

JUDGMENT

Date of last Order: 06/12/2024 Date of Judgment: 20/02/2024 A, MSAFIRI, J. The plaintiff have instituted this suit against the defendants jointly and severally claiming that the plaintiff is a registered owner of a surveyed land known as Plots No. 16 and 17, Block 'C' Kimara -Temboni under Registered Plan No. 31121 held under Certificate of Title No. 51835. (herein as the suit plot, suit land, suit property). That the said parcel of land is located along Morogoro Road, Dar es Salaam. TW 1 That the plaintiff have been in peaceful occupation of the suit plot until sometimes in May 2017 when the 4th defendant started claiming that the suit plot is part of the road reserve for Morogoro Road. The plaintiff claims that on 27/9/2017, the 4th defendant entered the plaintiffs land and demolished all the developments thereon causing loss of the plaintiff's property valued at TZS 122,337,000/= and crops valued at TZS 13,790,000/=. That the plaintiff have never been compensated in respect of the suit plot. The plaintiff therefore prays for the following reliefs and orders against the defendants, jointly and severally, namely;

1. A declaration that the plaintiff is a rightful owner of the suit land comprising Plot No. 16&17 Block "C" Kimara- Temboni within Kinondoni (now Ubungo) Municipality, Dar es Salaam under Certificate of Title No. 51835.
2. An order declaring Certificate of Title No. 51835 was lawful issued to the plaintiff.

3. An order declaring that the 4th defendant's acts of demolishing the plaintiff's properties as illegal.
4. An order that the plaintiff is entitled to be restored to his landed properties.
5. Costs of the suit.
6. Any other orders and reliefs as this court shall deem fit to make. T 2 The defendants filed their joint written statement of defence where they denied vehemently each of the plaintiff's claims and put him to strict proof. They prayed for the dismissal of the suit in entirety with costs. The plaintiff was represented by Mr Benitho Mandele, learned advocate, while the defendants were represented by Ms. Hosana Mgeni, learned State Attorney. Before taking off of the hearing, a total of three issues were framed namely; 1st, whether the plaintiff is the lawful owner of the suit land, 2fd, whether the demolition of the plaintiff's house done by the defendant was lawful and 3d, to what reliefs are parties entitled to. During the trial, the plaintiff was the sole witness in his case while the defendant summoned two witnesses. Testifying as PW1, the plaintiff stated that he acquired a suit Plot No. 16 &17, Block "C" Kimara Temboni, located at Ubungo District, Dar es Salaam along Morogoro Road. That he was granted the suit plot by the Government in 1974 through "operesheni vijiji vya ujamad' and "KUimo cha kufa na kupona." That he developed the suit plot by planting trees including fruit trees, timber trees and other varieties of trees. That he erected a residential house on the suit plot and huts which he used for keeping livestock. Io i I! r 3 He said that he conducted valuation before the demolition on the suit plot which was done by a professional Valuer. He produced a Valuation Report which was admitted as exhibit Pl. That the total value of his property was over TZS 522 Million. That after that he lived comfortably and peaceful and his ownership was cemented when he was granted the right of occupancy by the Commissioner for Lands. He produced a Certificate of Title which was admitted as exhibit P2. He said that the Certificate of Title was issued in the year 2000 and was valid up to the year 2030. PW1 testified further that in 2017 he was served with a Notice from TANROADS (4th defendant), directing him to vacate from the suit plot where he was residing. He produced a photocopy of the said Notice which was admitted in court as exhibit P3. That the Notice ordered the plaintiff to vacate the suit plot and demolish it. That he made a follow at the TANROADS and also went to the Commissioner for Lands, seeking for explanation about his ownership of suit property. PW1 said that, suddenly in September 2017, TANROADS entered into the suit plot and demolished the property. They demolished residential houses, huts and some trees. He said he and his family were devastated following the demolition. That they were torn apart as family whereby the plaintiff moved to Luilo Village, Ludewa District, Njombe and his wife live 4 at Msigani, Mikoroshini, Ubungo, Dar es Salaam. That their source of income was demolished, wiped out and they were affected psychologically. PW1 stated that through his lawyer he issued a 90 days' notice of intention to sue the Government. He produced it and it was admitted as exhibit P4. He said that TANROADS claimed he has trespassed into Morogoro road reserve which is not true because Morogoro road location has been shifting hence there is no real definition of the real

