

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM SUB- REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 198 OF 2022

DILOLE CO-OPERATIVE SOCIETY.....PLAINTIFF
VERSUS

KINONDONI MUNICIPAL COUNCIL.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

Date of Last Order: 19.04.2024

Date of Judgement: 03.05.2024

JUDGEMENT

MAGOIGA, J

The plaintiff, **DILOLE CO-OPERATIVE SOCIETY** being a legal person registered under the laws of Tanzania, on 14th November, 2022, sued Kinondoni Municipal Counsel and the Attorney General (the 1st and 2nd defendants respectively) claiming the following reliefs, namely: -


- a. The court's declaratory order against the defendants that the act of the 1st defendant taking away her members' commodities without their consent and withholding them is unlawful;
- b. The 1st defendant be ordered to pay specific damages of TZS 1,000,000,000/= being value of different commodities that were unlawfully taken away by the said 1st defendant in the midnight of 2nd January, 2022;
- c. The defendants to pay costs of the suit;

d. general damages to be assessed by this court

e. and any other relief (s) as the court deem just and fit to grant.

The facts of this suit are not complicated. It was alleged that on 21st January 2022, the 1st defendant invaded the plaintiff market known as "Soko la Dilole" and took plaintiff's members' commodities include; 1 tone of fish, 2000kg of rise, 1000kg of unions, 2 tone of tomatoes and 4 Deep Freezers lawfully owned by the plaintiff's members. The plaintiff alleged further to own a business market place known as "Soko la Dilole" ("the Dilole Market") which is situated on Plot No. 131 Block "D" Magomeni area within Kinondoni District in Dar es Salaam city.

It was further alleged that the 1st defendant's act of invading and destructing the plaintiff's market place and taking away its members commodities was illegal and uncalled for, and caused serious financial hardships to all plaintiff's members whose families' life solely depends on that market place as small business individuals. The plaintiff alleged further that the 1st defendant has for long time been interfering with plaintiff's market claiming to the owner of the said Plot No. 131 Block "D" Magomeni-Kinondoni Dar es salaam. Against the above backdrop, the plaintiff instituted the instant suit claiming the above -mentioned reliefs.



Upon being served with the plaint, the defendants in their joint written statement of defence strongly disputed the plaintiff's claims on rider that, no such a market as "Dilole market" existed, Plot No. 131 Block "D" Magomeni in Kinondoni District is owned by Registered Trustees of the African National Union now Chama cha Mapinduzi (CCM) for a term of ninety-nine years from 1st day of April, 1968 and denied totally to have unlawful taken the alleged commodities belonging to the plaintiff as alleged. Finally, the defendants prayed the court to dismiss the suit in its entirety with costs for lack of merit.

The plaintiff enjoyed the legal services of Mr. Twaha Taslima, learned Senior advocate assisted by Mr. Jonas Kilimba, learned advocate both from Taslima Law Chambers of Dar es Salaam; while the 1st and 2nd defendants were represented by Ms. Adelaida Ernest learned State Attorney from the office of Solicitor General assisted by Mr. Charles Lawiso, Principal State Attorney from Kinondoni Municipal Council.

Against the above pleadings, the following issues were agreed, recorded and adopted by parties for the determination of this suit. These are:

- 1. Whether the plaintiff owns a business market known as "Soko la Dilole" situated at Plot No. 131 Block 'D' Magomeni Dar es Salaam.***

2. Whether the Plaintiff's commodities were unlawfully taken away by the 1st defendant.

3. If issue number two is answered in the affirmative, whether the plaintiff suffered any damage and to what tune.

4. What reliefs are the parties entitled to.

The plaintiff summoned four witnesses (PW1, PW2 PW3 and PW4) to prove her claim and tendered in Court two **exhibits PE1a-d)** and **PE2.**

The defendants on their side summoned two witnesses (DW1 and DW2) and tendered one documentary **exhibit DE1.**

The first witness for the plaintiff was **MR. SEBASTIAN KAROLI LUKWERE** to be referred herein as "**PW1**". Under oath PW1 told the court that, he is a small businessman who used to sell spices at a place called Dilole Markert which is situated at Magomeni street within Kinondoni District in Dar es Salaam city through a co-operative society known as Dilole Co-operative Society (hereinafter referred as the Plaintiff/Society). According to PW1, he joined and became the plaintiff's member in the year 1999 and that since then, he continued to conduct his businesses peacefully under the umbrella of the plaintiff without any disturbances or interferences from anybody. PW1 further testimony was

that, the plaintiff society was officially registered by the 1st defendant to conduct a business market since the year 1994 where all members pay the 1st defendant all taxes via the society.

