IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: MWAMBEGELE, J.A., KOROSSO, J.A. And RUMANYIKA, J.A.)

CIVIL APPEAL NO. 377 OF 2020

LUPEMBE VILLAGE GOVERNMENT
IKOLO WARD KYELA DISTRICT .... 1ST APPELLANT
NGOBE GROUP .... 2ND APPELLANT

VERSUS

BETHELEHAMU MWANDAFWA .... 1ST RESPONDENT
ANYANSWILE MWASIKOPA .... 2ND RESPONDENT
ARIDA MWAIPYANA .... 3RD RESPONDENT
AMBWENE MWANJOKA .... 4TH RESPONDENT
ANDAKILWE MWASAKATUNDU .... 5TH RESPONDENT
BRAITON MBASYULA .... 6TH RESPONDENT

(Appeal against the Judgment and Decree of the High Court of Tanzania at Mbeya)

(Ngwala, J.)

dated the 11th day of October, 2017
in
Land Case No. 6 of 2012

....

JUDGMENT OF THE COURT

27th September 2022 & 9th June, 2023

KOROSSO, J.A.:

In the High Court of Tanzania Mbeya Registry at Mbeya, the respondents (the plaintiffs then) Bethelehamu Mwandafwa, Anyanswile Mwasikopa, Arida Mwaipyana, Ambwene Mwanjoka, Andakilwe Mwasakatundu and Braiton Mbasyula sued the 1st and 2nd appellants,

Lupembe Village Government, Ikolo Ward, Kyela District and Ngobe group (the 1st and 2nd defendants then) vide Land Case No. 06 of 2012 for illegal acquisition of their respective portions of land located at Mwingo area in Lupembe Village, within Kyela District in Mbeya Region (the suit land). The respondents claimed that the 1st appellant unlawfully allocated the suit land which included their portions of land to the 2nd appellant without justification and claimed for several reliefs that included: a declaratory order that the 1st appellant's acts are unlawful; a declaratory order that the suit land belongs to the respondents; an order for vacant possession of the suit land; an order for demolition of structures in the suit land at the costs of the 2nd appellant; and an order for payment of damages for unlawful interference to the respondent's land and costs of the suit. The appellants, through a joint written statement of defence denied the respondents' claims asserting that the suit land is the property of the 2nd appellant. In support of their claim, they relied on a letter of offer for the suit land showing having been allocated the same by the Village Council, upon the consent of the villagers.

In the determination of the appeal, we find it apt to provide the background to the dispute that gave rise to the instant appeal as gathered from the adduced evidence before the trial court. To support their claims,

each of the respondents expounded how their portions of land within the disputed land were acquired. Arida James Mwaipyana (PW1), a resident of Mbugani Village, Kyela District in Mbeya Region, testified that he owned a two acres farm at Lupembe Village containing cashew nuts trees, mango trees and palm trees which he had purchased from one Mzee William Mwainyekule for Tshs. 4,500,000/= in 1985. He maintained that his ownership of the farm was for more than 35 years until the year 2004 when the Lupembe Village Government without consulting him, took it over and allocated it to the 2nd appellant. His complaint at Ikolo Ward Tribunal (IWT) was unsuccessful. When he knocked on the doors of the District Land and Housing Tribunal for Rungwe and Kyela (DLHT) he was advised to institute the matter in the court of competent jurisdiction hence together with the other respondents who had been similarly affected decided to institute the dispute in the High Court.

According to the 3rd respondent (then PW1), on 4/6/2004, the 1st appellant through a letter which was admitted as exhibit P2, promised him and other respondents' allocation of new pieces of land to substitute those which had been taken by the Village Government and reallocated to the 2nd appellant. A promise which remained unfulfilled. He stated further that since being deprived of his land he has been unable to carry out any

economic activity on his portion of the suit land and suffered financial loss amounting to Tshs. 63,000,000/=.

