

TANZANIA / JUDGMENT

19920331 TZHC Dar es Salaam

COURT
TZHCDECIDED
31 March 1992

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IN THE HIGH COURT OF TANZANIA AT DAR, ES ~ , - - CIVIL CASE NO. 44 - OF 19'0
... , ~ , - tt . MRS. - MGEN! KIHENDO ; ; - ! PtitiNTIF.F VERSUS NANZY MTAWALI1oe • . 1 , , i.
~ , ~ , ~ _ DEFENDANT l3@TI J, 4 This is a suit for a deela.ra.tion that the plaintiff is t h ~ - lawful
holder of and oeeu.pier of plot No. 196 13101,;k D~ Mbezi ~ l.e:1 High Density.Area. The suit . . is
also for dam€3€es and costs. • The evidence ~ u.e~ is that' th~ plaintifi we:s• offered a ri.3ht ot
occupancy of plot iio. 196 :Bl~ D Mbezi High Density area. ~ dn/•,r- • !.s &fter c~lled the suit plot, • '!
be •ff8' 'was dated 2/3/83. The Jla.intu'f then l)aid the necessary fees but the first re•eipts l),%1d
tn, off er were stolen, After ~e time and after. producing - . a lett•r froni the Police Station
e concerni.n6.the theft, the plaintiff wa.s issued with another offer on 3/4/87. In 1986 the :plaintiff -
• took 2000 bricks, 2 lorries of sand and 2 lorries of gTavel ' . to the 'a_ui t plot. Th~ plaintiff ~ould
not start 5onst:ttiction \ . . as there ~as paddy on the suit~ plot. . The Plaintiff paid shs. 5 1 to0/
=,;for .. each lor:cy- of sand and 7,000/= for eaah lo:t;y uf eravel while e~ cement block cost the
plaintiff shs. 30/= per piece. •"•~en the • plain_tiff went to the plot a.gain in Chtober, .1988 she
f'otriid 2. .houset, _a founda'tion under eonstruction •ut ~er buildin~rmaterials . . were \ all there.
Ch learning about this,ihterf~rence . ui he:r- piot the plain.tiff reported the matter to the
l',a".ld :lffice~ . - . . - . -A stop order was issued and given to the plaintiff to take to M\$bu.Ja.. ""' • . -
-..the hus~~ d. of ~-e: defendant,. :But the defendant}ev~r went to the _ , 1 -- _Land •ffice~ ev-
en,.. arter recei'7ine the •stop order nor did the 3.,_,-,-- •ii ,;:_~:~on~:F,~o-tion atop{ .A letter w~
writ~en by the Land Offi•e addresser•,,, f' to Nancy-. Mtawaj.i. 'lhis made the plaintiff realize that
the: , plot h~ •b~eh issued to another-i~:rson. . . before. When the . , . "l plaintiff went back to the
Land • f ice she was• advised to f!~l. tQ • • i" ', •6urt: She did. so• and hence this suit. She ea.id in
cross,-examina.tion that she did not h~ve any receipts for the peritd 1983 to .1987 because the
same - were stolen. Ncr did -she have a building penni t. S">.e wa.9 . asked about the dates w?en
she. took the building material to the suit plot. She said that it was in 1986 although' her advoeate
wrote that it was• in 1988 in . his letter to the defendant. She was also asked about the
disorepancy in he:1! evidence and the plaint regarding the :prio~ ~f gravel per trip. She.said that
she told her advocate that a l•rry of g%avel _o~st 25,000/= •whereas in' her evidence it, was an;Ly-
700o/= Onari Jtull4 1W 2 said that he knew the p~tiff but not 'the 10 defend~t as the plaintiff
was t~ven a plot in 1983 ~p to 1984 which oocupied pa.r.t of N' e shamba.' The Plaintiff brought
lorrie11 , • of •and: and gl!avel. as wel~ as brieks t which he assisted . , ,?-ll offl~ng.