location of Morogoro road. He said in addition that he was granted the Certificate of Title by the issuing authority and the Title is valid. He added that the Commissioner of Lands could not have issued a Certificate of Title on the road reserve. He added that he has been in occupation of the suit plot since 1974 and no any authority came forward and warned him that the area he was occupying was in the road reserve. He said that Morogoro road location has been shifting hence there is no definition or identification of the real location of Morogoro Road. He prayed for restoration of his suit plot and all the improvements he has made therein. He prayed for compensation reliefs which the court may deem fit and just to grant. 5 On the defence side, one Johnson Rutechura testified as DW1. He said that he works at TANROADS Dar es Salaam as a Sociologist. His duties includes overseeing the maintenance of road reserves and the area surrounding the road reserves. He said that in the dispute at hand, he was the one who identified the houses which were in the road reserve and had to be demolished. After identification, he issued Notice to the owners of the identified houses which were in the road reserve. He also participated in the demolition exercise of the said houses. He testified that the Highway Ordinance of 1932 and later the Highway Act of 1967 which was amended in 2007 provides for sizes and measures of the roads. That Morogoro Road has a size of 90 metres by each side of the road from Ubungo Mataa to Kimara Stop Over. And from Kimara Stop Over to Kiluvya TAMCO the road measures 121.5 meters on each side of the road. That as per the Road Act, before the amendment, the size of the road reserve was 22.5 meters but with the amendment the size is 30 meters. DW1 said that the house of the plaintiff was located at Temboni hence it was within the size of 121.5 meters and this is as per the Highway Act. He said that they demolished a total of 1815 houses which were in the road reserve including the house of the plaintiff. He said further that the owners of the houses were not compensated as according to the law they are trespassers. DW1 said further that although the plaintiff has claimed for restoration, it is now impossible since the area claimed is now the road and road reserve. In cross examination, DW1 stated that the Highway Ordinance establishes the road reserve and set its size/width. He said that the plaintiff and others are not entitled to compensation as they are the trespassers. He was shown exhibit P1 which is the Certificate of Title in the name of the plaintiff and it shows the tenure expires on 2030. He said he cannot elaborate on the existing Title but the fact is that the plaintiff's house was demolished by TAN ROADS and it was as per the Road Act (supra). DW2 was one Kajesa Minga, who said that he is a Land Officer working at the office of the Assistant Commissioner for Lands. He testified that according to their records, initially the suit plots were allocated to plaintiff in 2000. After the allocation the plaintiff requested for the said land to be registered under his name. 7 That the plaintiff informed the Office of the Commissioner that he has surveyed the suit land by using private surveyor. That the Commissioner's Office prepared a Certificate of Title which was then issued to the plaintiff. DW2 said further that in 2018, the Office of the Commissioner received a complaint letter from the plaintiff claiming that his property i.e. the house and all improvements he has done on the suit plots were demolished. That the Office of the Commissioner wrote a letter to the plaintiff and replied to his complaints that it is true that he was issued with a Title on the suit plots but the same was wrongly issued as

