IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
(ORIGINAL JURISDICTION)

LAND CASE NO. 18 OF 2012

RAMADHANI SALUM KINYOGO .... PLAINTIFF

VERSUS

1. **TANZANIA NATIONAL ROADS AGENCY (TANROADS) .... 1ST DEFENDANT**
2. **THE PERMANENT SECRETARY MINISTRY OF WORKS .... 2ND DEFENDANT**
3. **THE HONOURABLE ATTORNEY GENERAL .... 3RD DEFENDANT**

Date of Last Order: 20/07/2016
Date of Judgment: 08/09/2016

JUDGMENT

FELESHI, J.:

The plaintiff sues the defendants for payment of Tshs. 51,160,800/= being unpaid compensation arising from an acquisition carried out by the Government, an order for payment of special damages to the tune of Tshs. 20,520,000/= being loss of business and an order for payment of Tshs. 7,000,000/= being special damages for costs incurred in drilling a well which was also acquired by the Government.

The plaintiff also sues for an injunctive order restraining the 1st and 2nd defendants from carrying out further acquisition of the property measuring 2.5x16 square metres, an order for payment of a sum of Tshs. 5,000,000/= being incidental costs, payment of Tshs. 50,000,000/= being general damages due to frustrations, anger, pain and sufferings. The plaintiff also pressed for interest and costs of the suit.

In their Written Statement of Defense, the defendants basically deny the liability adding that the plaintiff was promptly paid compensation in accordance with an evaluation approved by Chief Government Valuer. They urged for the suit to be dismissed with costs to the defendants.

Five (5) issues were framed and shared with parties namely:-

1. **Whether the plaintiff's land was lawful acquired by the 1st defendant and how much of it.**
2. **If the 1st issue is answered in the negative, whether the 1st defendant and/ or the 2nd defendant duly complied with the procedures in acquiring the plaintiff's land and compensating the plaintiff.**
3. **Whether the purported valuation exercise (if any) was legally and procedurally carried out by the 1st and 2nd defendants.**
4. **Whether compensation effected to the plaintiff was prompt and fair.**
5. **What reliefs are the parties entitled to?**

To establish his claims, the plaintiff paraded four witnesses, that is, PW1 Ramadhani Salum Kinyogo (the plaintiff), PW2 Hamad Salim Wendo, PW3 Speratus Kazaura & PW4 Emmanuel Dotto. The defendants had three witnesses, that is, DW1 Martin Anthony Mwakabende, DW2 Elizabeth Shadrack Tom & DW3 Fortunatus Lucas Massawe. The plaintiff engaged services of F.K. Law Chambers and Ms.Hadija Kinyaka, learned advocate represented him in court whereas the defendants were represented by attorneys from the 3rd Defendant's Office namely Messrs. Gabriel Malata (PSA) and Mwitasi (SSA), Ms. C.Lubuva (SSA) and Ms.Griner (SA).

In his evidence, PW1, a retired Senior Assistant Commissioner of Police (SACP) testified that, he sues the defendants because they took his land where he built his house in contravention of the law. PW1 added that, he acquired ownership of the plot on 18/09/1995 whereas by 2003, he was given a building permit. He bought building materials and started with the foundation. By

2007/2008, he continued with construction whereas in October, 2008, he shifted into the house.

It was PW1's further testimony that, he has an offer given to him on 18/09/1995 issued by Temeke District Land Officer for residential and business purposes. Letter of offer for Plot No. 123 Block B Yombo Vituka issued to Ramadhani S. Kinyogo on 18/09/1995 was admitted and marked Exhibit "P1". His plot measured 16x30 metres whereas he was issued with a building permit on 04/03/2003.

The said Building permit issued to Ramadhani Kinyogo on 04/03/2013 was admitted and marked Exhibit "P2" and that's what authorized him to carry out building works. In the course, he purchased and mobilized building materials through receipts KIN A1, A7, A8, A9, A12, A14, A15, A17, A18, A19, A23, A24, A26 and A35 which were admitted and collectively marked as Exhibit "P3". Other documents admitted under Exhibit "P3" are KIN A–2, KIN A–3 (12474), KIN A–6(1465 & 150245), KIN A–10 (1830 & 0635), KIN A–11 (11733), KIN A–13 (4621 & 1336), KIN A–16 (0518), KIN A–20 (4200), KIN A–21 (0157, 1436 & 159253), KIN A–28, KIN A–29, KIN A–30 (3129, 11383 & 0693), KIN A–31 (1027), KIN A–32 (2017, 1855 & 8129), KIN A–33 (8455 & 1655) and KIN A–34 (1592).