PW1 went on telling the court that, despite the fact that the plaintiff and its members fully pays all legal taxes required by the 1st defendant, the 1st defendant unreasonably and without any colour of right acting through their employees accompanied by militia men and policemen invaded their market place during the midnight and took away all of their commodities to unknown places and destroyed everything and left nothing on the place. According to PW1, the 1st defendant's conduct caused serious financial hardship to the plaintiff's members. PW1 insisted that due to the loss suffered by all members, the Plaintiff is claiming on their behalf a total of one billion Tanzania Shillings (TZS 1, 000,000,000/=) being the value of the commodities which were taken away by the 1st defendant.

Under cross examination by Mr. Lawiso, learned Principal State Attorney from the 1st defendant, PW1 told the court that before the incident the plaintiff had 300 members. PW1 insisted that he was testifying as member and on behalf of other members of the plaintiff co-operative society. PW1 further responded that as member of Dilole market he was selling spices and fruits whose capital investment was Tshs 350,000/=

Pressed with questions, PW1 admitted that he cannot remember and mention each of commodities that were taken away by the 1st defendant nor his fellow members. Not only that but that, he cannot mention the loss suffered by every person or list down commodities of every member of the society.

Further under cross examination, PW1 told the court that, he did not witness the 1st defendant on the material night taking away their commodities but rather he was only informed by the chairman he mentioned by one name as Mr. Sanga) in the morning when arrived at the market place. More pressed with questions, PW1 told the court that he had no identity card to prove that he is one among of plaintiff's member. PW1 also told the court that he has no purchasing receipts proving that he is a small businessman who buy and sells different sets of commodities at different markets places in Dar es salaam city.

Next witness for the plaintiff was **MR. IGNAS FOCUS THOMAS** to be referred herein as "**PW2**". Under oath PW2 told the court that, he was a small businessman working as member and treasurer of the plaintiff. According to PW2, the plaintiff owns a market place known as 'Soko la Dilole' ("Dilole Market") situated on Plot No. 131 Block "D" Magomeni within the jurisdiction of the 1st defendant. PW2 told the court that, in

the year 2022 their business market place was demolished during the midnight by unknown people working under the instruction of the 1st defendant accompanied by police officers and other militia men. According to PW2, that on material night, he was present on the scene market hence managed to witness everything.

Further testimony of PW2 was that he was in accompanying with other individual members and there was enough electricidal lights that managed them to see the 1st defendant's agents. As a member and treasurer of the plaintiff testified that the plaintiff does pay all taxes to the 1st defendant's relevant authority for conducting business on the said market. PW2 tendered in evidence a receipts/ tax invoices collectively as **exhibit PE1a-d**.

Further testimony of PW2 was that the 1st defendant claimed to be lawful owners of Plot No. 131 Block "D" Magomeni within Kinondoni Municipality something which is not true and the demolition of their business premises were unlawful. Following the destruction of their essential commodities and their business premises, the plaintiff instituted a land case against the defendants in the High Court of Tanzania Land Division in Land Application Case No. 1 of 2021 claiming the ownership of Plot No. 131 Block "D" Magomeni and admitted

unlawful trespass by the 1st defendant. PW2 tendered in evidence **exhibit PE2.**

On the above testimony, PW2 told the court that they are claiming against the defendants jointly for payment of one billion Tanzanian Shillings (TZS 1, 000,000,000/=) being a specific damage for all members' commodities that were unlawfully taken away by the 1st defendant on fateful night. PW2 also prayed for costs and invited this court to decide in favour of the plaintiff.