- ' ... later. oh a foundation for a house was dug and oonstruction was B~B' ,i _till .when a house had been built. In o~,s-e%amination PW 2 said that he knew Mabula. He said ~~~ - . that he used to see vehicles a.fte.~ the house was under' constructiClll. . N 3 Valentine Sanze said that he was a land officer and he woJlked at Kinondoni))i.striet 0C1'i•1! M the Di.stri.Dt lend Offieer. ~ •M~sa .• Hua~ ' was an Assietant, 't !,afid Officer.
- ., Musa ' Hussein signed 20 .a .l.~tter ad~essed to Nan~,r 'Mtawali (Elch.?)3) whi~h states that Nancy Mtawali w~ given the suit<- plot in 1980 • ~e letter was saying ~ that. sinoe the defendant did not ~epl,y,to the letters from the Land Of'liee asking about payment ~f fees, the plot had been given to anothe~p~rsan •
- r. ' In o~oss-exam.ination PW3 said that sending receipts of paymen~ of fees to the Land Office w~s not ~ne of the liOnditions in .ti- ••••• pa:cagraph 6 •f. the of{er •. Jfe said that nulli~icatitn ot .an offer paid for and accepted can only be by ~evocation by'the Commispi.oner• for ~ Lands. In t~.s .~case there was no such revocation. 30 In defence, the defendant said that she got an, offer for the ., ' suit pl~ ,_op. 22/JJJy8o and she paid all t~e fees thereby accepting the o!fer. . Sle produced a •opy of the offer, as exhibit D1 and the ;,eceipt a!3 exhibit D2. She went on to state 'ihat in.1988 when ;the house construction had reached the linted level, the plaintiff vren.t to the land , Office to -claim part of her plot._ .. A stop order wae i~sued by the City Council (~xhibit D3). '!be Land Office!'. wr,ote the defendant a letter . to the effect_ tha'i it was giving '•) I I ' hex plot to the plaintiff (ipch~ D4)~ Later on she got a copy ~ a letter addressed t~ :ne defendant (Exh~ n5)& This letter states inter alia that the lawful oocupier of the suit plot is the defendante !Then she got a letter from the advocate of the Pl~tiff ... d~ding that the defendant leave the suit plot alone• ('E,chibit D6).• After ocmplaining to the Land Office the defendant got.a letter from the Land Oi'fice (Emo Tf() to the effect that there were no bu.iiding materials when inspection of the suit plot was made on the su.i t " . . premises in May 1989.. The defendant denied seeing any building materials • on the suit plote lO In cross examination the . defendant said that the building was partly in the suit plot and her husband's plote She was shown exhibit D5 which says inter alia that she had failed to fulfil IB,rt of the. concli tions of the Land Office regarding the suit plot,, ~e said that she had replied. to that letter saying that she rn~ver got any letter . . . from the Land Officeo She showed a oopy of that let~er to the advocate for the plaintiff •. She said in answer to mother question that she had not obtained a building permit but that since she had sent her drawing for approval • . i. and approval was not forthcoming she found that she was entitled to eta.rt I buildings She tendered the letter of her advocate in .,i3/4nswer to the letter 20 of• the plaintiff (exho D8)o 'Shakila Abedi DW 2 .from the Rovenue "Office tendered twc., files in respect of the suit plot" Ole file• was in the defendant's n~.ne which had her offer and receipts f:r:T 1980c, The other one was in :jie plaintiff's name but the receipts and offer v1er8 of 1987 o Michael Mapunda DW3., a: builIDe' inspector in the City •!)ouncil then said that he wrote exho D3 which was a stop ordere Finally Tatu Pelemba DW4 said that she was a Land Off.sc~r in the • City Council and that the suit plot was in their reoordso '1..11 defendant •was offered the plot on 22/10/80 and the~ plaintiff on 2/3/83< 30 The office got no reply to the letter sent to the defendant as~i.ng for