Besides, one Tax Invoice and 31 cash sale receipts whose numbers were cited on the Court Ruling issued to the Plaintiff by service providers were collectively admitted and marked Exhibit "P4". PW1 shifted to his house on 12/10/2008 whereas at that time, his house was well constructed with 12 rooms of different measurements. The main house also had a rear house which however was not part to the measurements used to demolish the main house. The main house is constructed of cement materials.

PW1 put floor tiles on the entire house floor measuring 3 metres, aluminum ridge sheets and 17 wooden doors where two doors had outer iron doors. The main house also had 16 grilled windows. They used to fetch water from their borehole drilled well for their use and for sale. In front of the main house, there was a separate structure for shops roofed with aluminum ridge sheets with the floor also made of tiles. The structure had two rooms whereas each room had its own door made of flexible iron.

The house ceiling was made of gypsum materials and there was wall fence surrounding the whole area. The plaintiff's sketch was admitted and marked Exhibit "P5". Besides, the four (4) photographs taken at the plaintiff's house in 2008 were collectively admitted and marked Exhibit "P6". There was also a main gate made of iron materials with another made of iron materials at the car park.

It was PW1's further testimony that, immediately after they had shifted in the house that is, towards the end of 2009, Land Officers from Temeke Municipal Council went there and introduced themselves to him and wanted to take photographs of the house. PW1 asked them as to why they wanted to do so whereas they said that his house was involved amongst the houses which ought to be removed for a road project.

They forced to do what they intended. He requested for a formal Notice but they refused and took a photo showing him standing outside his house being preparation of valuation proposes. On 31/01/2011, PW1 said, Hon. Magufuli convened a meeting at Ghadafi grounds and apologized for the delayed compensation whereas he said that the payment was about to be effected.

On 07/02/2011, they were summoned to the TANROADS Regional Officers where they were paid the compensation. He was hurriedly given a cheque,

whereas when he had chance to read it, he found it worth Tshs. 49,234,700/= and that was the end of the payment. A breakdown given to Ramadhani Salum Kinyogo was admitted and marked Exhibit "P13".

PW1 added that the acquisition was effected in 2009 but the payments were made on 7/02/2011. On 20/02/2011, one Engineer by the name of Rubirya whilst accompanied by Mr. Martin, the project manager, and 2 other officers, went to his home and told his wife in his absence to stop repairing the house. They also added another area that was supposed to be demolished measuring 2½ x 16 square metres. His wife phoned him whereas he traced them in a nearby area. He asked them why they had taken more area whereas Eng. Rubirya promised to issue them with letters in two or three day's time.

On 21/02/2011 in the evening, PW1 got a copy of a letter from DSM Regional TANROADS Manager to their Street Chairperson ordering them to stop any construction/repair until further directives from TANROADS' Regional office were given. A copy of letter written by Dar es Salaam TANROADS Regional Manager to Wenyeviti wa mitaa ya Kilimahewa, Dovya, Msakala Uwazi, Makangalawe, Buza Sigara, Machimbo na Vituka Temeke dated 21/02/2011 was admitted and marked Exhibit P "7".

Moreover, 6 pictures showing the current structures were collectively admitted as Exhibit "P8". Upon receipt of the letter dated 21/02/2011, PW1 was dissatisfied because the act of putting new markings for further demolition aggrieved him especially after they had told him that further demolition would not be accompanied with any compensation.

Two letters by the plaintiff dated 07/03/2011 and 12/04/2011 to Dar es Salaam TANROADS Regional Manager and TANROADS Chief Executive Officer

were admitted and marked Exhibit "P9". A copy of the letter written by Deputy Minister for works dated 17/01/2011 was admitted and marked Exhibit "P10". Another copy of letter written by the Chief Executive Officer (CEO) of TANROADS dated 10/05/2011 to Zainabu Sinare was admitted and marked Exhibit "P11". Eventually, on 24/02/2012, PW1 was paid Tshs. 3,005,100/=. A Deposit slip dated 24/02/2012 and copy of cheque dated 09/02/2012 were collectively admitted and marked Exhibit "P12".