Under cross-examination by Lawiso, PW2 told the court that society had 164 members who were all doing businesses at Dilole Market in Magomeni. PW2 further told the court that each member pays TZS 100/= per day for 200 tables. He responded further that the claims of one billion (TZS 1,000,000,000/= also includes other 36 persons who are not members of the plaintiff society.

Pressed with question, PW2 replied that one billion claimed as specific damages, PW2 admitted not knowing exactly how much amount is claimed by the rest 36 persons who were not members of Dilole Cooperative Society. Further pressed with questions, PW2 told this court that 36 persons whose claim were inclusive in TZS one billion shillings were considered as party of the plaintiff's market because they had been



also conducting small business at Dilole Market. As to the commodities taken, PW2 quizzed and told the court that the properties in the market were personal properties of the members of the plaintiff and the society only owns and manages all tables for business which were rented to individual members. Directed to the plaint and asked the number of members, PW2 replied that he does not know about 316 and 164 members who were stated in the plaint and evidence by PW1 but he knows the number of members at his time in office was only 200 persons.

Further pressed with questions, PW2 replied to the Court that he doesn't have any documentary proof to show that the plaintiff was registered to conduct business on Plot No. 131 Block "D" Magomeni Dar es Salaam but he says he believes the society was registered to conduct its business on the said plot. Asked the names of the people from Kinondoni Municipal Council, PW2 replied that, he does not know the names of people from Kinondoni Municipal Council who took away the commodities during the midnight. PW2 also told the court that he does not have any tax payment receipts but rather he submitted in court payment bills.



Under re-examination, PW2 told the court that commodities in issue prices or value depend on the availability in the market.

Next was **MR. HAMIS ALLY MKOMI** to be referred herein as "PW3".

Under affirmation testified that he is a member of the Plaintiff and board member of the society. PW3 told this court that the plaintiff is claiming against the 1st defendant are rice, fish, tomatoes, unions and tables that were using to conduct businesses. According to PW3, in 2022 the 1st defendant through their agents assisted by police officers and militia men in the midnight invaded the plaintiff's market place and took away all business commodities and that was present and witnessed the 1st defendant demolishing their places using excavator and forcibly carrying away their commodities through the municipal tipper.

Further testimony of PW3 was that the plaintiff through their members pays all taxes to the 1st defendant and all payment receipts are issued in the name of the plaintiff. According to PW3, members are claiming through the plaintiff a sum of one billion Tanzanian shillings (TZS 1,000,000,000/=) being the value of properties which were taken by the 1st defendant. PW3 told the court that, the record showing each particular member's commodities was taken by the 1st defendant's people who were in accompany with the police officers. It was the PW3's further evidence that, he knew the 1st defendant's people

because he always saw them at the Kinondoni Municipal Council. From that incident, the plaintiff decided to institute a land case against the defendants at the High Court of Tanzania, Land Division.

PW3 continued to testify that, in the said land case (**exhibit PE2**) the plaintiff's lawyer admitted that the 1st defendant removed the plaintiff from their common market. PW3 claimed that the 1st defendant's act of unlawful taking away their commodities and destroying their market places caused them a serious financial loss to their business is to be compensated. He finally prays the court to decide in their favour and the defendants who should be condemned to pay costs of the suit.

Under cross-examination by the Mr. Lawiso, PW3 stated that the plaintiff is the owner of Plot No. 131 Block "D" Magomeni. However, pressed with questions, PW3 admitted that he has no any documentary evidence to prove that Plot No. 131 Block D is owned by the plaintiff and he even agree that he is not aware if the said Plot is owned by the then Registered Trustees of Tanganyika African Union (TANU) now known as Chama Cha Mapinduzi (CCM). Further under cross examination, PW3 replied that the plaintiff had a total number of 250 members. PW3 shown the tax payment receipt (Exhibit PE 1(a)) and when inquired by



Mr. Lawiso, he admitted that the said payment receipts do not indicate anywhere payment received from the so called "Soko la Dilole".

