

TANZANIA / JUDGMENT

mussa said memba vs the commissioner for lands 2others 2023 tzhclandd 16498 2 may 2023

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM LAND CASE NO. 102
OF 2021 MUSSA SAID MEMBA.....PLAINTIFF VERSUS THE
COMMISSIONER FOR LANDS..... 1stDEFENDAN THE ATTORNEY
GENERAL..... 2ndDEFENDAN HENERY STAMBULI
MUTAKYAHWA..... 3rdDEFENDAN

JUDGMENT

Date of last Order: 02/5/2023 Date of Judgment: 24/5/2023

- k. MSAFIRI, J. The brief facts of this case as claimed by the plaintiff Mussa Said Memba is that, sometimes in 2014 the plaintiff requested for assistance of the Minister for Lands for allocation of a piece of land for residential purpose. That, after several follow up, he was directed to make an application Form No. 19 and paid the application fees. He was allocated a piece of land situated at Plot No. 182, Block 14 Buyuni Area within Ilala District (herein as disputed property or the plot in 1 dispute) and was served the bill of fees assessment form. That upon receiving the bill of fees assessment, the plaintiff effected the payment as required. That after payment, the plaintiff made unsuccessful follow up to the Commissioner for Lands for his Certificate of Title. That after sometime, he made official search and discovered that Plot No. 182, Block 14, located at Buyuni, Ilala, which was once allocated to him, was also allocated to the 3rd defendant by the Certificate of Title No. 149775. After instituting the matter at Buyuni Ward Tribunal, and later at Ilala District Land and Housing Tribunal, he was granted leave to file a fresh case at the competent court which he has done by instituting the present suit. The plaintiff prays for judgment and decree against the defendants as follows;
- a) Declaration that the plaintiff is the true and lawful owner of the suit land against the whole world.
- b) Costs of the suit (if any) be borne by the defendants.

- c) Any other relief (s) as this Honourable Court may deem just and equitable to grant. 2 The 1st and 2nd defendants filed their joint written statement of defence and denied the plaintiff's claims and state that the disputed land is lawfully owned by 3rd defendant vide a Certificate of Occupancy effective from 1st July 2015. They prayed for the dismissal of the suit with costs. The 3rd defendant has neither appeared in Court nor filed his defence despite being summoned to appear. Finally by leave of the Court granted on 15/9/2022, the 3rd defendant was served by publication in a local newspaper (Mwananchi) dated 28/9/2022. He never responded so, on 31/10/2022, this Court ordered an ex-parte hearing against the 3rd defendant. In the proceedings the plaintiff was represented by Ms. Amina Mkungu, learned advocate under the legal aid. Mr. Thomas Mahushi, learned State Attorney appeared for the 1st and 2nd defendants. Before the trial, the following issues were framed for determination: -
1. Whether the property in dispute was legally allocated to the plaintiff.
 2. Whether the plaintiff accepted the offer on time.
 3. To what reliefs are parties entitled to. At the trial, there was a total of two (2) witnesses, i.e. each party had one (1) witness only. The plaintiff testifies himself as PW1 and was the only 3 witness while the 1st & 2nd defendants also had one witness only namely Kajesa Ambyelisye Minga, who testified as DW1. To prove his claims, PW1 testified that the disputed property Plot No. 182 Block 14, Buyuni, Chanika, Ilala is his land lawfully owned by him. That he got the disputed property when he wrote to the then Minister for Lands Mama Tibaijuka requesting to be allocated a plot. That the Minister for Lands directed the Commissioner for Lands (who is the 1st defendant) to allocate the land to PW1. He said that the said letter to the Commissioner was lost. That, after that, he went to see the Commissioner for Lands who told him that his request for land allocation was accepted but he was supposed to make payments for allocation. PW1 stated that he paid TZS. 80,000/= for application form and was issued with a receipt. The exchequer receipt was admitted in Court as exhibit P1. He said that after that, he was given the details on payments of the offered plot and started to effect payment. The required payments were for the offered Plot, survey expenses and land rent. He tendered the photocopies of the receipts and they were admitted under Section 67(1) (c) of the Evidence Act, Cap 6 R.E 2019 as Exhibit P2 collectively. 4 That after payments, he was required to request for the Certificate of Title which he did by writing a request letter. The letter was admitted in Court as exhibit P3. PW1 stated further that he did not receive any response of his letter to the Ministry for Lands, so he went to the Ward Office and addressed the issue. That the Ward Office communicated with the Office of the Executive Director of Ilala Municipal Council (by then), where the Executive Director responded that the disputed Plot is under Project. That, he made a search on the disputed plot and discovered that the Plot was allocated to one Henry Stambuli (3rd defendant) by way of compensation. Following that, PW1 instituted a case at Buyuni Ward Tribunal which decided in his favour, he went for execution at Ilala District and Housing Tribunal. At the said District Tribunal, he was told that the case involves the Commissioner for Lands as a party hence the Tribunal

