

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

LAND CASE NO. 18 OF 2013

**1. FANUEL TITUS LAMAI
2. LEMBRIS OLE NGIREMO
3. AGNESS MARTIN
4. GABRIEL NGARABALI
5. SIFAEI TARANGEI
6. CHRISTOPHER MUNGURE** }**PLAINTIFFS**

Versus

ARUSHA DISTRICT COUNCIL.....DEFENDANT

Date of last Order: 28/03/2014

Date of Judgment: 26/05/2014

JUDGMENT.

F.H. Massengi, J.

Plaintiffs Fanuel Titus Lamai, Lembris Ole Ngiremo , Agness Martin, Gabriel Ngarabali, Sifaeli Tarangei and Christopher Mungure herein and after referred as as 1st, 2nd, 3rd, 4th, 5th and 6th plaintiffs respectively filed representative suit representing 37 others whose list was attached to the plaint. Defendant is Arusha District Counsel. Plaintiffs were under the service of Mr. Akida learned advocate while the respondent were represented by Mr. Kiama who is city solicitor.

Plaintiffs claims against the defendant are that:-

- (a) A declaration that the plaintiffs and 89 others are the lawful owners of the suit land and properties along Mianzini – Timbolo Road.
- (b) Permanent injunctive order against defendant from interfering with the plaintiffs' land and their properties.
- (c) In the alternative and without prejudice to the prayers herein above the defendant be ordered to compensate the plaintiffs herein and 89 others a total of Tshs. 6,809,000,000/= in lieu of their land and properties contained on the suit land.
- (d) Interest at 12% of the decretal amount from the date of judgment till the date the final payment is made.
- (e) Costs of the suit.
- (f) Any other relief(s) the Hon. Court may deem fit and just to grant.

Defendant on their part has denied the claim against them and they did file counter claim as follows:-

1. Special damages to the tune of Tshs. 11,516,500/= incurred by defendant for demolition work done by defendant over plaintiffs' properties and development along the suit land.
2. General damage to be assessed by the court.
3. Costs of the suit.

Issues were framed as follows:-

1. Whether plaintiff are the lawful owners of the suit land.
2. Whether the suit land is within the road reserve area.

3. Whether the plaintiffs are entitled to any compensation or it is the defendant to be refunded costs incurred in demolishing plaintiff's properties within the suit land.
4. To what reliefs are the parties entitled to.

Plaintiffs in proving their claims through PW1 Fanuel Titus Lamai said that he was born in 1957 at Mianzini area. The present Mianzini – Timbolo road was cattle path. Before 1975 with the permission of the Chief Simon and on request of Singh the cattle path was changed to a road. In 1975 ten cell leaders request all people who were beside the road area to maintain the road and his father had a retail shop beside the road know as Mutel Shop. He obtained the disputed area through inheritance. In 2006 all houses along the road were marked as sign for demolition, without any notification. Among the 47 plaintiffs, 43 obtained the area through inheritance and others obtained through buying. The demacation between the road and residents beside it, was planted trees. Those trees have being destroyed by defendant. After extending the road area by 10 metres which is plaintiffs land.

They inquired to the Village Council and District Council Director. Then the marking exercise through a letter with Ref. No. MM/ARM/140/3/Vol. IV/70 dated 20/06/2006 from the District Director was stopped. The letter is admitted in evidence as PE1. In September 2011 they were issued with a 90 days notice which was admitted in evidence and marked PE2. The notice indicates the width of the road to be 30 metres. They then wrote another letter, PE3 to the defendant and on 5/12/2012 the defendant marked the road width to be 20 meters from the centre of the road.

Therefore the claim is compensation to all people whose land has been included in the road reserve as per annexure PE1 and their houses which were demolished and their trees which were destroyed. He further states that they are not subjected to pay defendants any compensation and he prayed the counter claim to be dismissed. He prayed that plaintiffs to be declared as the lawful owners of the disputed land and all the properties within it. Also they should compensate all destroyed properties by defendant which worth 3 billion and two hundred and fifty seven million Tshs. as demonstrated in annexed document to the plaint.

PW2 Eliapenda Ndeteyai evidence was as the same as that of PW1 only he said the council have been changing the width of the road in different occasions. 1st the width was four meters then it was extended to 15 and thereafter it was extended to 20 metres. They complained and it is when they were issued 90 days notice.

PW3 Philipo Gidion Lukumai evidence was the same as that of PW1. Even PW4 Agnes Martin and PW5 Wilson Mungaya Ngarash evidence was almost the same as that of PW1. That was all about plaintiff's evidence.

Defendant in his evidence through DW1 Samwel Ngarabali who is the Councilor of the disputed area and he was born there, is that since he was born the road was in use and they have obtained funds for reconstruction of the road. They have conducted various meetings with all who have encroached the road area to vacate so construction can take place. Others have already vacated but some have refused until they are compensated. He further said that some of the plaintiffs are not there. He gave an

example that the list demonstrates Ayubu Ngalabali to be one of the plaintiffs while Ayubu Ngalabali is his deceased father. Also Herny Mayooli does not have any claim and Agness who was married Moshi and according to their custom woman do not inherit. Wilson Mungaya Ngarash and Christopher Mungure have shifted. He prayed the suit to be dismissed. He admitted that some of the houses have being demolished by the Council.