PW3 still under cross examination neither mentioned the names of the police officers and people from authority of the 1st defendant nor registration of the motor vehicles used to in the exercise. PW3 mentioned that after the incident, they confirmed the affected members were 150 and the destroyed commodities were rice, unions, fish and spices. He also admitted that in their pleadings before the court, the plaintiff never mentioned stall business and he also didn't have the lists of all the commodities items for every affected member. PW3 also mentioned other persons that were with him on the fateful night including; Mariam Kimenya, Mengi Dunia, Fikiri Juma, Ignas Focus, Abdul Hungo, Hamisi Namulya and others he said he forgotten their names.

Under re-examination by Mr. Kilimba, PW3 testified that the case before this court is a civil case claiming against the 1st defendant one billion shillings being the value of the commodities taken away and destroyed by the 1st defendant. PW3 further testified that he doesn't have any documentary evidence of proving one billion shillings as he was not a treasurer of the society. Lastly, PW3 told the court that all records of

plaintiff's members and list of all member commodities were also all taken by the 1st defendant.

The last plaintiff witness was **MR. ISSA CHARLES BAKARI** to be referred herein as "**PW4**". Under affirmation, PW4 told the court that since 2022 he was a chairman of the plaintiff society. According to PW4, the 1st defendant invaded the plaintiff's market located at Magomeni and destroyed and took away all commodities and properties belonged to the plaintiff's members. He also stated that the Plaintiff owns a market on Plot No. 131 Block "D" Magomeni in Dar es Salaam. PW4 told the court that proof to that effect are various payment receipts and tax bills/ invoices that exhibit the plaintiff is paying tax to Kinondoni Municipal Council. PW4 testified that on January, 2022 the 1st defendant via her employees assisted by the police officers invaded their market place in the midnight and took fish, rice, unions, spices and all other items that were found in the market. PW4 also testified that the 1st defendant left them with nothing and all that evil acts were done without prior written notice or information. PW4 further told the court that following that demolition, they opened a land case against the defendants at the High Court of Tanzania-Land Division where the 1st defendant's lawyer admitted that the 1st defendant has already been removed the plaintiff's members in their business market places referring to exhibit PE2.



PW4, further testimony was that since the proceedings in the said land case are unequivocally clear that the 1st defendant removed them from their daily business places, the defendants should be accountable for their unlawful acts. According to PW4, on account of the above undisputed fact, this Court has to decide against the defendants and order compensations immediately to all plaintiff's members who have suffered financial loss. Lastly, PW4 prayed the court to grant all prayers as in the plaint.

Under cross examination by Ms. Ernest, PW4 testified that on the fateful night, Dilole had 160 active members and there were other businessmen who were not members. PW4 further insisted that the market is owned by Dilole and is on registered Plot No. 131 Block "D" Magomeni since 1974. PW4 also admitted that he cannot remember the names of other members and non-members but insisted that, their claim for one billion shillings includes peoples who are members and non-members. Pressed with questions, PW4 failed to mention a list the names of all members and non-members who suffered specific damages amounting to TZS 1,000,000,000/= say one billion Tanzanian shillings. Further pressed with the question as whether he had authority of representing other members, PW4 unequivocally admitted that he had no such authority



and the commodities alleged to have been taken were private properties and he had no authority to represent non-members.

On ownership of the Plot No 131 Block "D" Magomeni, PW4 admitted again that he has no evidence to prove that the plaintiff owns Plot No. 131 Block "D" Magomeni and continued to state that he believes that the plaintiff owns the said Plot because he has stayed for long time on that plot of land. He also replied that he doesn't see anywhere in exhibit PE1(a) written "Soko la Dilole".

Under re-examination by Mr. Kilimba, PW4 stated that, the correct number of plaintiff's members is that one mentioned in the pleadings and not that he testified in court. He also testified that he doesn't have the lists of members because the same was taken by the 1st defendant. PW4 also testified that they were put under arrest by the police officers, thus, they could not do anything. Finally, he insisted that they are paying taxes to Kinondoni.