On the part of Bethlehamu Andrea Mwandafwa, the 1st respondent (then, PW2) testified that he owns a quarter of an acre within the suit land bought from Mr. Kannogele Mwakamenyele for Tshs. 3,500/= in 1983 and later developed it. He claimed that at the time his portion of the suit land was grabbed by the 1st appellant in 2003 to allocate it to the 2nd appellant, it was already developed and had cashew nuts, palm, lemon, and mango trees together with cassava plants and it was worth Tshs. 5,000,000/=. The 1st respondent denied having consented for his piece of land to be taken by the appellants and alleged that after it was handed to the 1st appellant by the 2nd appellant it was ruined. He stated further that his complaints to the District Commissioner over the issue were barren of fruit since no compensation was given.

For Ambwene Mwanjoka, the 4th respondent (then PW3), his claims amounted to Tshs. 6,000,000/= as compensation for his piece of land taken from him without his consent and Tshs. 25,000,000/= for the loss of the plants therein. In the alternative, he prayed that he be given back his portion of the suit land. He challenged the sale agreement involving the suit land between the 1st and 2nd appellants arguing that the alleged

sale was not in compliance with the law. Asha Joseph Ipopo, the wife and administrator of the estate of the deceased 2nd appellant, Anyandwile Mwasikopa (then, PW4) advanced claims related to three acres of land within the suit land. PW5 on the other hand claimed for a piece of land grabbed by the 1st appellant which he had inherited from his late father, Green Mwasakatundu who died in 1998 which led him to suffer a loss of Tshs. 90,000,000/=.

On his part, PW6, a legal representative of Braiton Mbasyula, testified that his father had refused any compensation for his ¼ acre farm, a position which was however, disregarded, and the 1st appellant had forcefully grabbed the said land and allocated it to the 2nd appellant. All the respondents had also denied having attended the village meetings alleged to have approved the transfer of the suit land to the 2nd appellant or to have consented to the same.

In defence, Daifu Samson Mwalugali (DW1), the Chairman of Lupembe Village Council at the time the trial was ongoing, testified that he was unaware of the date the dispute between the 1st appellant and the respondents arose. He acknowledged knowing only four respondents out of the six before the trial court, those he recognized as residents of Lupembe Village. It was his further contention that according to the

information he had, the takeover of the suit land from the respondents by the Village Council was approved by the villagers and it was not the decision of the 1st appellant. Nichodemu Amin Mwaipopo (DW3) conceded to knowing the respondents except for the 3rd and 5th respondents. He tendered the minutes of the Village General Meeting of 01/4/2004 (exhibit D3) and stated that except for the 4th respondent, the other respondents were not in attendance at the said meeting. DW3 conceded that the respondents were in occupancy of the suit land before it was allocated to the 2nd appellant and that they were not compensated by the village Government because they had not attended the village meeting that decided to give the suit land to the 2nd appellant.

In determining the suit, the trial Judge drew the following issues to guide the conduct of the trial: one, whether the plaintiffs owned the suit land under deemed right of occupancy (customary tenure); two, whether the Village Assembly/Council of the 1st Defendant allocated to the 2nd Defendant the suit land and whether that allocation was legal? Three, whether the plaintiffs are entitled to compensation; and four, to what reliefs are the parties entitled.

Having heard the adduced evidence from the contending parties, the trial court (Ngwala, J.) through its judgment delivered on 11/10/2017

decided in favour of the respondents. The granted and decreed claims were that: one, the suit land belonged to the respondents, and they should take possession of their suit land forthwith. Two, the acts of the 1st appellant were declared to be unlawful. Three, ordered the 2nd appellant to vacate the suit land. Four, ordered that the structures erected on the suit land be demolished forthwith, and five, denied compensation claims and granted general damages of Tshs. 3,000,000/= and the costs of the suit.

The appellants were dissatisfied with the trial court's decision and lodged an appeal to this Court premised on four grounds of appeal. For reasons to be shown in a short while, we shall only reproduce what was the 2nd to 4th grounds now renamed 1st to 3rd grounds of appeal as follows:

1. *That the Hon. Learned Judge erred both in points of law and facts when she ordered the demolition of the structures erected in the suit land without ordering compensation for exhaustive improvements.*
2. *The award of Tshs. 3,000,000/= to the respondents was against the principles of awarding general damages.*

3. *The suit before the trial court was improper for lack of a proper plaint and it contravened the provisions of Order VII Rule 3 of the Civil Procedure Code, Cap 33 R.E. 2002.*

On the day the appeal was called on for hearing, Mr. David Kakwaya learned Principal State Attorney represented the 1st appellant assisted by Mr. Thomas Mahushi, learned State Attorney, whereas the 2nd appellant enjoyed the services of Mr. Simon Mwakolo, learned Advocate. Mr. Justinian Mushokorwa, learned Advocate entered appearance for all the respondents, who were also present.