Besides, a Valuation schedule for buildings and allowances paid later to the plaintiff were admitted and marked Exhibit "P14". PW1 engaged a private valuer who valued his house at Tshs. 100,395,500/= though the same was not certified by the Chief Government valuer. The Valuation report prepared by STAN PROPERTY SERVICES in April, 2011 was admitted and marked Exhibit "P15". A Payment schedule signed by PW1 was admitted and marked Exhibit "P17".

It was PW1's further testimony that, his area is 480 square metres as per the private Valuation Report unlike the said 240 square metres. He added that, the assessment done per Exhibit "P13" did not involve PW1's whole house. PW1 testified to have spent Tshs. 3,000,000/= for the borehole drilled well which is 60 metres deep. He claims amounting to Tshs. 7,000,000/= for compensation for the well was because apart from the borehole there are more other fittings that he spent/used to build it.

PW1 added that, the payment of Tshs. 3,005,100/= is not related to 2½ x 16 m^2 additional area which they wanted to demolish adding that he built the wall fence in 2008. He added that, the market value of surveyed plot in 2009 was Tshs. 20,000,000/= per plot. The finishing of PW1's house was over Tshs. 60,000,000/= whereas the foundation cost was about Tshs. 20,000,000/=. Both valuations treated toilets and bath rooms as rooms. PW1 took the valuers inside

his house and showed them all the places whereas there were no threats. Besides, it is PW1 also who introduced the private valuer inside his house.

On his part, PW2 testified that, in October, 2010 officers from Temeke Municipal Council fixed their marks for road expansion. They initially went in 2009 and later on cancelled the valuation. After a lapse of about 9 – 10 months that is, in February, 2011 they were paid. PW2's shops and poultry units were affected whereas he was compensated Tshs. 20,000,000/= which was inadequate compared to the loss.

He consulted TANROADS who said they would attend his complaint. They later got letters from TANROADS stopping them from developing the areas. PW2 looked for a lawyer who advised him to first issue a demand note and subsequently they filed a Land case in the High Court Land Division that is, Land Case No. 152/2012 before Wambura, J for unpaid balance of compensation.

Another testimony was by PW3, a holder of Advanced Diploma in Land Management and valuation from Ardhi Institute now Ardhi University (1992) also a Masters Degree of Science in Community Economic Development from Hampshire University USA (2003) who testified that, he is a fully registered and licensed Valuation Surveyor registered under the National Council of Professional Surveyors of Tanzania (NPST).

PW3 told PW1 that they were supposed to look for a quantity surveyor or building economists (Wakadiriaji gharama za ujenzi) whereas PW1 got one Emmanuel Dotto. They went to the site on the same date at 13:00hrs where they were shocked to find what was described on the paper was different from what they found and viewed. The house they found at the site had ridge aluminum sheet and not corrugated iron sheets. Inside the house, they found

the ceramic tiles and cement sand slide with the doors made of timber panel doors and not timber batten.

On 5/4/2011, they went to the site again where they found the shops which were attached to the main house in front were already demolished together with small portion of the main house. However, the demolished materials like iron sheets and cement blocks were there. PW3 said, the house being a family house, made it ideal for them to use the Replacement costs method which is frequently used in valuating properties like petrol stations.

The Replacement of costs method requires establishment of the costs incurred in the construction and then compare with the land valuer of the given area to get the market value. They followed the guidelines given by the National Construction Council. Compensation value is obtained by the value of building plus land values plus accommodation allowance, transport allowance, loss of profit and disturbance allowance done per the Land Regulations, 2001. PW3 added that the Chief Government value refused to approve the valuation report on the ground that he had given approval in the previous valuation report used by TANROADS.

PW3 added that, the market value at the time per sqm was Tshs. 15,000/=. He prepared his report on 11th April, 2011 while they went to the site on 04/04/2011. According to PW3, lack of approval by the Chief Government Valuer to Exhibit P15 rendered the report incomplete.

