

TANZANIA / JUDGMENT

mac group ltd vs mohamed kanji

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IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA LAND DIVISION AT DAR ES SALAAM
LAND CASE NO. 197 OF 2006 MAC GROUP LIMITED..... PLAINTIFF
AND MOHAMED KANJI..... DEFENDANT

JUDGEMENT

OPIYO, J. The Plaintiff is suing the defendant for a declaration that the Plaintiff is the lawful owner of the two godowns (35A and B) in plot No 21 and part of plot 22, located at Nyerere Road, Dar Es Salaam, and for perpetual injunction restraining the Defendant, its workmen, servants, assigns and whomsoever is claiming interest in the said premises through him from interfering with the Plaintiffs peaceful enjoyment of the said godowns. It is pleaded by plaintiff that, the sale agreement executed between the parties indicated that the godowns bought were on plot numbers 21,22 and 23, Block D Nyerere Road and even a certificate of title number 53508 that was issued to the Plaintiff reflecting that fact. It is further pleaded that it was later realized that, that was erroneous as it came to light that the three plots also included an office building which was sold to Data Machines Limited. Upon such realization, on direction of the Commissioner for Lands, the said certificate of title was surrendered to the Ministry of Lands Housing and Human Settlements Development for subdivision so that two separate titles are issued to the respective owners, that is, the Plaintiff (in respect of the go-downs in plot No 21 and part of plot 22) and Data Machines Limited (in respect of the office building in plots no 23 and part of 22). That the defendant became successor in title to Data Machines Ltd, but has been claiming ownership of plaintiff's properties (two godowns) as forming part of what he bought. On the other hand, the defendant pleads that on 8th June 2003, through a public auction, he purchased Plot Nos. 21, 22 and 23 Block D situated along Nyerere Road, Dar es Salaam. The sale was conducted pursuant to execution of Kisutu RM's Court order in Misc. Civil Case No. 230 of 2001 between Ahmed Rajabu vs. Data Machine Ltd. executing judgment and decree entered by the Regional Court of Zanzibar. It is also the Defendant's defence that the purchase of the premises was lawful and on 15th September, 2003 the Kisutu RM's Court notified the Commissioner for Lands that the said property had been sold to the Defendant and demanded the Commissioner to effect transfer by power of sale. The defendant further alleges that Data Machines Ltd, the owner of the property, subject of execution proceedings challenged the sale defendant by way of appeal in the High

Court of Tanzania arguing that all properties in the three plots belonged to them, but lost. That, the plaintiff knew and had knowledge of the dispute/proceedings by Data Machines, but did not join to challenge the said Data Machines Ltd until the judgement was entered by the High Court, Mlay, J, as (he then was) in Civil Appeal No 161/2003 DSM blessing the sale to the defendant. The Defendant therefore prayed for dismissal of the Plaintiffs suit with costs. Before commencement the following issues were framed

- (a) Who is the lawful owner of godowns No. 35 A and B situated in Plot No. 21 and part of 22?
- (b) To what reliefs are the parties entitled? The parties' testimonies, final submissions as well as site visit findings will be considered in due course during analysis of issues. To start with the first issue as to who is the rightful owner of godowns No. 35 A and B situated at Plot No. 21 and part of plot no 22? In answering this issue the plaintiff called three witnesses. PW I, one Neema Victor Ndone, Assistant Executive Compliance and Liaison Operations Manager of the plaintiff, testified that the Plaintiff rightfully purchased godowns No. 35 A and B located at Plot No. 21 and part of 22, Nyerere Road, Dar es Salaam, through a bidding process organized by Tanzania Investment Bank as the appointed 3 Liquidators of Tanzania Hides and Skins Limited. The letter notifying plaintiff to have won the bid was admitted as Exhibit PI. She continued to submit that, after such notification, the Plaintiff paid for the purchase of the same via receipts that were admitted in court as Exhibit P2 collectively. One of the receipts shows that the payment was effected by Chemi Products Ltd, a company owned by Mac Group Limited and another one by Mac Holdings currently known as Mac Group Ltd, totaling Tanzania Shillings 72 Million. PW I also tendered various correspondences reflecting of such sale which were admitted as Exh. P3 collectively. In her testimony PWI testified that, the properties acquired by Plaintiff were godowns No. 35 A and B built on plot No. 21 and part of plot 22, Nyerere Road. She also testified that, Data Machines owned Head Office building built on Plot No. 23 and part of plot 22. PW I further testified that after purchase of the property in dispute, a Title Deed was, upon request, issued in the name of the Plaintiff, showing that she owned properties on plots number 21, 22 and 23. The said title deed was surrendered to the Commissioner for Lands, Ministry of Land, Housing and Human Settlement (Ministry of Lands) on the ground that the title deed was erroneously issued to the Plaintiff because it included properties other than the two godowns belonging to other persons. That, this fact was evidenced by formal correspondences between the Ministry of Lands and the Plaintiff acknowledging the mistakes, thus, the need for sub-division of 5 the plots to accommodate the interest of respective interested parties. These letters were admitted as exhibit P3 collectively. In relation to this issue also, PW2, one Hellen Philip, a land officer from the Ministry of Lands testified that, as per the records of the Ministry, Mac Group Limited are the rightful owners of godowns No. 35 A and B in plot no 21, 22, and 23, block D Nyerere Road. She stated that, earlier on, the properties in those plots belonged to East African Trading Company who later sold it to Tanzania Hides and Skins Limited shared with Tanzania Leather Associate Industries. Tanzania Hides and Skins limited was placed under receivership of Loans and Advances Realisation Trust (LART) who contracted with Tanzania Investment Bank as Official Receiver to conduct sale of the