At the inception of the hearing, Mr. Kakwaya informed the Court that the 1st appellant has lost interest in prosecuting the appeal, he, therefore, prayed to withdraw the appeal under Rules 4 (2) (a) and (b) and 102 (1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). Mr. Mushokorwa registered no objection to the prayer advanced by the learned Principal State Attorney, he however pressed for costs. On his part, Mr. Mwakolo also had no objection to the prayer sought. Having considered the uncontested prayer, we granted it in terms of Rule 4 (2) (a) and (b) of the Rules. In consequence, the appeal by the 1st appellant was marked withdrawn with costs. For the avoidance of doubt, we ordered the hearing of the appeal of the 2nd appellant to proceed accordingly.

Mr. Mwakolo commenced his submission by seeking and being granted leave to abandon the first ground of appeal which he stated was essentially one drawn by the 1st appellant since they had filed a joint memorandum of appeal. The learned counsel further prayed to adopt grounds 2, 3 and 4 and the written submissions filed in support of the appeal so that they form part of his oral submission. The learned counsel also sought and was granted leave to argue all three remaining grounds of appeal conjointly. He stated that the underlying issue for the Court's determination was whether the respondents proved their claims against the appellants. Mr. Mwakolo also urged us to find that the respondents had contravened Order VII Rule 3 of the Civil Procedure Code, Cap 33 (the CPC) since the witnesses PW1 to PW6, failed to describe the area of the claimed disputed suit land in terms of size, boundaries and location.

According to the learned counsel for the appellant, the respondent's failure to properly describe and identify the disputed suit land rendered the disputed land and commensurate claims unproven under section 110 of the Tanzania Evidence Act, Cap 6 (The Evidence Act). He also implored us to consider the fact that the 2nd respondent has already developed the suit land as shown in the valuation report tendered in evidence as exhibit D2.

Regarding the second ground of appeal relating to the general damages of Tshs. 3,000,000/= awarded to the respondents, Mr. Mwakolo, whilst acknowledging that the granting of general damages is within the discretion of the court, he, however, challenged the general damages awarded to the respondents. He argued that in the instant case, no party deserved to be granted the same. According to him, in awarding the general damages, the trial Judge went against her earlier findings that the respondents did not deserve such damages. He referred us to the trial court's judgment on page 162 of the record of appeal where she stated:

> *"In so far as compensation is concerned plaintiffs have not proved their claims on the balance of probabilities".*

The learned counsel reasoned that the trial Judge having found as above, it was a misdirection and erroneous for her to thereafter award general damages to the respondents. He argued further that in essence what the trial court did was apply double standards, since on one hand, the decision seemed to favour the appellant, and then in awarding damages, she ended up preferring the respondents on the same issue.

Amplifying ground number three, the complaint addressing the propriety of the plaint, the learned counsel argued that it is defective and

did not comply with Order VII Rule 3 of the CPC. According to him, the plaint is designed in a manner like an application to be filed in the DHLT instead of the High Court. The learned counsel concluded by questioning whether under the circumstances the granted decree is executable and prayed that the appeal be allowed with costs.

In response, Mr. Mushokorwa commenced by adopting the written submission filed for the respondents praying they form part of his oral submission. He also alluded that he had nothing further to amplify unless called upon by the Court to do so. In the written submissions the counsel for the respondents urged us to find the appeal to lack merit. He contended that considering all the contending arguments, the Court should find that the description and details on the location of the suit land were not disputed since at the trial, the witnesses of both parties repeatedly addressed the suit land as the location presented in paragraph 9 of the plaint. According to the learned counsel, the appellant was not prejudiced by the description of the disputed land found in the plaint, essetnially stated thus: "*unsurveyed land located at Mwingo area within Lupembe Village.*"

He argued that according to the witnesses including DW1 and DW3 the disputed land was within Lupembe Village and prior to being handed

over to the 2nd appellant it was in the hands of the villagers including some of the respondents. He argued that each of the respondents had provided sufficient evidence to prove ownership of land in the suit land before the Village Council handed it to the 2nd appellant, ownership which was unchallenged in the trial court.