·reeceiptso Then the offer w~s made to the d_eferidant on 12/6/86 · there was a letter ·to the plaintiff asking her whether she had ~ ~ paid for the ploto There v.as no reply(When a reminder was sc:crt on 28/3/87 the plaintiff brought a letter from the Police stating that she had lost the letter of offere Then on 3/4/87 another offer was issued tJ her. Then there was a dispute in 1989 and a stop order was issued m7 <· went to the suit plat on ~/5/89 ,lhel'8 she ~Qlllld a bu.i~ding on 2 .~1.lots.. T: .:-;- nw_~ ft'"--!., t: · 1 ' t:i. ff that the plot was of the def end.ant. In cross-examination DW4 said that there was double allocation. She also said that once a ~rson abcepts the offer then it is his ·until revoked by the President-... The defendant is shovm in the Land · Office reoords to. have ,aid for the offer on 22/10/80. 1 _nw4 said finally that the person recognized as the rie~tful owner of th_!: suit plot was the defendant and that if the office had knavl · that the. defendant bad acc~pted the off er no other offer would have been issued. I will now attempt to answer ·the issues. I will start with th€ 2nd , ·,· issue.. There is no credib,le ·lO evidence_ to sh0r-1 ·i;l.iat ·the plaintiff mt.do "any payment for the 1983 offer. The file from ·the Revenue· Office exhibit DlO ha_s got_ no receipts fcrr such period. Payments for the 1987 offer are mention~d by the wi tnesse., from the Land Office. The first issue reads· Which of the _two offers ·is valid, " The Land Office at Kinondoni_ District Land Offf~e ·· (see exh. D7) impliedly state~ that the offer·of the defendant ' . is: 'the valid on~· Similarly the letter from the Zonal Land Officer (Ex:h. D5) states that the defendant's offer is the v-alid one. In any case the Land Office ~esolved the dispute in favour of the defendant,. The 20 a.rg~cmt from the plaintiff side is that since the defendan~; did not notify the Land Off ice as required by pa.re.graph 5 of tho letter of offer even after. the Land officel! had sent the defende.nt t110 letters asking for the receipts, the offer-laptied~ Mr. Semgalawe learned JOlll1.sel for the ·:plaintiff .went further and argued that here was an offer and the off-er had to be accepted in order for tho contract to be complete but that the offer _was not accepted. On the otmr hand Mr. Ismail learned · coll11.sel for the defendant ~gued that the acoopt~ce of ·~;be offer was by payment of the necessary fees within a~certain 0 ,riod and that it matters not whether Kinondoni Land Office was aware 30 \"'.~' of. the :payment as such lack of knav ledge wo\;ld not vi ti ate, roscind or invalidate the offer. It is my opinion that what. is important and necessary fo:-c the offer to hold good is the payment of the necessary fees within the ·specified period, Notific2.tion of such payment to the Land Office although~equied cannot vitiate or make the offer lapse as long as ·.. ' . peyment has been made ;i.n time. This is so because otharwiso y-0·1 would get very unfair results where either the notification does not £ reacfu its destim tion or there is some foul play involved.,. Tp.0 offer ·: itself does: not make failure to notify a reason for an offer to lapse. Paragraph 5 of the letter of offer of the defendant required: the offeJt~e to send to the ;Land Officer the Original exohequer receipts obtained after payment of the amount payable. P;·µ-agraph 5 does not mention any consequences for failure to forward the receipts 4 'i'. But par~aph 6 of the letter_ of offer gives the consequences of failure to pay vtltin the time prescribed namely lapse of the offer, +t seems to me that once the off ~e has accepted ·the offer .by payment of the prcsoribed amotU1t. within the pres,ribed i:eriod, he ~annot be said no_t to have accepted 10 · · · the offer, be6a\lse it, is suoh payment within time which is knorm as the_ acceptance o.f the