has no jurisdiction to entertain it. He then instituted the current suit. He tendered the Ruling of Ilala District and Housing Tribunal which was admitted as Exhibit D4. /M- 5 In cross examination, the plaintiff stated that he was offered the plot in dispute in 2014 but he effected payments on the same in 2016. He responded that he did not know that he was to pay the fees within 30 days of being offered the land. That the Commissioner for Lands never responded to his letter and he was never allocated an alternative plot which is said to be Plot No. 184 Block 6 Buyuni, Ilala. However, he pointed that he cannot accept an alternative plot for the reason that he was the first one to be allocated the disputed plot so he should benefit by that. In their defence, the 1st and 2nd defendants brought one witness, DW1. He said he is a Land Officer, working at Land Office, Dar es Salaam Region. He stated that according to the records of the Land Office, the plot in dispute was initially allocated to the Ministry for Home Affairs, but the same did not pay the mandatory land rent. Hence, in 2014, the plot was allocated to the plaintiff. That the plaintiff also failed to pay for the necessary fees on the allocated plot, so the same was taken and allocated to Henry Stambuli (3rd defendant). That, the said Henry Stambuli was allocated the plot in dispute as an alternative plot, and was issued with Certificate of Title. That as of now, the land authorities recognise Henry Stambuli as the owner of the plot in dispute. That, Henry Stambuli was allocated the plot in dispute as 6 alternative of his other plot which he has already paid for and was acquired by the Government. DW1 said that the plaintiff did not pay for the allocation expenses on time. He said further that, the plot in dispute was under the Project of 20,000 Plots by the Ministry for Lands. That, the sale of the said 20,000 plots under the Project was advertised in various forums including newspapers and radio and every citizen was at liberty to apply and purchase the plots under the terms and conditions set. That, one of the conditions was for the applicant to make payment of allocation fee within 30 days from the date of receipt of payment vouchers. DW1 stated that the plaintiff did not fulfil this condition of payment within the time prescribed i.e. 30 days instead, the plaintiff made payments in 2016 while he was allocated the land in 2014. DW1 stated further that upon discovering that the plaintiff made payments in 2016, the Office of Commissioner for Lands decided to allocate him another plot which is Plot No. 184, Block 6, Buyuni, Ilala, Dar es Salaam. That, the plaintiff visited the Office of Commissioner for Lands with his lawyer and they were taken to see the alternative plot. DW1 tendered the letter 7 from the Commissioner for Lands to the plaintiff. The letter was admitted as Exhibit DI. He said that the plaintiff refused to go to the Land Office to sign the documents for allocation of the alternative plot. In cross examination, DW1 stated that there are two types of payments; first, payment of initial fees as application fees and two, payment of allocation fees. He prayed for the dismissal of the suit with costs. Having gone through the evidence of both sides to the dispute, and before I embark on the determination of issues, I have to point out that it is a cardinal principle of law that he who alleges must prove. This principle is enshrined under the provisions of Sections 110 and 111 of the Evidence Act, Cap 6 R.E 2019 and has been reiterated in numerous cases both of the Court of Appeal and this Court. To name few, there is a case of Godfrey Sayi vs. Anna Siame (as legal representative of the late Mary Mndolwa), Civil Appeal No. 114 of 2012 (CAT) (unreported) where the Court of Appeal