On the second ground of appeal, the learned counsel submitted that this should not take too much of the Court's time since it was an issue not addressed in the trial. In the alternative, he argued that the appellant's challenge on the award of general damages of Tshs. 3,000,000/= to the respondents is misconceived. The learned counsel reasoned that the appellant's counsel finger-pointing of the trial court's decision is misguided since general damages were pleaded under prayer (e) and (g) of the plaint where the respondents sought any other relief the court would deem just to grant. He argued that since general damages are action *per se* and awardable at the discretion of the court, even without specific prayer it was just and fair for the trial court to award the said damages at the tune she deemed just in the circumstances of the case. The learned counsel asserted that what was awarded by the trial court arose from what had transpired in the trial court and be recognized notwithstanding any minor

inadvertent confusion somewhere in the judgment where the trial judge had earlier held that general damages were not proven.

Mr. Mushokorwa conceded the fact that the trial Judge's statement above which was faulted by the learned counsel for the 2nd appellant is unfortunate, "*a lapse of the pen*". He argued that moreover, what should be considered is the fact that the evidence on record before her clearly showed how each respondent suffered extensive damages to his or her area of the disputed suit land and the consequential inconveniences from the wrongful acts of the appellant. Such, circumstances without disdain would attract reparation to the eye of any trial Judge as was the case in the present case, he argued.

Furthermore, the learned counsel urged the Court, as the first appellate Court engrained with the duty to re-appraise the evidence to do the needful and reach its own conclusion on the matter in the interest of justice. He implored us to be inspired by our decision in the case of **Martha Wejja v. Attorney General** [1982] TLR 35 on page 43 last paragraph. Mr. Mushokorwa also argued that the complaint that the trial court had no basis to award compensation to the 2nd appellant who was ordered to pull down his structures built on the land of the plaintiffs not

to have legal justification because the respondent could not be compensated for his own wrongful act and urged us to find so.

On the last ground, the learned counsel for the respondents urged us to find it without merit, arguing that failure to strictly comply with the format of the plaint prescribed as inconsequential so long as the plaint substantially embodied all the important particulars of a plaint, as did the plaint subject of this instant appeal. He then urged us to ignore any slight deviation in the format and be guided by the overriding objective principle. He concluded by beseeching us to dismiss the appeal with costs.

Mr. Mwakolo had nothing more in rejoinder, urging us to consider his submission in chief and allow the appeal.

We have examined the record of appeal and considered the rival submissions of the learned counsel from both sides. In our determination of this appeal, we shall consider all three grounds of appeal before us starting with grounds three, one, and then the second ground as reproduced herein. In the instant appeal, as a first appellate court, our duty to re-examine, re-appraise, and re-evaluate the evidence on record and come to our own decision where the need arises is well established. (See, **Peters v. Sunday Post Ltd**. (1958) E.A. 424 and **Hassan Mzee Mfaume vs Republic** [1981] TLR 167).

Our understanding of complaint number three is that the appellant is disgruntled by the trial court's failure to hold that the plaint with the respondents' claims was improper, being in contravention of Order VII Rule 3 of the CPC. The learned counsel for the appellant's position was that the plaint is in the format suitable for an application expected to be filed in the DLHT and not the High Court. He further contended that the plaint also lacked essential details to enable proper identification of the suit land which rendered it defective and that any decree granted from it would be inexecutable.

It is pertinent to point out at this juncture that as argued by the learned counsel for the respondents, the concern was not raised at any stage of the trial, but this being a point of law, we find it apt to address it. We understand the complaints on this ground to be, (i) the propriety of the suit (subject of the instant appeal) to warrant the court to grant the claims sought. (ii) the impracticality of executing the granted decree.

