

IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT VUGA

CIVIL APPEAL NO.46 OF 2017

(FROM ORIGINAL DECREE CIVIL CASE NO.157 OF 2007
OF THE LAND TRIBUNAL – ZANZIBAR)

FAIDA (alias) BIMKUBWA MAZIKU APPELLANT

VERSUS

HAJI MUHIDIN JUMA RESPONDENT

JUDGEMENT

BEFORE HON. ABDUL-HAKIM A. ISSA, J

This appeal arises from the decision of the magistrate of the Land Tribunal, Zahra H. Haji (RM) in Civil Case No. 157/2007 at Vuga, Zanzibar. The background to the case is that the Respondent, Haji Muhidin Juma filed a Civil Suit No. 157 of 2007 at the Land Tribunal against the Appellant, Faida Maziku claiming that the Appellant has trespassed in his plot of land (Plot No. 241) situated at Kidichi Block A. The Appellant alleged that he purchased the plot of land from Miguel Conceicao Baptista on 14.10.2005. Miguel possessed the right of occupancy in the said plot which was issued by the Minister responsible for land in 2002. After the purchase he started constructing his house, but he could not finish it because of the presence of the Appellant who has constructed her hut in that plot. Hence, he asked the Court to order the Appellant to give vacant possession of the disputed plot.

On the other hand the Appellant denied the issue of trespass and is claiming that she is the owner of the disputed plot which she purchased from Mwajuma Bakari Haji on 16.4.1993 and she constructed her house in the said plot. In the year

2000 the Kijichi area was surveyed and plots of land were allocated by the Ministry of Land. The plot which she was occupying was given No. 241 and was allocated to Moh'd Abdalla. It is not clear how Moh'd Abdalla got the plot or what happened afterwards. But it is clear that Baptista owned the plot and later sold it to the Respondent.

The learned Magistrate of the Land Tribunal heard the matter and delivered her judgment against the Appellant on 07.09.2016. The following orders were issued:

- a) The Respondent was declared to be the lawful owner of the disputed land
- b) The Appellant was ordered to remove her house in order to allow the Respondent to continue with construction.
- c) The Appellant was advised to make a follow up in the Commission of Land to resolve her problem.

The Appellant being aggrieved with the said decision preferred this appeal. She filed a memorandum of appeal which contained five grounds of appeal which can be summarised as follows:

1. That the Honourable Chairman of the Land Tribunal erred in law by proceeding with the hearing of the case without considering that the Respondent had no locus standi as he was not the owner of the disputed plot of land, and the purchase alleged to have been made by Miguel was invalid as Miguel had no authority to sell the land as it was not his.
2. That the learned magistrate of the Land Tribunal erred in law by agreeing with Respondent's witnesses; PW1, PW2 and PW3 who did not give the Respondent the said land and further Miguel was not called to testify on the sale which was illegal.

3. That the magistrate of the Land Tribunal erred in law by not considering that the certificate of right of occupancy was provisional and was granted to a foreigner. Further, the said sale was not permitted by the Government.
4. That the magistrate of the Land Tribunal erred in law by not finding that the Respondents used his official position to influence the witnesses to say what they said.
5. That the magistrate of the Land Tribunal erred in law by neglecting the truth that the Appellant was the first to establish her home in the disputed land, and that fraud was used against the Appellant when she was asked by officers from Department of Land to fill the application form for a plot of land and later was not given the plot.

In the hearing of this appeal the Appellant was unrepresented while the Respondent was represented by learned advocates Mr. Kassim Madai and Ms Maryam Mohammed.

The Appellant adopted her memorandum of appeal and added that she is not satisfied with the decision of the Land Tribunal delivered by Hon. Zahra. The Appellant did not elaborate the grounds of appeal but narrated what happened to her. She said she purchased the plot of land from Mwajuma for Tsh 70,000 and there are witnesses from two sides: Secretary of CCM Branch, Zani Suleiman and Ms. Amina Maziku. Later she constructed the house and at that time the place was a bush. She finished the construction and she was living with her children. Then a board was erected announcing that there should be no construction at Kijichi as the Government intends to allocate planned plots in that area. The survey was done and plots were allocated but she was already there together with other 10 people. They went to the Department of Land and they applied for plots of land and after one year she started making a follow up until 2005. Then a person called Moh'd Abdalla came and he was the one who was given her plot. He told her he will buy her hut for Tsh 100,000 and she will be allowed to remove everything.

She added that the problem was taken to the District Commissioner and she was told to go to the Department of Land and she will be given the certificate of right of occupancy, but she was not given the certificate to date. Later the plot was sold to Haji Muhiddin in 2005 and she was sued for the same plot. The Respondent constructed his house in one month and she was told that she has trespassed in that plot of land. She said she has been oppressed and humiliated in fighting for her rights.

Mr. Kassim, on the other hand, opposed all stated by the Appellant. He submitted that the Appellant went outside her grounds of appeal and narrated things she did not even say in the trial court. He added that what was explained by the Appellant has been clearly mentioned by PW2 and PW3 in the proceedings of the case. Also the Respondent did not buy a plot of land from Moh'd Abdalla. He bought the plot from Miguel Batista as it is evident from the Annexure attached. The right of occupancy has been issued by proper authority, which is the Department of Land and it is not true that the Respondent trespassed in that plot. He added that it is also not true that Moh'd Abdalla and Department of Land dispossess her of her land. It was a procedure set by the Government at that time for planning the town. PW2 and PW3 explained what happened. He prayed for this Court to uphold the decision of the Land Tribunal as the Appellant failed to explain her grounds of appeal.