This marked the end of the plaintiff's case and was dully marked closed. The defence case was opened by **MR. ZAHORO RASHID HANUNA** herein to be referred as "**DW1**". Under affirmation and led by Mr. Lawiso testified that he is an employee working with the 1st defendant (Kinondoni Municipal) as Business Licensing Officer since 2018. DW1 testified further that his duties including the issuance of business

licenses, collect taxes from all markets within the municipal, to educate businessmen within the municipal and do other works assigned by his supervisor.

DW1 continued to testify that he knows the plaintiff as one among the Cooperative societies which does its business at Magomeni market. He proceeded to testify that Magomeni market is owned by the Kinondoni Municipal Council (the 1st defendant). DW1 also testified that Dilole Cooperative society has members who sales home use commodities including chicken, rice, unions and all sorts of spices. DW1's further evidence was that the Magomeni market has been reconstructed since 2019 and recently there is a new modern market with all facilities in place including banking facilities and meeting halls. DW1 continued to testify that Dilole (plaintiff) were our direct customers who paid taxes to our council. After being showed exhibit PE1 (a), DW1 stated that the said exhibit shows that the plaintiff used to pay taxes for old Magomeni market before the reconstruction. DW1 also stated that the plaintiff has no business licence of establishing her own market because no private person is allowed to own market within the Kinondoni Municipal Council under the Public Health Act of 2009. Responding on the allegation that the 1st defendant destroying the plaintiff's market and taking away their commodities, DW1 disputed



those allegations by testifying that the 1st respondent has never destroyed the alleged plaintiff market as there was no market registered in the name of the plaintiff or as the called "Soko la Dilole" and that there is nothing in their registry so called "Soko la Dilole" but is Dilole Cooperative Society is only what exists.

Under cross-examination by Kilimba, DW1 repeatedly stated that the plaintiff has never owned a market called "Soko la Dilole". He also said that, the 1st defendant has no direct contract with the Dilole but with individual members of Dilole Cooperative Society. DW1 also responded that in 2019 they were still using the book receipts but later on it changed completely to electronic generated receipts. DW1 answered further that the receipt which were issued for Dilole it doesn't mean the plaintiff owns any market place, rather it means the plaintiff's members pays all taxes through the plaintiff. DW1 continued to testify that Plot No. 131 Block "D" is not owned by the plaintiff.

The second defence witness was **MR. HERMAN EDWARD MASUNGA** to be referred as "**DW2**". Under oath DW2 told the court that he is a Land Officer working with Kinondoni Municipal authority since 2021. Categorically, DW2 told the Court that neither the 1st defendant nor the



plaintiff owns the land known as Plot No. 131 Block "D" located at Magomeni Dar es salaam. According to DW2, the legal owner of said plot of land is TANU now CCM since 1st day of April, 1968 for a term of 99 years. DW2 further stated that the said land has Certificate of Right of Occupancy with No. 18077. DW2 tendered a certified copies of the Tittle Deed with No. 18077 in evidence as **"exhibit DE 1"**.

DW2 added that Plot No. 131 Block D with tittle No. 18077 was allocated to TANU for office use only as the area is high density measuring only 500 feet whose use cannot be a market. DW2 told the court that the new Magomeni market was constructed on Plot No. 300 Block "D" Magomeni. According to DW2, who is the custodian of all land registered within Kinondoni Municipality, the allegations by plaintiff that he owns a plot No.131 Block "D" Magomeni are unfounded and without any supportive documents. DW2 also told the court that in the land registry there is no title deed which reflects the plaintiff's name. Finally, he testified that he had no ideas of any plaintiff's commodities.

Under cross examination by Kilimba, DW2 insisted that he does not know what is meant by Dilole and the said Dilole has no Certificate of Right of Occupancy in his land registry.

This marked the end of the defence case and it was dully marked closed.

The noble task of this court now is to determine the merits or otherwise of this hotly contested suit.

Having carefully gone through the pleadings, heard the parties' oral testimonies and the documentary exhibits admitted as evidence in this Court, I find out the material evidences on record suffices to trigger a discussion and deliver timely justice based on the framed issues.