Another testimony was by PW4, a holder of Advanced Diploma in Building Economists in the year 1993 and a Masters in Business Administration in International Business in 2006. He is also registered by Architects and Quantity Surveyor Registration Board since 2000.

PW4 testified that, on 04/04/2011, he was called by PW3 whereas they went to PW1's house at Yombo Vituka. They found part of the house demolished which was a recent development. Floor tiles were intact, gypsum board was intact, iron sheet and other materials were intact.

On his part, he found the borehole well, house floor tiles, gypsum board, Aluminum sheets, panel doors, well painted house which had electricity. The house had 12 rooms and its floor area was 147.19 sqm with its outer part fence wall. PW4 established that the house was worthy Tshs. 80,000,000/=, that is- covering the foundation, wall, beams, doors, windows, finishing, painting, roofing, fittings and floor tiles.

In defence, DW1 a degree holder in Engineering from Dar es Salaam Institute of Technology in 2007 testified that, he is a Road Inspector and High Way Engineer. He said, from 2007, he worked at DSM TANROADS as a Road Inspector and Supervisor to all roads falling under TANROADS. Presently, he works with Katavi TANROADS as Head of Planning Unit since 2012.

In 2009, there was a road construction project aimed at decongesting traffic jam in Dar es Salaam. The roads were in four packages that is, Ubungo Maziwa to Kigogo Round About, Kigogo Round About to Msimbazi, Tabata Dumple to Kigogo and Jeti Corner – Buza to Davis Corner. In that road project, the width did not allow implementation of the project. They needed an addition of 15 metres on each side of the road for them to install other infrastructures for electricity, telephone, drainage and water from the centre of the Jet Corner – Buza to Davis Corner road. Therefore, Dar es Salaam TANROADS Manager fixed special marks and identified the houses, land, trees within that area.

Measurements taken using tap measures indicated the markings which were made visible using a red colour. They wrote a letter to Temeke Municipal

Council Director informing him of their intention to construct a tarmac road and asked him to inform the Street Chairpersons for them to further notify the persons whose properties fell under the identified area.

DW1 was the over all in-charge assisted by Stanford Gideon, Seleman Rashid, Muhsin Rashid and Jumanne Shengo (now deceased). Before commencing the exercise, they reported to respective street chairpersons. The streets involved included Kigilagila, Vituka, Sigara, Buza, Dovya, Makangarawe, Uwazi, Nyambwera and Kilimahewa.

The Jet Corner leaders were involved. In that exercise, residents were identified and introduced by the street chairpersons and also witnessed the markings being put on their properties.

The plaintiff's house had six rooms in the main house with three rooms for shops in front of the main house. He added that, there were two valuations conducted at the area whereas the 1st one was conducted 2009–2010 with the 2nd conducted in 2011. Only the 2011 evaluation report was relied upon in paying compensation to the victim. The 1st valuation was conducted by the Temeke Municipal Council. The second valuation was conducted by M/S Property Market, a private company.

The plaintiff's acquired land was 240 sqm covering 3 shop rooms, part of the main building, wall fence and borehole well. DW1 added that, it is not true that the victims were not involved in the exercise. They were involved. He said, the area involved was 15 metres adding that, 6.7 metres was a temporary beacon that was inserted to allow construction to go on and fixed by UWP – the Consulting Engineer. 2.65 metres area was not demolished. 9.35 metres was covered by the building to be demolished. The acquired land was 15 metres from the centre of the road.

Another testimony was by DW2, a Land Valuer for movable and immovable properties employed by M/S Property Market Consult Ltd and a graduate in Advanced Diploma at the Land Institute in Land Management and Valuation in the year 1985. She said, they were hired by TANROADS in around October, 2010 and evaluated 174 houses in the plaintiff's Street.

During that exercise they were accompanied by street leaders and the individuals whose properties were affected by the exercise. Section 10 of the Land Acquisition Act directs that if the remaining piece of land is less than an acre then the whole piece of land must be measured but when the area is more than ½ an acre, the involved area should be worked out adding that 480 square metres is approximately ¼ of an acre.