the area allocated was within the road reserve. DW2 said that it is the person who is requesting to be issued with a Title who is responsible for supplying correct information of his land to the Commissioner for Lands. And that if the Commissioner discovers that there is acts of cheating in the procedure for making and issuing of the Title, then the Office has authority to rectify the Title. He told the Court that as of now, the Title on the suit plots has already been rectified by the Office of the Registrar of Titles. He tendered the two letters one from the plaintiff and another from the Office of the Commissioner for Lands. The letters were admitted collectively as exhibit 8 DI. In cross examination, DW2 said that the rectification has been done but the revocation has not been done. He maintained that the plaintiff was a trespasser in the road reserve. After the completion of the evidence by all parties to the dispute, the parties filed the final submissions through their advocates. I have read and well considered the said submissions along with the authorities issued therein. As pointed earlier, the three issues were framed before the commencement of trial. I will determine them accordingly. The first issue is whether the plaintiff is the lawful owner of the suit land. It is the requirement of law in civil cases that he who alleges must prove. This principle of law is enshrined under Section 110 of the Evidence Act, Cap 6 R.E. 2022. This principle is further embedded in litany of cases both of this Court and the Court of Appeal. Among the cases is one of Godfrey Sayi vs. Anna Siame as legal representative of the late of Mary Mndolwa, Civil Appeal No. 114 of 2014 (unreported) where the Court of Appeal held that; It is a principle of law that generally in civil cases, the burden of proof lies on the party who alleges anything in his favour. We are fortified in our view by the provisions of Law of Evidence which /n- 9 among other things states that whoever desires any court to give judgment as to any iegai right or liability dependent on the existence of facts which he asserts must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person". The similar observation was made by the same Court of Appeal in the case of Ernest Sebastian Mbele vs. Sebastian Mbele and others, Civil Appeal No. 66 of 2019, CAT at Iringa (Unreported). Basing on that requirement of the law, it is the duty of the plaintiff who have to prove his case on the balance of probability. In his evidence, the plaintiff stated that he was granted the suit plot by the Government in 1974 by Operesheni Vijiji vya Ujamaa and KUimo cha Kufa na Kupona. In 2000 he requested and was issued with a Certificate of Occupancy by the Commissioner for Lands which made him a lawful, registered owner of the suit plots. The original Title No. 51835 on Plot No. 16 8cl7 Block C, Kimara Temboni, Dar es Salaam City which was issued on 01st July 2000, was admitted in Court as exhibit P2. The ownership was for the tenure of 33 years form the year 2000. The fact that the suit plots were allocated to the plaintiff in 2000 was corroborated by DW2 Kajesa Minga, a Land Officer from the Office of the io Assistant Commissioner for Lands, Dar es Salaam Region. He admitted that his office prepared and issued the plaintiff with a Title of ownership of the suit land which was received in court as exhibit P2. DW2 admitted further in his evidence that the plaintiff was issued with the Title but the same was issued on the road reserve. He said that the Title was wrongly issued to the plaintiff since the suit land was within the road reserve. When he was asked by his leading counsel on whose fault the Title was issued on the road reserve, DW2 replied that it was the

plaintiffs duty to supply the correct information to the Office of the Commissioner for Land about the suit land. He said further that the plaintiff conducted private survey on the suit land and the Office of the Commissioner for Lands acted on those wrong information and acted upon them by issuing a Title. DW2 testified that as of now, the Title in dispute has been rectified by the Registrar of Titles. However, there was no any document to show that indeed, the Title in dispute has been rectified. When he was cross examined by the counsel for the plaintiff, DW2 said that when rectification is done, the Notice of rectification has to be sent to the owner of the Title. The witness said he has not produced the said Notice. He explained that the revocation of the Title has not been done. ML 11 From this evidence, it is clear that the plaintiff was legally issued with a certificate of occupancy which made him a lawful owner of the suit land. He have been a lawful registered owner of the suit land since 2000 when the Title of ownership was granted to him. There is no any evidence that the said Title has been rectified or revoked by the issuing authority. It is my finding that the plaintiff was and still is the lawful owner of the suit land. The fact that the ownership was granted on the road reserve does not make the ownership illegal as it was put by the defence witnesses DW1 and DW2. I base my reasoning on the provisions of Section 22 of the Land Act, Cap 113 R.E.2019 which provides for the incidents of the rights of occupancy as follows; 22(1) A granted right of occupancy shall be- ta) granted by the President