The first issue in this suit was couched that "***Whether the plaintiff owns a business market known as "Soko la Dilole" situated at Plot No. 131 Block 'D' Magomeni Dar es Salaam?***"

In answering the issue number one whether the plaintiff (Dilole Co-operative Society) owns a business market known "Soko la Dilole" situated at Plot No. 131 Block 'D' Magomeni area within Kinondoni District in Dar es Salaam city, this Court is on the settled view that the plaintiff's evidences adduced at trial are short and all shoot out of the required standard in civil cases namely on balance of probabilities. I take the above stance for the following reasons, namely. **One**, all plaintiff's witnesses who testified (PW1, PW2 PW3 and PW4) none tendered any evidence to prove that there is a registered market in the name of "Soko la Dilole" on Plot No.131 Block "D" Magomeni. Not only that but also no licence was tendered by the plaintiff from the 1st defendant that, indeed,

and actually the plaintiff is trading using such a name for operation of such a market on behalf of its members.

Two, a mere registration of the Cooperative Society as alleged in this case but whose registration was not tendered in court, cannot be said that the plaintiff was doing business legally in the absence of those vital documentary evidence. No document was tendered to suggest that there is a market by that name.

Three, all plaintiff's witnesses who testified in Court did not tender any documentary evidence to prove ownership of a businesses on Plot No. 131 Block "D" Magomeni area within Kinondoni District in Dar es Salaam city.

Four, the plaintiff's documentary exhibits; the tax invoices (exhibit P1(b) of 2020/2021; exhibit P1(c) of 2019/2020 and exhibit P1(d) of 2020/2021) and copy of the payment receipt (exhibit P1(a) which were tendered in Court do not indicate either the so called "Soko la Dilole" or "Dilole Market". Neither Plot No. 131 Block "D" Magomeni Kinondoni District in Dar es salaam city.

To the contrary, the 1st defendant being the custodian of all public document concerning grant of land and ownership of land within Kinondoni district tendered (exhibit-D1) before this Court a registered



Certificate of Right of Occupancy with Tittle No. 18077 owned by the Registered Trustee of Tanganyika African Unions (TANU) now Chama Cha Mapinduzi (CCM) with a tenure of 99 years with effect from 1st April, 1968. Also 1st defendant's witness (DW1) Mr. Zahoro Rashid Hanuna who is a business licensing officer within the authority of the 1st defendant proved that the plaintiff has no market called "Soko la Dilole" within Kinondoni Municipal but the only market exists in Magomeni area is the Magomeni Market. These facts were unchallenged by the plaintiff's evidence hence remained the truth.

From the above stated reasons, at this stage, I wish to recall the plaintiff to the cardinal principles of pleadings as was held by the Court of Appeal of Tanzania in the case of **Barclays Bank (T) LTD Vs. Jacob Muro; Civil Appeal No. 357 of 2019** at Mbeya (reported at Tanzlii) where at page 11, the Court held: -

*"We feel compelled, at this point, to restate the time-honoured principle of law that **parties are bound by their own pleadings and that any evidence produced by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored**". [Emphasize added]*



It is the findings of this court that the plaintiff's evidences which are contrary to the pleadings are hereby ignored and disregarded. This position also was stated in various Court of Appeal decisions including in **James Funke Ngwagilo v. Attorney General** [2004] TLR 161. See also **Lawrence Surumbu Tara v. The Hon. Attorney General and 2 Others**, *Civil Appeal No. 56 of 2012*; and **Charles Richard Kombe t/a Building v. Evarani Mtungi and 3 Others**, *Civil Appeal No. 38 of 2012* (both unreported).

That said and done, the first issue must be and is hereby answered in the negative that the plaintiff owns no market by the name of "Soko la Dilole" situated at Plot No.131 Block "D" Magomeni Dar es Salaam.