DW2 added, in preparing Exhibit "P13", they were guided by the Land Act, [CAP. 113 R.E, 200] and the Land Regulations. Exhibit "P13" was prepared after completing their work on site basing on Land Form No. 1 which was signed by the victim, street leader and a Valuer. The rate for other houses ranged from 150,000/=, 200,000/=, 250,000/= to 300,000/=. However, there was no house in that area that exceeded Tshs. 300,000/= per sqm. It was DW2's further testimony that, a valuation report was prepared by the M/S Stan Property services in April, 2011 after the Company had conducted the valuation in favour of PW1's house in October, 2010.

She said, for compensation purposes, the law prescribes as to which method should be used which are, market value or comparable method, replacement cost method, income approach method and profit loss method. DW2 added that, it is clear that market value and replacement cost leads to different outcomes but it was difficult for them to use market value as it was difficult to get data for comparison.

In the course of conducting their valuation DW2 said, TANROADS' engineers were present whereas they showed them the marks they fixed on the properties before starting their valuation exercise in October 2010. On 12/10/2010, they conducted valuation to the plaintiff's property. The marks they found fixed in red colour on the wall showed the extent of acquisition and the distance in metres. She added that, it was Fortunatus Lucas Masawe (DW3) who conducted the valuation at PW1's house under the supervision of licensed valuers.

DW2 added that, she was professionally duty bound to supervise DW3 even if he was a qualified valuer. It was DW3 who took the plaintiff's photo picture. However, they did not issue the valuation report copies to victims of demolition. The 240 m^2 was for the land acquired whereas 149.m^2 was for the area covering the house.

She said, during the evaluation, they found in the plaintiff's house floor tiles and not a sand cement screed floor. That was expensive than sand cement screed floor and was contrary to what was filled in Exhibit "P13". That, 149.6 m^2 only covered the house building adding that the 149.6 m^2 was within the 240m^2 whereas 300,000/= rate per square metre was applied in determining the compensation basing on research reports of which they had chosen from the 2010 Research Reports. He said, as per TANROADS, the area of 6.7 m x 16 m was the one to be acquired adding that the categorization range is normally set by valuers before commencement of valuation.

She said, PW1's whole land was 480 sq m of which 149.6 m plus 280 m^2 for the main and rear houses were covered by the compensation hence making the whole acquired area to be 389.6 m^2.

Another witness was DW3, a graduate of UCLAS and holder of Bachelor of Science degree in Land Management and Valuation, currently working with Bariadi Town Council as Valuation Officer (Town Valuer). He said, he was transferred to Bariadi in the end of October, 2010. Before, he worked with the M/S Property Market Co. Ltd. where he was assigned to conduct valuation at Jet Rumo Road Yombo Vituka under four supervisors with DW2 being his supervisor.

They valued the property of PW1 which was a unique house as it was decent and good compared to other houses. Besides, on 12/10/2010, DW3 went to the site whilst accompanied by DW2 and the Street leader where they met the plaintiff. Upon arrival, the plaintiff (the owner) identified to them his house as per Exh."P13" which shows the approved compensation was Tshs. 49,234,700/=.

He described the plaintiff's house saying they found it on plot sized 16x30 that is, 480 sqm^2 as at 12/10/2010. It had a mono pitched roof made of trough sheet, ceiling made of gypsum, windows made of timber panel and wire mesh also a trough sheet canopy. The wall was constructed of cement block. The doors were a mix of button and panel. It had floor tiles with its sand cement wall plastered and painted by Tanga stones and had a 60 feet deep borehole well.

It was DW3's further testimony that, in that exercise, they were also accompanied by road Engineers from TANROADS who showed them the demarcated marks. He said, the plaintiff's plot had its 240 m^2 extending to the road reserve. According to the procedure, he said, they conducted valuation to the whole area because the size of the area they found extending or falling in the road reserve was 50%. The plaintiff's house as a whole was thus valued.

As regards the valuation report by a private valuer (Exhibit P15) he said, the same is incomplete as it was not approved by the Chief Government Valuer.

DW3 added that, there was 2nd payment phase done to the plaintiff resulting from the 2nd valuation covering the items which were not covered before. They further discovered that one side of the wall was not covered in the earlier payment and there was a dispute.