DW2 Daniel Petro evidence was that he was employed as road foreman by the Public Work Department and he did work on the Timbolo – Mianzini road which its width was 33 feet and that the road area was encroached since 1967 such as Titos road is with the road area.

DW3 Lt. Col. Alphayo Lotaanywaki Laizer (Rd) evidence was that the plaintiffs have encroached within the road area including himself who has encroached by 1 ½ feet and his building is among the demolished to extent of the part which has protruded to the road area.

DW4 Steve Njamakuya evidence was to the effect the plaintiffs have encroached into the road area and they have been required to vacate.

DW5 Richard Philipo Sululu who is heading the Works Department within Arusha District Council and among his duties is supervising construction, maintance of roads and buildings. He knows the Timbolo – Mianzini road which was 20 metres widthwise and 8 kilometers long Act No. 13/2007 did enlarge the width of the road to 30 metres. Most of people whose land was within the expansion of the road area surrendered their land and agreed not to be paid compensation. Though there were also people who

were within the 30 metres. Their development was demolished by the council which incurred expenses in doing so.

DW6 Songoyo Salon Laizer who is the chairman of the road committee evidence was that the plaintiffs have evaded the road area.

DW7 evidence was that he was once employed as a casual worker by the Council for six months and he worked at the disputed work. He didn't know the width of the road but where they found the demarcation has been encroached they removed whatever has encroached immediately.

DW8 Godwin Gasper Owiso who is a technician within the Arusha District Council evidence was that the Timbolo road was there since 1932 and its width was 33 feet. In 1992 when he was employed there were few business structures along the road.

In 2006 the council expanded the road and plaintiffs are not entitled to compensation as they are not within the 33 feet.

DW9 Olais Simon Siko evidence who is Quantity Surveyor within the Arusha District Council evidence was that the Mianzini – Timbolo road started in 1932 and its width was 33 feet equal to 10m and according to Act No. 13/2007 was expanded to 30 metres.

Court's witness Eng. Deudedidi Kakoko the Arusha Regional TANROAD Manager evidence was that the Timbolo – Mianzini road is a Municipal road. That in 2011 the Municipal Council invited TANROAD to join them in designing and budgeting on reconstruction of that road. So they first resorted to the law involved. They found that 1959 law which shows the

width of the road was 33 feet for each side and therefore the width was 66 feet which is equivalent to 20.13 meters. Then in 2007 the width of that road was extended by Minister responsible to Roads to the width of 45 metres from 20.13 through Act No. 13 of 2007 and therefore from each side the road was extended further by 12.5 metres. On the extended portion they were people living who are entitled to compensation of their improvement.

From the evidence we have from both sides it is not disputed that the road which is the subject matter of this suit was in use since 1932 and the width of the road was 20 meters by then. It is also established through the court's witnesses the Arusha Region Tanroads Manager and as well demonstrated by Act No. 13 of 2007 that the width of the road was extended by 12.5 metres on each side of the road in 2007. That TANROADS was involved in designing of the road and they found people in the extended 12.5 metres area who deserve compensation. This evidence was also supported by Municipal engineer DW6 and DW5 the head of Works Department within Arusha District Council. Though the defendant claim the plaintiff did encroach into the road reserve area but the above cited evidence proves otherwise that the plaintiff didn't encroach into road area but it was the road which encroached into their area. The first issue that whether plaintiffs are lawful owners of the disputed land is answered in affirmative and that the plaintiffs are the lawful owners of the suit land. 2nd issue is well answered that the suit land was not within the road reserve area as demonstrated by the above evidence. 3rd issued is answered that since the width of the road was extended to plaintiff's area

then they are entitled to compensation and not defendant for demolition expenses as plaintiff didn't trespass or intrude into road reserve area but it was the road which was extended to their area.

The last issue is to what reliefs are the parties entitled to I have already find that plaintiff are entitled to compensation but to what extent. There is no evidence as to how valuation of the plaintiff's property was conducted so as to reach to the claimed amount. Also it is demonstrate some of the defendants are not existing Ayubu Ngalabali who is not entitled to any compensation. I therefore find the plaintiff's claim is not certain. I therefore order, an independent valuer who is to be approved by Chief Government valuer to value plaintiff's properties within 3 months and then defendant to pay according plaintiff in accordance to that valuation report. Thereafter construction of the road to continue. Defendants counter claim fails as plaintiff's didn't encroach into road reserve area, it is the road reserve area which was extended and cover plaintiff's area and therefore defendant has no right to demolish their structures.

SGD: F.H. MASSENGI

JUDGE

26/5/2014

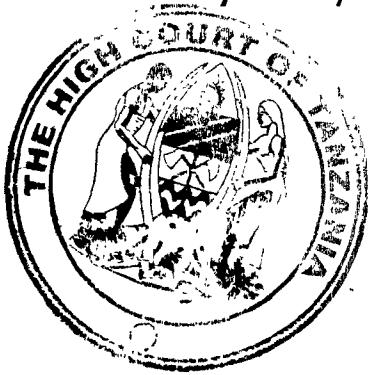
Delivered in Court this 26th day of May, 2014 in presence of Mr. Akida for plaintiffs and Mr. Kiyama for defendant. Right of Appeal fully explained.

SGD: F.H. MASSENGI

JUDGE

26/5/2014

I hereby certify to be a true copy of the original.



[Handwritten Signature]
DISTRICT REGISTRAR

ARUSHA

22/5/14