Addressing whether the plaint is defective, our starting point is the relevant provision. Order VII Rule 3 of the CPC states:

> *"Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it*

and, in case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number"

On the argument that the plaint did not disclose the description of the suit land, we are aware of the provisions of Order VII rule 3 of the CPC, the emphasis being where the involved subject matter in a suit is immovable property, there must be such details of the requisite property in the plaint to sufficiently enable it to be identified. Suffice it to say, upon our revisit of the record of appeal, we failed to find anything on record to show any concerns raised by the appellant's side on the insufficiency of the description provided for the suit land or on the contents of paragraph 9 of the plaint. It was also not one of the issues framed for determination by the trial court. Paragraph 9 of the plaint found on pages 1-3 of the record of appeal, states:

"Location and addresses of the disputed land. The land in dispute is allocated at Mwingo Lupembe Village."

While the above description can be said not to provide too many details on the suit land, it is, however, pertinent to ensure that each case is adjudged within its own circumstances. In the written statement of defence (WSD), the appellant clearly did not challenge that description of

the suit land, nor did he deny it. This is established through paragraph 1 of the WSD on pages 6-8 of the record of appeal states:

> "*That the contents of paragraphs 1, 2, 3, 4, 5, 6, 7, 8,* ***9*** *and 11 of the plaint are not denied by the defendants SAVE that the location of the disputed land is in Mwigo Village ...*"

The fact that the suit land is in Mwigo area as described in the plaint and WSD seems not to be disputed. This fact can also be discerned from the evidence of the appellant's witnesses, especially DW1 and DW3. The record reveals further that when PW1 was cross-examined by the appellant's witness, on page 76 of the record of appeal she stated: "*The area is Mwigo. It is Mwigo. It is ng'ambo ya mto Mwigo.*". There is also the evidence of DW1, the Chairman of Lupembe Village, who when cross-examined by the respondents' counsel as seen on pages 120 and 122 of the record of appeal, stated:

> "*... We did not dispute the address that is in Kyela District. The disputed land is in Lupembe.... Mwigo is not a village, the village is Lupembe. Mwigo is a "kikorongo" in the village.*"

According to DW3 who was the Village Chairman at the time when the village reallocated the disputed land to the 2nd appellant, the land handed to the 2nd appellant at the time was occupied by some people

including some of the respondents. He also acknowledged there being plants owned by those who occupied the land. All these facts give rise to a conclusion that the suit land details were known and acknowledged by the parties and hence it was not an issue raised during the trial as a concern. We are thus convinced that all the parties were fully versed with the details and description of the suit land and the appellant was not in any way prejudiced. Therefore, the complaint lacks substance.

Regarding the format of the plaint, having perused it thoroughly, we find nothing to warrant us to find it incompetent since all the essential elements as outlined under Order VII Rule 1 of the CPC are there. Any departure discerned we find to be minor and does not vitiate the essence and content of the plaint and nothing to lead us to find the appellant was in any way prejudiced. Overall, we find ground three unmerited.

The first ground of appeal faults the trial court for ordering the demolition of the structure erected in the suit land without ordering compensation for unexhausted improvements. Indeed, the complaints found in the first ground of appeal are founded on the trial court's invalidation of the village council's reallocation of the suit land from the respondents to the appellant, a process where the appellant did not acquire any title to the suit land. A perusal of the record of appeal reveals

that the said holding has not been challenged by the appellant. We are thus of the view that failure to dispute the trial court's invalidation of the reallocation of the suit land to the appellant invariably means that the appellant did not dispute that the respondents are the ones holding titles to the disputed land as claimed. The appellant's stance is further amplified by the prayers sought in the memorandum of appeal where in prayer (b) the appellant prays to be declared the lawful owner of the erected structures on the suit land and not the owner of the suit land. What we gather from this is that the appellant's interest is compensation for the developments made to the suit land and not otherwise.