stated thus; "It is similarly common knowledge that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on balance of probabilities." Mt- 8 Also, the Court of Appeal case of Joseph Kahungwa vs. Agricultural Inputs Trust find & 2 others, Civil Appeal No. 373 of 2019 (unreported) where it was held among other things that; "... It is a cardinal principle of law that the burden of proof in civil cases lies on the party who alleges anything in his favour." Having said so, in the matter at hand, it is the duty of the plaintiff to prove his claim on balance of probabilities.

Determining the issues, I had a look at the first issue which is whether the property in dispute was legally allocated to the plaintiff and I am of the view that it is inseparable with the second issue which is whether the plaintiff accepted the offer on time. Therefore, the two issues are consolidated and will be determined jointly. The evidence adduced shows that the plaintiff requested for a piece of land and was allocated Plot No. 182 Plot 14 Buyuni, Ilala Dar es Salaam and paid for application fee which is proved by Exhibit Pl. The 1st and 2nd defendants did not dispute that the plaintiff was allocated the said plot. The plaintiff stated that he paid the required allocation fee and land rent as per the receipts admitted collectively as Exhibit P2. The receipts as Exhibit P2 shows that the plaintiff at diverse dates and months in 2016, made 9 payments on the disputed plot. Since the plaintiff did not produce an offer letter, then the terms and conditions of the allocation are unknown. The plaintiff states that he was not given any condition for payment while the defendants states that the plaintiff was required to pay the necessary allocation fee within 30 days from the date he was offered the disputed plot which was 01/01/2014 but instead he paid in 2016. In absence of a letter of offer, the Court had to rely on the contents of Exhibit DI which is a letter from the Ministry for Lands, the Office of the Commissioner for Lands, at Dar-es Salaam which shows that the plaintiff was allocated the disputed plot on 01/01/2014 where he was required to complete the payments of the Plot within thirty (30) days. The plaintiff effected payments in 2016. By the available evidence which I have analysed, the first and second issues can be answered that indeed the property in dispute was legally allocated to the plaintiff but he did not accept the offer on time. The offer is accepted by effecting the required payments within the prescribed time but the plaintiff made the required payments later in 2016. By that time the disputed plot was already allocated to another person, the 3rd defendant. 7- 10 The third issue is to what reliefs are parties entitled to. The plaintiff prays for this Court to declare him the true and lawful owner of the disputed plot. According to the available evidence including the evidence from the plaintiff himself, the disputed plot has been allocated to Henry Stambuli. The Ruling on Exhibit P4 shows that, Henry Stambuli was allocated the said plot through Certificate of Title No. 149775. The plaintiff testifying as PW1, admitted that he conducted a search and discovered that the disputed land was allocated to Henry Stambuli. DW1, the Land Officer told the Court that in 2015, the disputed land was allocated to Henry Stambuli and he is recognised by land authorities as the owner of the said plot. Considering the available evidence, this Court cannot declare the plaintiff the lawful owner of the disputed land, as he has not proved that he is the lawful owner. It is true that initially the disputed land was allocated to the plaintiff. However, the process of grant of ownership to him was not completed so the ownership of the disputed land was never

granted to the plaintiff. ZV/ 11 The payment of requisite application fees and allocation fees alone does not make one the owner of a registered land until he is registered accordingly as the owner. In addition, the Court was told that the plot in dispute was allocated to one Henry Stambuli in 2015. The plaintiff paid for the same in 2016, so the plaintiff cannot be the lawful owner of the disputed Plot. For the foregoing reasons, this Court finds that the plaintiff is not entitled to the reliefs he has pleaded. This case is hereby dismissed in its entirety. No order for costs is given as the plaintiff is under the legal aid. Right of appeal expressly explained. A. MSAFIRI JUDGE 24/5/2023 12

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