This takes me to the second issue which was couched that "**Whether the Plaintiff's commodities were unlawfully taken away by the 1st defendant.**" Having heard both sides evidence on this issue, this Court is of the view that there was no cogent evidence on the plaintiff's side to justify that the 1st defendant unlawfully invaded the plaintiff's business premises in the midnight of January, 2022 and took away their trading commodities worth one billion Tanzanian shillings (TZS 1,000,000,000/=). The reasons for such conclusion are abound. These are: **One**, all plaintiff's witnesses testified that "Dilole Cooperative Society" only owns a business market place at Magomeni within



Kinondoni District called "Soko la Dilole" but the commodities were owned privately by the individual members of the cooperative society. The testimonies of PW1, PW2, PW3 and PW4 is clear that, commodities like tomatoes, fish, unions and spices belonged to the plaintiff's members who conducts the business daily at the market. This fact also was stated in the plaintiff's pleadings under paragraph 5 of the Plaint which reads as follows: -

*"That the plaintiff claims against the 1st defendant TZS 1,000,000,000/= (One Billion Tanzanian shillings) being money, valued to different commodities taken away by the 1st defendant on 2nd January, 2022 to unknown place **the commodities which owned lawfully by the Plaintiff's members at Dilole Market at Magomeni.** Such commodities were taken by the 1st defendant are 1 tone of fish, 200kg of rice, 1000kg of unions, 2 tones of tomatoes, 4 Deep Freezers and other related commodities." [Emphasize is added].*

The effect of such paragraph and the testimonies of PW1, PW2, PW3 and PW4 are that while the alleged goods/commodities belonged to individual members of the Society but nothing was tendered to prove that the plaintiff is registered society capable of being sued and sue in



her own name. The absence a of the Society registration and its constitution to authenticate the relationship between the members and the society makes this issue to fail. None of the witnesses of the plaintiff tendered evidence to prove his membership and that the plaintiff had a capacity to sue on behalf of its members. In my respective view, all plaintiff's witnesses' testimonies were at variance with the pleadings that the plaintiff is not the owner of the commodities alleged to have been taken while all witnesses admitted that the commodities, if any, were the individual properties of the members.

Two, the only evidence that the properties were taken by the 1st defendant was the proceedings in exhibit PE2. I have had a chance to scrutinize the contents of exhibit PE2 but what the lawyer from the 1st respondent said in the said proceedings were that the members of the plaintiff were removed from plot No.131 Block "D" Magomeni but nothing in those proceeding suggested taking the commodities. So, the argument that in the said proceedings there was admission of unlawful taking away the commodities was pleaded and testified out of context.

Three, not only that but the mandate of the plaintiff to sue of behalf of the members and non-members remained unproved to justify this claim.



Four, all plaintiff's witnesses (PW1-PW4) failed to mention the names of the persons and the motor vehicles from the 1st defendant's office who on 2nd January, 2022 invaded the plaintiff's market site and took away its members' commodities. In the circumstances where the alleged unlawful entrance took place at the midnight, and in the absence of clear names of the wrong doers, absence of the employees or agents official identity card number, the 1st defendant's motor vehicle registration number for the cars, tipper and excavator that were used to carry the commodities and demolish their tables, subjects the entire plaintiff' case on hypothetical claims.

Three, the plaintiff (Dilole cooperative society) provided no evidence to justify that it had its own commodities separate from the alleged members' commodities.

On the foregoing reasons, I find the second issue in the negative. Since the second issue is answered in negative, the third issue dies a natural death.

This trickles this suit to the last issue which was couched that **"what reliefs are the parties entitled"**. From the findings in issues number 1 and 2 above, the plaintiff's claims stand to fail in their entirety for want of evidence. The plaintiff as such failed to prove her case on the



balance of probabilities and without much ado this suit must be and is hereby dismissed with costs.

It is so ordered.

DATED at **Dar es Salaam** this 3rd day of May, 2024.



S. M. MAGOIGA

JUDGE

03/05/2024

Court: Judgement delivered in Chambers this 3rd day of May, 2024 in the presence of the Twaha Taslima, learned advocate for plaintiff and Adelaida Ernest and Charles Lawiso both learned State Attorneys and Principal State Attorneys for defendants.



S. M. MAGOIGA

JUDGE

03/05/2024

Court: Rights of the parties to appeal to the CAT fully explained.



S. M. MAGOIGA

JUDGE

03/05/2024