According to the trial Judge, the respondents did prove ownership of their pieces of the suit land acquired either through various means such as inheritance, succession, or purchase through the adduced evidence of their witnesses, PW1 to PW6. The trial court found that the respondents' witnesses stamped ownership of the respective pieces of the suit land for each of the respondents on the balance of probability. On our part, we find no need to disturb the trial court's findings on this matter for the following reasons:

One, in the absence of sufficient proof that the Village Council was mandated to transfer the suit land from the hands of the respondents who

had proved in the trial court their rights to pieces of the suit land, a fact which was not disputed by the appellant's witnesses, it meant that the respondents' titles to the pieces of land remained intact as declared by the trial court. In other words, each of the respondents retained the title to the land in his/her possession as decided by the trial court, a holding we have noted has not been challenged in this appeal. **Two**, there was no presented evidence that the respondents were amply engaged in the process of the reallocation, in contrast, there was evidence that apart from one of them, none other participated in the village meetings alleged to have discussed the reallocation of the suit land to the appellant nor given consent to such reallocation as interested parties. Even, the one respondent who was said to have attended the meeting denied authorizing or acquiescing to the allocation of his piece of land to the 2nd respondent. **Three,** the respondents were not given any compensation at the time land was grabbed from them as alluded to by PW1 to PW6 and DW3, which under the circumstances they were entitled to. **Four**, the evidence of the respondent's witnesses was supported by the evidence adduced by appellant's witnesses DW1 and DW3. who conceded that the ownership of the suit land prior to reallocation to the appellant was held by the respondents.

Noteworthy is the fact that DW1 and DW3 failed to bring forth any justifiable reason by Lupembe Village Government to show where they derived the mandate to reallocate the suit land from the respondents to the appellant. Thus, we are at one with the holding of the trial Judge on the fact that the respondents categorically proved ownership of the suit land.

The issue left for determination under this ground is whether the trial court should have awarded compensation for to the appellant for unexhausted improvement to the suit land. A careful perusal of the record of appeal shows that on the issue of compensation, the trial Judge only deliberated on the propriety of granting compensation to the respondents and not whether the appellant deserved compensation for unexhausted improvement of the suit land. On this point, the learned counsel for the appellant argued that the order for demolition of the structures in the suit land without an order for compensation of unexhausted improvement was improper. Unfortunately, the learned counsel did not expound further on why it was inappropriate. We find the trial court's action is in tandem with the appellant's pleadings since compensation was not pleaded and, in the instant appeal, this issue or claim is not amplified enough for the Court to duly deliberate on the issue.

As the record of appeal reveals, compensation for developments alleged to have been made by the appellant on the suit land was not claimed for, nor was any evidence presented to prove this for determination by the trial court. We are aware that in the process of the trial, the appellant had attempted to show the developments made to the suit land having presented the valuation report (exhibit D2) and the contents of paragraph 6 of the WSD. However, there was no counterclaim or prayer for compensation for the alleged developments and the only prayer in the appellant's WSD was for dismissal of the suit with costs.

Conversely, it is now settled as stated in the case of **James Kabalo Mapalala v. British Broadcasting Corporation** [2004] T.L.R. 143 and **Grace Umbe Mwakitwange v. Suma Clara Mwakitwange Kaare and Others**, Civil Appeal No. 88A of 2007 (unreported) to name a few, that parties are bound by their pleadings and that the case must be decided on the issues on record arising from the pleadings. This being the position, in the absence of such pleadings or led evidence on the issue undoubtedly, the trial court did not have anything before it on the matter to make any determination on it. In the circumstances, it is no wonder the trial Judge found no need to address the issue of compensation for the appellant having already determined that the act by the then 1st

defendant (not a party to this appeal) of allocating the suit land to the appellant unlawful, and that the appellant had no title to the suit land and declared that the same belonged to the respondents. In the premises, as correctly argued by the learned counsel for the respondent, the appellant did not deserve any compensation for unexhausted improvement.

In the second ground of appeal, the appellant is dissatisfied with the award of general damages of Tshs. 3,000,000/= to the respondents by the trial Judge. Mr. Mwakolo argued that this amount was not justifiable since it was not pleaded while Mr. Mushokorwa implored us to find the awarded general damages was minimal and that it was pleaded. The learned counsel for the appellant was at issue with the earlier findings of the trial Judge since earlier in the Judgment she made a finding that compensation was not proved on the balance of probabilities and later went on to grant general damages to the respondents. According to Mr. Mwakolo this was an irregularity removing certainty of the decisions of the courts which parties rely on.