In the 1st payment, he said, the payment in respect of the wall and borehole well was wrongly omitted by the M/S Property Market as a result, the plaintiff was later compensated Tshs. 1,800,000/= for the borehole well. He added that, in establishing that cost, their basis was the material used. It was constructed by cement blocks the minus depreciation at 20%.

He said, they commenced their job in October, 2010. That section 15 of the Land Acquisition Act provides 6 months as a period within which compensation has to be paid adding that, the Land (Assessment of the Value of land for compensation) Regulations, 2001 was the guideline they followed in establishing the amount for compensation where Regulation 13 provides that interest should be pegged to 6 months from the time of acquisition. He said, both the rear and front/main houses were compensated where the plaintiff was paid for the 240 Sqm whereas 240 sqm remained with the plaintiff. Besides, the plaintiff's house had 5 bed rooms and three shop frames.

DW3 conceded that Exhibit "P13" had some human errors regarding the roof, floor, doors and number of rooms as it has one more room. However, he added that, whereas rooms are relevant in computing accommodation costs, dimension is on the other hand very key in compensating the house under the replacement cost method. He said, sitting room is part of the accommodation.

It was DW3's further testimony that, all the rooms were considered that's why the plaintiff signed and he did not resist against any item. The errors

referred are that they filled corrugated iron sheet instead of trough sheet, in the floor where they filled sand cement screed instead of floor files and on the doors where they filled button doors instead of bottom and panel doors. Besides, he said, the said errors did not affect the compensation adding that the same did not occasion any underpayment to PW1.

According to DW3, PW1 was paid Tshs. 49,234,700/= and Tshs. 3,500,100/= being 1st & 2nd installments respectively whereas the 2nd installment concerned the borehole well and wall fence while the 2nd installment was prompted by PW1's complaint that some items were not considered. Besides, the rate of Tshs. 300,000/= per sqm was the highest and resolved whatever human errors are found in Exhibit "P13". Moreover, the said 240 Sqm remained as PW1's property as they just compensated only the acquired 240 sqm area.

In her final submission, the learned State Attorney for the defendants submitted for the 1st and 2nd issues that, all the prerequisites to acquire land were procedurally dully complied with including issuance of notice of intention to acquire land in 2009 as testified by PW1 which was followed by a prompt and fair compensation.

As to the 3rd issue, the learned State Attorney submitted that, the valuation was procedurally and legally carried out as testified by PW1, DW1 and DW2. Regarding the 4th issue, it was submitted that, the plaintiff was dully compensated in terms of the Land (assessment of the value of land for compensation) Regulation, 2001 as approved by the Chief Government Valuer. In respect of the sought reliefs, the learned State Attorney submitted that, the plaintiff is not entitled to the sought reliefs as no evidence was availed in proof as to loss of business as held in **Patel vs. Samaj and another** [1944] E.A. 1 to that effect.

It has been submitted that, the plaintiff has failed to prove special damages which must be specifically and strictly proved as was underscored by the Court of Appeal of Tanzania in the cases of **Anthony Ngoo and another vs. Kitinda Kimaro,** Civil Appeal No. 25 of 2014, (Unreported), (Arusha Registry) and **Arusha International Conference Centre vs. Edward Clemence,** Civil Appeal No. 32 of 1988, (Unreported).

On the other hand, the plaintiff's counsel submitted that for the 1st issue that, the notice was improper for it was published in the Daily News paper as testified by DW1 whereas the same was not served to the plaintiff or left to his usual place of abode or to the occupiers of the land or been affixed to a conspicuous part of the plaintiff's land in terms of sections 3, 4(1)(a) and 8(1),(3)&(4) of the Land Acquisition Act, [CAP. 118 R.E, 2002].

Regarding the 3rd issue, the plaintiff's counsel submitted that, the testimonies by PW1 and PW2 were that the valuation exercise was carried out haphazardly and without regard to the procedure. He argued that, had the victims of acquisition been involved in the process of valuation, there could not have been complaints after payment of compensation.

Besides, she said, the entire exercise of acquisition, valuation and compensations was carried out without abiding to the required procedures. The relied upon valuation report was nowhere to be seen and did not form part of the Exhibits tendered in Court to prove that the valuation was conducted and approved by the Chief Government Valuer.