former's properties. In so doing, the former's properties in plots no 21, 22, and 23 Nyerere road were sold to two different entities. The two godowns no 35 A and B were sold to Mac Holdings Limited on a sale executed on 6th September 1994 as per sale agreement that was admitted as Exh. P4. He continues to state that, the said sale agreement was submitted to the Ministry of Lands to process the Plaintiffs application for Title Deed as the former had expired. The Ministry issued Mac Group Ltd with a new title on the 29th January 2003 bearing Title No. 53508 as purchaser of Godowns No. 35 A and B, but indicating that the same were located in plots no 21, 22 and 23. The certificate of occupancy was admitted as Exhibit P5. 6 Her further testimony is that, after a certificate of title was issued in the name of the Plaintiff they received a letter from Data Machines Limited complaining that their property, an office building, has been included in the said certificate of title to Mac Group Ltd. They informed the Commissioner for Lands that, the certificate has been wrongly issued in that, the Plaintiffs godowns were located on plot no 21 and part of plot 22 only and their property, office building was built on plot number 23 and part of plot number 22. Data Machines Limited letter is dated 20th March 2003 and was admitted in evidence as Exhibit P6. She, thus, advocated for rectification of the certificate of title no 53508 issued to the Plaintiff to reflect such reality. Data Machines Limited's sale agreement dated 20th September 1994 was admitted as Exh. P7. That, Ministry also received a letter from LART, Exhibit P8, requesting for revocation of the title issued to the Plaintiff (title number 53508) and re-issuing of separate titles to each rightful owner. PW3, Menson Nyahatirwa, a Director of Legal services, at Tanzania Investment Bank, confirmed the testimony of PW I and PW2 to be true as per their office records. He testified that, the properties were sold to two buyers. One is Mac Group Ltd who bought godowns No. 35 A and B located in Plot No. 21 and part of 22 and Data Machines limited who purchased Head Office Building located in Plots No. 23 and part of 22. He confirmed TIB receiving payments for the same. PW3 Further admitted that indeed the Title Deed had errors on the face of it as it gave total ownership of Plots No. 21, 22 and 23 to Mac Group Ltd. hence the need for partitioning to accommodate needs of different lawful owners. On the other hand, the defendant's testimony is that, he saw on the newspaper of 7th June 2003 that, there was to be an auction on 8/6/2003 for the sale of properties in plots no 21, 22 and 23 Block D Nyerere Road, Dar es Salaam as per the order of the Kisutu Resident Magistrate Court. He attended a sale and emerged a highest bidder in purchase of three plots No. 21, 22 and 23 referred to above. He tendered proclamation and certificate of sale which were admitted as exhibit D1 collectively. That, Data Machines Limited, the original owner of the property the subject of execution proceedings had challenged the sale by way of Misc. Civil Application No 230 of 2001 claiming that there was no notice of auction issued to him in order to give him a chance to pay debt before auction of her property. She lost the application. Copy of court's decision in that application was admitted as exhibit D2. She then appealed to the High Court in civil appeal no 161/2003 and again lost and the court held that sale of plot no 21, 22, 23 was valid and her appeal was dismissed. That, the court declared Mohamed Kanji as the rightful owner of all the three plots, and not just part thereof. From what have been provided in the testimonies above coupled with arguments in final submissions to be noted herein below, it