The Appellant in her reply said that she does not agree to what has been stated by the Respondent. What she said is the truth and God is her witness. The plot belonged to her and she followed up all the procedures to get her right. The Respondent purchased the plot of land when she is still living there.

Although the Appellant did not elaborate on her grounds of appeal, but what brought her to this Court is very clear. The Appellant on 16.4.1993 purchased the disputed plot of land from Mwajuma Bakari Haji. She produced a piece of paper showing the transaction, and which is supposed to be a sale deed. It is submitted that this piece of paper is inadmissible in evidence and the learned magistrate was right in that respect. But the Appellant brought several witnesses who testified that she purchased that plot of land and was there for several years before the land was surveyed and planned plots were allocated. Even the former

Deputy Minister responsible for land came to testify and confirmed that the Appellant was living there and is still living there. He also testified that he was faced with that problem when he was a Deputy Minister and he ordered that the Appellant should be provided with a new plot of land, but his order was not obeyed. All these facts leaves us with no doubt that the Appellant was occupying the said disputed plot before the area of Kijichi was surveyed and plots were allocated.

On the other hand, it is clear that the plot in dispute after the survey which was done in 2000 the plot was allocated to Miguel Baptista in 2002, a provisional certificate of right of occupancy signed by the Minister of Water, Construction, Energy and Land together with the Site plan approved and signed by the Director of Surveys and Urban Planning were produced and admitted in evidence. This leaves us with no doubt that the plot in dispute was allocated to Miguel Baptista. Miguel Baptista in 14.10.2005 sold the disputed plot of land to Muhidin Juma, the Respondent. The sale receipt has been produced and tendered in Court and a witness who witnessed the transaction testified in Court about that transaction. Again this leaves us with no doubt that the plot was sold to the Respondent. The Respondent then constructed his house on the said disputed plot of land.

The problem now is that there are two houses existing in one plot of land and hence the parties in this case are all affected by this unhealthy situation which also affects the enjoyment of their plot of land. The whole mess was created by the Ministry responsible for land when it allocates a plot of land to Miguel Baptista when the same has been occupied by the Appellant. The learned magistrate recognised this predicament and in her judgment advised the Appellant to make a follow up of her right to the Commission of Land. But at the same time she asked the Appellant to give a vacant possession of the plot to the Respondent. It is submitted that the Ministry responsible for land was the source of whole mess and it was proper for her to be included as the party in the suit before Land Tribunal. Since, the Ministry was not made a party to the original suit and also this appeal this Court cannot give any order to a person who is not a party to the suit.

Going back to the case in hand, following the documentation tendered by the Respondent, the learned Magistrate came to the conclusion that the plot of land in dispute belong to the Respondent and the Appellant should remove her hands in that plot. This Court agrees with this finding of the Land Tribunal, but the learned magistrate ought to have considered the fact that the Appellant was occupying the land before it was surveyed, and also should have considered the time the Appellant has had undisturbed possession of that land which is from she purchased it in 1993 to the time the survey was done in 2000.

Granting of land in Zanzibar is governed by the Land Tenure Act No. 12 of 1992 which came into force on 29.1.1993, and the Minister has been empowered to grant the right of occupancy as well as to revoke the same. Sections 3 (2) explains how public land is distributed in Zanzibar which is through right of occupancy. Section 3 (2) provides:

"3 (2) The Minister may, subject to the provisions of this Act, both distribute public lands which are under the control of the Government by grants of right of occupancy as well as terminate those rights of occupancy when appropriate as defined by this Act".

The land in question was occupied by the Appellant at the time of survey. It is unclear whether that occupation was lawful or not, but it follows that when the Government acquires a land from a private individual for whatever purpose a procedure for acquisition should be followed and compensation should be paid to that person. In this case nothing has been done to the Appellant.

Following the existence of this problem that two houses exist in the same plot of land, this Court after hearing the parties to this appeal agrees with the first order of the Land Tribunal that the Respondent is the lawful owner of the disputed plot of land. But it is also of the considered view that the right of the Appellant cannot be brushed aside. Hence, the second order of the Land Tribunal is stayed for a period of 90 days to allow the Appellant to claim her right by filing a case against the Ministry of Land. If she does file a case against the Ministry the execution of the second order of the Land Tribunal will be stayed further pending the

determination of that case. If she does not institute the suit within the stipulated time the second order of the Land Tribunal should have immediate effect.

It is so ordered.

(Sgd) ABDUL-HAKIM A. ISSA

JUDGE

19/12/2017

COURT

The judgement was delivered in chamber on this 19.12.2017 in the presence of Appellant and in the presence of Respondents advocate, Mr. Kassim Madai.

(Sgd) ABDUL-HAKIM A. ISSA

JUDGE

19/12/2017

COURT

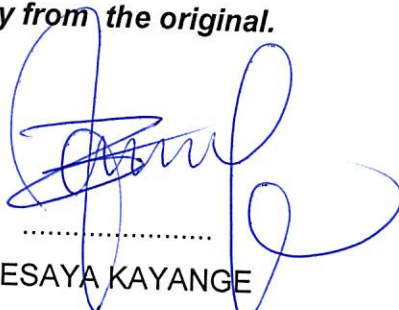
The right of appeal has been explained.

(Sgd) ABDUL-HAKIM A. ISSA

JUDGE

19/12/2017

I certify that this is a true copy from the original.



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YESAYA KAYANGE
DEPUTY REGISTRAR
HIGH COURT – ZANZIBAR

/HALLY/