Upon our further perusal of the record of appeal, in the last paragraph of the trial court's judgment on page 162, it states: "*In so far as compensation is concerned the plaintiffs have not proved their claims on balance of probabilities*".

Our understanding of the above passage which has been faulted by the appellant's counsel is that what was being addressed was, the failure of the respondents (plaintiffs then) to prove specific claims amounting to 90,000,000/= as specified in the plaint in paragraph 12(a) and paragraph (e) of the reliefs sought at pages 2 and 3, respectively of the record of appeal. We firmly believe this was not a reference to any other reliefs sought including general damages as assumed by the learned counsel for the appellant but that it referred to failure to prove specific reliefs sought by the respondents in the plaint. This stance was certainly in line with various decisions of this Court including the case of **Reliance Insurance Company (T) and 2 Others v. Festo Mgomapayo,** Civil Appeal No. 23 of 2019 (unreported), we stated that:

> *"... The position of the law in regard to an award of general damages is settled. There are several authorities stating that the general damages are normally awarded at the courts' discretion and need not to be specifically proved...".*

Nevertheless, even if for the sake of argument, the appellant's counsel argument is considered, the final determination by the trial judge to grant general damages showed clearly that upon considering the

obtaining circumstances she was of the view that the respondents deserved some compensation. In awarding the relief, she stated: "*The general damages to the tune of Tshs. 3,000,000/= awarded to the plaintiffs...*"

Indeed, taking all the above into consideration, the trial court's statement in the above excerpt exhibits that the faulted statement above on failure to prove claims did not relate to the general damages awarded to respondents. We have also considered the fact that the guiding principle in awarding general damages was stated in the case of **Admiralty Commission v. S. S. Susqehanna** [1950] 1 All ER 392 where it was held as follows:

> "*If the damage be general, then it must be averred that such damage has been suffered, but the quantification of such damage is a jury's question*".

Similarly, we find it relevant to remind ourselves of what was held in the case of **Tanzania Saruji Corporation v. African Marble Company Ltd** [2004] TLR 155 that:

> "*General damages are such as the law will presume to be the direct, natural or probable consequence of the act complained of, the*

defendant's wrong doing must, therefore, have been cause, if not a sole or a particularly significant cause of the damage."

In the instant appeal, plainly, the wrongdoing complained of was the unlawful reallocation of the suit land from the respondents to the appellant and thus depriving them of the use for their individual purposes of their portions of the said suit land which each of the respondents testified had the negative impact it had on their economic activities. In their pleadings, the prayed amount was not revealed. The record of appeal shows that the trial court, exercising its discretion, weighed the circumstances and determined that the respondents deserved to be compensated for the wrongdoings upon them and the consequences of the same. Having considered all the surrounding circumstances, we find nothing to fault the trial Judge or to interfere with the discretion exercised in granting the general damages to the respondents since that is what she believed will meet the end of justice in the case. In the final analysis, we find the appellant's counsel complaints on this ground to lack substance. For the foregoing, all three grounds fail.

In the end, we thus find no need to interfere with the holdings of the trial court. In the circumstances, we are constrained to reject the

invitation by the respondent's counsel to increase the award of Tshs. 3,000,000/= granted by the trial court to the respondents.

In the end, the appeal is dismissed with costs.

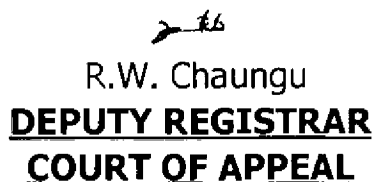
DATED at **DAR ES SALAAM** this 7th day of June, 2023.

J. C. M. MWAMBEGELE
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

The Judgment delivered this 9th day of June, 2023 in the presence of Mr. Amani Mwakolo, learned counsel for the 2nd Appellant, via video link from High Court Mbeya, and in the absence of 1st Appellant and Respondents, is hereby certified as a true copy of the original.



R.W. Chaungu
DEPUTY REGISTRAR
COURT OF APPEAL