is not disputed that originally the three plots had one title deed in the name of Tanzania Hides and skins Ltd who constructed various structures therein including 8 office building and the two godowns 35 A and B. From the seller's point of view as per Exhibit P4 it has been proved that, the two godowns were sold to the plaintiff way back in 1994 and Exhibit P7 a sale agreement shows that, what was sold to Data Machines Ltd is the Head Office building. It is also undisputed that, what the defendant bought is the property of Data Machines Ltd that was auctioned in execution of court order. Plaintiff claims that the newspaper had advertised sale of all properties in plots No. 21,22 and 23, but he never tendered the said newspapers to prove that. In my settled view, even if it was true that, the advertisement indicated that, the Data Machines property was located in Plots No. 21,22 and 23, but as defendant derived their title from Data Machines for whose property he bought from the auction, he cannot have a hand in other person's properties that are also situated in the same piece of land, plot No. 21, 22 and 23. He is only entitled to what belonged to his predecessor in title, Data Machines Ltd. The description referring to the property in question is in all the three plots resulted from the fact that all were held under the same title by then, thus, it cannot mean that, what was auctioned constituted all the plots, but only what belonged to Data machines constituted in the plots. The TIB receiver Manager who sold the properties to both Plaintiff and defendant proved that, Data Machines only bought head office building situated in those plots not the entire piece of land. And that it is the plaintiff who bought the two godowns No. 35 A and B. In the circumstances, it is my view that the defendants claim and Mr. Mbamb's argument in final submission that, as long as the godowns are in the plots, they constitute part of the purchase is unfounded as the defendant could not have recourse to the property that was never of Data Machines Ltd, from whom he derived title. In building argument for the plaintiff, Mr. Mponda was so emphatic that as long as at page 2 paragraph 1.0 of sale agreement admitted as P7 between M/S Tanzania Investment Bank, Receiver and Manager Tanzania Hides and Skins Limited (Under Receivership) and M/S Data Machines Limited describes subject matter of sale as the Head Office Building Located along Pugu Road (as it then was) Dar es Salaam, it establishes the ownership of Data Machines and subsequent rights of the Defendant not otherwise. Indeed Exh. D2 read together with Exhs. P4, P6 and P7 resolves clearly the dispute between the Plaintiff and the Defendant. Exhibits P4, P6 and P7 pre- exist all the documentary evidence tendered by the Defendant. All the court decisions submitted as exhibit by the defendant presupposes existence and authenticity of exhibit P7, the sale agreement to data Machines Limited as it forms the basis of judgement debtor's ownership of the subject matter in all those proceedings. D2, a decision by resident magistrate court was an application for setting aside the sale of a house on plot no 21, 22 and 23 sold by auction, sale to the defendant. That means what was sold was not all the properties in those plots, but one of the immovable properties therein. Exhibit D3, judgement by Mlay, J as he then was referred to 10 applicant's (Data Machines Ltd) property in plot no 21, 22, and 23. It did not make reference to all properties in plot no 21, 22 and 23 warranting claiming everything situated in those plots that were not belonging to the then applicant. Above all, even both proclamation of sale and certificate of sale in Exhibit D1 made reference to premises/immovable properties of

judgment debtor (Data Machines Ltd) in plot no 21, 22 and 23. With all that evidence in place and from the defendant himself, I am persuaded to subscribe to the view by Mr. Mponda that is irrational and beats all common sense for the Defendant to claim that he bought the godowns in dispute which his predecessor in title, Data Machine Limited, the judgment debtor stated did not own in Exh. P6. His entitlement ends with entitlement of judgment debtor in those proceedings he relied on to derive his title, not more. Making reference in those proceedings that the property he bought was situated in plot no 21, 22 and 23 Block D by itself did not entitle him to all the three plots, as Mr. Mbamba argued, rather it constituted sufficient description of the subject matter at the time Tanzania Investment Bank sold the landed properties to the Plaintiff (godowns No. 35 A and B) and Data Machines Limited (Office Building). Exhibit P4, P6, and P7 clear it all on the issue of who owns what in what is situated in plots no 21,22, and 23 Block D Nyerere Road, that it need not an over emphasise. It suffices to say that, the court's site visit to the locus in quo on 3rd April 2020 where PWI and DWI were given the opportunity to show their respective buildings, the court was able to see godowns No. 35 A and B sold ii to plaintiff clearly demarcated with no entrance to the other side where the ;i Office Building, sold to data Machines, is located. The court was also able to find out that the plaintiffs are in use and occupation of the two godowns ever since they bought the same and defendant have never came to the occupation of the same at any time. The site visit also wiped out the unfounded insinuation by .the defendant that, entering judgment in favour of the Plaintiff in this case would amount to an interference with the decision of Mlay J. which confirmed the decision of the Resident Magistrate's Court of Kisumu which proclaimed sale of Data Machines Limited's property i followed by a certificate of sale. The proceeding by Mlay, J. can cannot be overstretched to cover the Plaintiff's go-downs which Data Machines Limited by their own document authored well before court auction took place declared in no uncertain terms that they belonged to the Plaintiff (see exhibit P6), correctly argued by Mr. Mponda. There is no dispute that the property he bought were of data Machine only. And the property of data Machine as per exhibit P6 and P7 was only office building in those plots. Thus, the defendant's recourse is only in that single building. He cannot claim what was already owned by plaintiff from 1994 in execution of a decree against data Machines. Based on that finding in the first issue, the reliefs the parties are entitled to can now be decreed as follows:-

- (a) The plaintiff is the lawful owner of Go-downs No. 35 A and B situated in Plot No. 21 and part of 22. 12
- (b) The Defendant, its workmen, servants, assigns and whosoever will be claiming the property/ interest through the defendant are refrained from interfering with the Plaintiffs peaceful enjoyment of the said godowns.
- (c) Costs of the suit be borne by the defendant M. P. OPIYO, JUDGE 15/5/2020 13

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