

TANZANIA / JUDGMENT

yuditha b lymo vs flora edwin lyatuu 3 others 2022 tzhclandd 1 20 september 2022

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IN THE HIGH COURT OF TANZANIA LAND DIVISION AT DAR ES SALAAM LAND CASE NO. 168
OF 2020 YUDITHA B. LYIMO..... PLAINTIFF VERSUS FLORA
EDWIN LYATUU..... 1st DEFENDANT COMMISSIONER FOR
LANDS..... 2nd DEFENDANT THE ATTORNEY
GENERAL..... 3rd DEFENDANT

JUDGMENT

29/08/2022 & 20/9/2022. Luvanda, J.: The plaintiff above named is claiming against the defendants above mentioned for a declaration that the plaintiff is the lawful owner of plot No. 375C located at Regent Estate, Mikocheni "A", Kinondoni Dar es Salaam, including an order compelling the second defendant to issue a certificate of title in the name of the plaintiff in the disputed plot. The first defendant, by way of counter claiming is claiming for a declaration that she is the lawful owner of the suit property having lawfully acquired and granted a certificate of occupancy for a tenure of ninety- nine years in 1985. i Ms. Marietha Loth Mollel learned Advocate appeared for the plaintiff, Mr. Abdul Kunambi learned Counsel was advocating for the first defendant and Mr. Thomas Mahushi learned State Attorney was representing the second and third defendant. At the commencement of hearing, the following issues were framed: One, who is the lawful owner of plot No. 357C located at Regent Estate Mikocheni "A"; Two, whether a certificate of occupancy issued to the first defendant was revoked; Three, whether the first defendant counter claim is time barred; Finally, to what reliefs are parties entitled to. Regarding the first issues. It was the testimony of Flora Edwin Lyatuu (DW1), stated that she is a lawful owner of a disputed plot, because she have a title deed certificate number 31006, exhibit DI, which was issued by the Commissioner for Lands in 1983 for a term of ninety-nine years. DW1 also tendered the official search dated 20/8/2021 (exhibit D2), which indicate that a plot is still her property. That she submitted drawing plan (exhibit D3) for a building permit, in vain. Later she noted that the plot was allocated to another person that is Yuditha Lyimo who obstructed and frustrated her application for a building permit. DW1 refuted a claim that her title was revoked. Yuditha Batholomeo Lyimo (PW1), stated that she made an application for allocation of land (exhibit P1) to Kinondoni Municipal Council where 2 she was given a form for application of a plot (exhibit P2), she filled and submitted to the Kinondoni Municipal. Later she was given an offer ref. No D/

KN/A/23170/7/Som dated 16/1/1988 (exhibit P3), and she made payment via a receipt ref. No D/KN/A/23170/8/MH dated 19/1/1988 (exhibit P4). PW1 applied and was granted a building permit No. 21931 dated 20/9/1988 (exhibit P5). PW1 proceeded to the site commenced clearing the site by removing scrub bush and grasses started cultivating okra (bamia), sweet potatoes, in 1989, while warming up or getting prepared for construction by a fact that she was an employee at the President's office. In 1990 she started construction slowly and she moved and started living there in 1991. In view of above testimonies of DW1 vis-a-vis PW1, the plaintiff (PW1) has a good title. For one thing, all procedures for allocation of land or plot were followed and abided to the letter, by virtue of exhibit P1, P2 and P3. Two, she obtained a building permit exhibit P5, and erected a building as stipulated in the offer. Three, PW1 have been in actual possession of the impugned plot for the past thirty one years. Four, a letter from the Kinondoni Municipal Director ref. KMC/LD/3065/18/EKS dated 2/1/2018, (exhibit P7), indicate that the impugned plot was re-allocated to the plaintiff after the first defendant had failed to develop it as per the requirement of the law, hence revocation of her title of right of occupancy 3 which was proceeded by a twenty eight (28) days' notice of intention to revoke. For appreciation, I produce paragraphs two and three of the said letter verbatim as hereunder, "Ndugu Flora Edwin Lyatuu hakuweza kuendeieza kiwanja hicho kwa mujibu wa sheria na hatimaye alitumiwa Hani ya siku 28 (ishirini wa nane) iakini hakujibu. Hivyo kupeiekea haki yake ya umiiki kufutwa kwa barua yenye Kumb. Na. D/KN/A/23170/5ya Desemba 1987' As such a plea by DW1 that she failed to develop it, because her drawings (exhibit D3) were dishonoured and not approved because of reallocation to the plaintiff, is legally untenable. Because there is no proof of submission of the same. A mere drawing plan does not suffice to prove submission. An argument by DW1 that her right of occupancy has never been revoked by any sitting president, is invalid. This is because her revocation was dictated by existing rule or law subjecting her grant of right of occupancy to the deadline for developing the plot. Therefore her revocation was actuated by a fact that she failed to develop the land as provided in her certificate of title (exhibit DI). Section 10 (f) of the Land Ordinance, 1923, as amended by Act No. 10 of 1974, provide I quote, 4 'It shall not be lawful for the Governor to revoke a right of occupancy granted as aforesaid save for good cause. Good cause shall include:- (f) Breach of any terms contained in the certificate or in any contract under section seven' According to exhibit DI, DW1 was required to submit her plan for the buildings by 31/12/1983; then begin erecting building within six months of approval of the plans. And completion of the building so that is ready for use by the 30th June 1986, see clause 2(iv) in exhibit DI. All these were not complied by DW1. It is to be noted that the plot was re-allocated to the plaintiff on 16/1/1988 as reflected in the offer exhibit P3. As such counting from 30/6/1986 when DW1 is reckoned and deemed to have failed to develop a plot, to 16/1/1988 when it was re-allocated to the plaintiff, there was a grace period of 18 months before revocation and re-allocation. Therefore the first defendant is to blame herself for being inaction. It would appear the impugned plot was initially allocated to the husband of the first defendant one Edwin Lyatuu, who afterward transferred it to the first defendant. Seemingly this was done to circumvent revocation of his title after he too failed to develop it. Unfortunately the transfer to the first defendant did not yield any fruitful result, as was ultimately revoked as aforesaid. As such a mere fact that the first defendant hold a certificate of title (exhibit DI) or else that a register of land at the office of Registrar of

Titles reflect the first defendant as the owner as per an official search (exhibit D2), to my view that is a mere prima facie, and does not warrant an absolute proof of ownership. The reasons as depicted above. Essentially the first defendant is barred by law to stage a claim for ownership of a plot which was reallocated to the plaintiff thirty two years ago. As a matter of fact, the counter claim by the plaintiff in the counter claim or first defendant in the main suit, is barred by limitation. Now, since the plaintiff have been declared to be the lawful owner within the eyes of law, there is no reason whatsoever for the second defendant to refuse to issue a certificate in her name. Therefore the plaintiff is declared as a rightful owner of a disputed plot. And she is entitled to be issued with a certificate of title. The title by the first defendant is invalid and of no legal effect. Appreciation to the learned Counsel labored submission. 6 The counter claim is therefore dismissed. The main suit succeed to the 7

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