- (b) in general or reserved land; (emphasis supplied)
- (c) of land which has been surveyed
- (d) required to be registered under the Land Registration Act.... From the provisions of Section 22 of the Land Act as reproduced herein above, a right of occupancy can be granted in the reserved land and I take that the road reserve is a reserved land for road use. The reserved land is defined under Section 6 of the Land Act to among others, the land reserved, designated or set aside under the provisions of the Roads Act.< 12 Hence, the ownership of the suit land by the plaintiff which was said to be within the road reserve was not unlawful. I find that the plaintiff have proved that he is a lawful owner of the suit land. That ownership was granted by the responsible authority and has not been revoked to date. The first issue is answered in affirmative. The second issue is whether the demolition of the plaintiff's house done by the defendants was lawful. There is no dispute that the plaintiff's house was demolished by the 4th defendant following the Notice of demolition issued by the 4th defendant to the plaintiff on 05/05/2017. The Notice was admitted in Court as exhibit P3. This was confirmed by DW1 Johnson Rutechura an Officer from TANROAD, the 4th defendant. In his evidence, he admitted that his office issued a Notice which is exhibit P3. The same was issued to the plaintiff and others who were residing in the road reserve. That they demolished about 1815 houses which were in the road reserve including the house of plaintiff. He said that the 4th defendant did not pay any compensation to the owners because as per the laws, the owners were trespassers. He named the laws to be the Highway Act, 1967 which was amended in 2007 and the Roads Act No. 13 of 2007. He testified that these laws provides for the size of the roads. And that for Morogoro Road, it has a size of 90

meters on each side from Ubungo Mataa area to Kimara Stop Over area. And from Kimara 13 Stop Over to Kiluvya TAMCO the size of the road is 121.5 meters. He said that the house of the plaintiff was located at Kimara Temboni hence it was within the road reserve. He admitted that there have been some amendments in the laws governing the road management which increased the size of the road reserve but no compensation has been made to the people who have been affected by the said amendments. Furthermore, DW1 admitted in cross examination that Operesheni Vijiji vya Ujamaa brought an impact of establishing residency in the road reserve. The defence has contended that the plaintiff and other people whose houses were demolished were trespassers. However it is my finding that since the plaintiff have established that he is a lawful owner of the suit land, then he was not a trespasser. He have established that he was granted the suit land and was issued with a certificate of occupancy. The demolition done by the defendants particularly the 4th defendant was unlawful as it was not done as per the requirement of the provisions of the Land Acquisition Act, Cap. 118. According to the provisions of the Land Acquisition Act, any land may be acquired by the President where such land is required for any public purpose. The said Act provides for the procedures where the land is set to be acquired by the Government. The Notice of acquisition should be issued to the owners and to the public by publication in the Gazette and the owners are to be 14 compensated. Furthermore, Section 16 of the Roads Act also provides that the owner of the acquired land for purposes of that act shall be entitled to compensation for any development done on that land. This procedure was not done in the instant case when the Government through TANROADS wanted the suit land for road infrastructure. It should be noted that the plaintiff owned the suit land lawfully and he stated that he has never been compensated. Since the demolition of the suit plots owned by the plaintiff did not follow the lawful procedure of land acquisition then it was not lawful. The second issue is answered in negative. The third issue is on the reliefs which parties are entitled to. Having analysed the evidence which was adduced by the parties to this suit, I find that the plaintiff is entitled to the reliefs prayed at the relief part of his Complaint. The Court will grant only relief which has been prayed for. (see the case of Dr. Abraham Israel Shuma Muro vs. National Institute for Medical Research& Another, Civil Appeal No. 68 of 2020, CAT at Mwanza, Unreported). Following that, the suit is entered in favour of the plaintiff and it is hereby ordered that; 15

- (a) It is declared that the plaintiff is a rightful owner of the suit land comprising Plot No. 16& 17 Block "C" Kimara- Temboni within Kinondoni (now Ubungo) Municipality, Dar es Salaam under Certificate of Title No. 51835.
- (b) It is declared that Certificate of Title No. 51835 was lawful issued to the plaintiff.
- (c) It is declared that the 4th defendant's acts of demolishing the plaintiff's properties are/were illegal.
- (d) It is ordered that the plaintiff is entitled to be restored to his landed properties.
- (e) The plaintiff is entitled to the costs of the suit. It is so ordered. 20/02/2024 16

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