offer. 'J';he defendant was offered the offer on ~f,/10/80 and she pe.i_d all the fees on the same day as the oopios of her receipts show~ Si.no~ her offer was valid no other offer aver the_ same plot could be made (see Hamisi Sinalile v.,. Assan Mbwele 1974 lllT28). Her earlier offer remains valid. I. tperefOJ;'c ansmJr the issue~ by saying that it is the offer of the defendant ~hich is the valid one. The 3rd issue is v,rhether tho plaintiff is entitled to shs •. 160,000/= . The ev,idence adduced by the Plain+; iff is~ that she put 2 lorries of 20 s;3nd and 2],or~ie~ of gravel on the suit plot as well as 2000 bricks •. This evidence was corroborated by PW2 Omari Juma.. 'hese building materiah; were no longer there when the defendantr s building was at the lint~- stage al though the building materi 1.ls were there when the def'endant started construction •.O,,otl:ie<othor hand the defendant said that there were no building materials on the suit plot when she started construction •. , She produced exh. D7 whi«h is a letter from the Land Office Kinondoni ' _J. ~ __,;_ ~ __,;..... .. • - ! i : ... : - : ~ \" - .. \" . stating irri.~r. alia that \vhc11, inspec ~ion was no.de there • nere no building materials in the form of stones or gravel or b~icl:s on the site but that there nas a building- which• had reached the r,)of stage• 30 This question of buildine materials was mentioned for the first time on 2/11/89 in the demand nute to the defendant from the ,advocate for the plaintiff. I do not find sufficient evidence establishmg that there were such building materials there. If the evidence of P/71 (Plaintiff) were true 1 the plaintiff would not have waited until November 1989 to mention that there wcro her building mat0rials at the suit plot. I was not impressed by the evidence of Pw2 who looked hostile to the defendant presumably because the defendant uas building in the Sh2JI1bn of 1W 2 rr.i. thout payine him any compensation •..• ~- I got this impression durinc. cross examination when IW2 was trying to~. oay that he saw no vehicle of the defendant eomc there until ho was fo+ced to ad.mi t that he saw a lorry bring sand.and blocks~ It is quite easy for the plaintiff to allege untrue matters with :regard to \that was on~ the plot. Indeod as can be seen from the plaint, the va,~uc of the 2000 bricks is inflated at 100,000/= .instead of 60,000/= or 80.,000/= according to the evidence. Aiso tho price of two trips of gravel is sho\m in , , tho plaint to be 50,000/= whereas in the evidence the plaintiff. put- the price of lorry of gr2.vel at 7,000/= . The plaintiff was 10 not able to give cJJ1 answer as to why the price of gravel is given as shs, 25,000/= per trip in the plaint but_ only 7000/= in the evide_nce. Fur.t.hcrmore oven if I were to hold th2,t the building •materials as mentioned by the 1>laintiff r:ero there, I have no rcasqn to assume without more that the dofondMt must •have used them in tthe , ~onstruction of her building. . 'There was evidence-from the plaintiff to the eff,eet that . there was no watchmnn at the ~:f~ si tc after the building materials. were deposited there.. 'Therefore ' . the passibility and indeed.the probability of the materials being carted away by someone other than the defendant or her agents• 20 id thcr~ Moreover, the plaintiff was saying that she took the bqilding ma_terials there in October or November 1986. But the lottor from her advo.,atc (exhibit n6) talks of •sometime I .; m November 1988.., This~is a difference of 2 yom,-s. When asked a.bout it th~ plaintiff s~d that it was possible that she gave her advocate a wrong date. This is a further fact to.show +.hat it is not all that clear concerning the presence of the building materials! ;Sy •claiming that the defendant took her building materials, the plaintiff ,is a,tur.lly ailerti.ng that the defendant is . , - , 0'1,, 6 a thief

who stole the building materials and used them in the construction of her house. A heavier burden of proof is required to prove fraud which the plaintiff has not discharged in this case; I will therefore answer this issue in the negative. I will also rule in issue no 4 asking for general damages in the negative because it is through no fault of the defendant that the plaintiff went through all that trouble inspired in this case. If anything it would be the defendant who might have made claims for general damages. This suit is there to dismiss the application, Judgment 31/3/92 delivered to Mr. Scmgalawo for the Plaintiff and Mr. Ismail for the defendant. Plaintiff.) Desant in the reason. A. BAFI.4, TI . . . , JU:IX;E 31/3/92,,

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Prepared on 14 October 2026 · Esheria