As to the 2nd issue, basically, the plaintiff's counsel maintained that, the acquisition exercise by the defendants did not follow the legal procedures per the testimonies by PW1 and PW2.

In respect of the 4th issue, the plaintiff's counsel submitted that, the compensation was unfair for it did not consider the market value of the land at the time of the publication of acquisition with the exhausted improvements in terms of Rule 3 of the Land (Assessment of the Value of Land for Compensation) Regulations, 2001 published in Government Notice No. 78 dated 04/05/2001 read together with sections 12(7) and 14 (a) of the Land Acquisition Act (supra), Rules 5(1) and 5(2)(a) of the Land (Compensation Claims) Regulations (supra) and section 2 of the Land Act, [CAP. 113 R.E, 2002]. It is from the above the plaintiff's counsel reiterated for the sought reliefs.

Having considered the evidence on record and the respective written submissions by counsels for the parties, the following are the deliberations of this Court in disposal.

Starting with the 1st issue as to whether the plaintiff's land was lawfully acquired by the 1st defendant and how much of it was so acquired, it has been throughout testimony by PW1 that the 1st defendant initiated the due process under which the portion of his land could be acquired for the purposes of road expansion.

PW1 prescribed in his evidence that, initially he was visited by personnel from Temeke and later from TANROADS where they started with the procedure of taking pictures of his house and the area generally. Later on, an assessment was done whereas ultimately, he was paid compensation as to what was acquired by the Government. This is manifested through Exhibit "P9" which is a letter by the plaintiff to the Executive Officer (TANROADS) dated 12/04/2011 reading at page 1 that:-

> **"........ tarehe 7 Februari 2011 mimi nilipokea jumla ya malipo ya Shs. 49,234,700/= ikiwa fidia ya sehemu ya jengo langu iliyoamriwa kubomolewa ....".**

Basically, a thorough going through the evidence on record reveals that PW1 (the plaintiff) had no problem with the said acquisition, rather, the amount of compensation. This is clearly stipulated through the same Exhibit "P9" which reads at page 4 that:-

> **"Kwa barua hii naomba mnilipe shs. 100,395,500/= (milioni mia moja laki tatu tisini na tano elfu na mia tano) kama inavyoonyeshwa na taarifa ya mthamini binafsi badala ya shs. 49,234,700/= (arobaini na tisa milioni laki mbili thelathini na nne elfu na mia saba mlizonilipa awali. Kwa kufanya hivyo sitakuwa na pingamizi la kuendelea kubomoa sehemu mnayoitaka. Pamoja na kuipenda nyumba yangu zaidi kuliko pesa za fidia mnazonipa bado niko tayari kutoukwamisha mradi huu wa barabara ili mradi mnilipe fidia stahiki ninayostahili".**

Thus, from the above, it is clear that the due process of acquisition was proper as all the procedures were followed and was done in the presence of the affected parties. Besides, the said acquisition was not resisted by the plaintiff (PW1) the same cannot be said to have been unlawfully acquired.

The next immediate sub issue from the 1st issue is as to what amount of piece of land was acquired. According to PW1, the total area of the PW1's plot is 480 square metres. This was also supported by DW1 and DW3 though neither the plaintiff's side nor the defendants' side tendered any documentary evidence in proof thereof.

Besides, the testimonies by DW1 and DW3 were that the total acquired area of PW1 (the plaintiff) was 240 square metres while DW2 clarified that the total acquired area was 389.6 square metres whereas 240 m^2 was for the land covered and 149 m^2 was for the house. Moreover, the testimony by DW3 was that the valuation process covered the plaintiff's whole area meaning that the given compensation covered the whole area.

Notably, what the plaintiff (PW1) basically faulted in this aspect is that his acquired area was not 240 square metres as that did not involve the area of his

house. But Exhibit "P13" tendered by the plaintiff is clear that the compensation of Tshs. 49,234,700/= covered 240 square metres as land size and 149.6 square metres for the rooms.

From the above in composite, the first issue as to whether the plaintiff's land was lawfully acquired by the 1st defendant and how much of it is answered in the positive and that the involved area was 389.6 m^2.

Regarding the 2nd issue, that is, if the 1st issue is answered in the negative, whether the 1st defendant and/or the 2nd defendant duly complied with the procedures in acquiring the plaintiff's land and compensating the plaintiff, it is the considered view of this Court that, from the nature of the 2nd issue, since the 1st issue has been answered in the positive, thus, this issue consequently and naturally collapses.

But from the above immediate position, this Court is of the firm considered view that considering that the whole process had approval of the Government Chief Valuer, the same was properly acquired with the plaintiff properly compensated to the tune of Tshs.49, 234,700/= as per Exh.P13 and Tshs. 3,005,100/= per Exh.P.12 & P14 all done in terms of Regulation 6 of the Land (Assessment of the Value of Land for Compensation) Regulation, 2001 vide Government Notice No. 78 published on 04/05/2001 providing that:-

> **"Every assessment of the value of land of an exhausted improvement for the purposes of payment of compensation by Government or Local Government Authority shall be verified by the Chief Valuer of the Government or his representative".**

Regarding the 3rd issue as to whether the purported valuation exercise (if any) was legally and procedurally carried out by the 1st and 2nd defendants, the first thing is to assess as to whether or not the valuation was conducted by a qualified person in terms of Regulation 5 of the of the Land (Assessment of the

Value of Land for Compensation) Regulation, 2001 (supra) which clearly provides that:-

> **"Every assessment of the value of land and unexhausted improvement for the purposes of the Act shall be prepared by qualified valuer".**

Thus, since the whole process of assessment and valuation was conducted by DW2 Elizabeth Shadrack Tom, a Land Valuer for movable and immovable properties employed by M/S Property Market Consult Ltd who is a graduate of the Land Institute in Advanced Diploma in Land Management and Valuation and DW3 Fortunatus Lucas Massawe who is a graduate of UCLAS and a holder of Bachelor of Science in Land Management and Valuation, the qualifications which have not been disputed, this Court is clear that the said valuation was conducted by legally qualified personnel who according to DW3 were guided by the Land (Assessment of the Value of land for compensation) Regulations, 2011 to arrive to the amount of compensation paid to the plaintiff.

Resorting to the second limb of the 3rd issue as to whether the purported valuation exercise (if any) was procedurally carried out by the 1st and 2nd defendants, the testimonies by PW1, DW1, DW2 and DW3 taken in composite were clear that, though the officers of the defendants who conducted the whole process of survey and taking of photographs were qualified and experts in the respective field or carrier and they involved the plaintiff (PW1) and the respective street leaders as per the prerequisites set by the law there remains no doubt that the application of Regulations 5, 6 and 13 of the Land (Assessment of the Value of Land for Compensation) Regulation, 2001 (supra) in this case on site was partly flawed by DW2 and DW3.

The evidence has it that even after the cancellation of the first valuation conducted by the Temeke Municipal Council in 2009, the valuation conducted by DW2 and DW3 in 2010 initially did not cover all PW1's properties. That, the final

documents Exh.P13 inclusive, as conceded by the witnesses before this Court, presented some misrepresentations of PW1's property descriptions. Part of DW3's testimony on the matter provides:-

> **"It is true that there was 2nd payment phase that was made to the plaintiff. Yes there was 2nd valuation. The 2nd one covered the items that were not covered before. We later discovered that one side of wall the wall was not covered in the earlier payment ..... It is not me who went to the plaintiff to establish the value of the items that were not covered before i.e wall e.t.c. It is Elizabeth who went to the place. .... I had filled the items in the Land Form No.1. Elizabeth was my supervisor.....In the 1st payment the payment in respect of the wall and Borehole wall was wrongly omitted by the M/S property market. It is not true that I authored that omission. It is me who took the descriptions of the plaintiff's properties and filled in the Land Form No.1. The errors in the computation were human errors. Exhibit P14 (Supplement payment schedule) bears the properties I had seen on site. The plaintiff's house was fenced by a wall and had shop frames in front of the main house."**

Then the witness (DW3) added;-

> **"Exhibit P13 has contents filled in the Land Form No.1 and is a basis of the compensation paid to the plaintiff. I concede that Exhibit P13 has errors emanating from human errors. There are typing errors as regards to the roof, floor, doors and number of rooms (it has one more room). However, the rooms are relevant in considering accommodation costs but dimension is key in compensating the house under the replacement cost method. Sitting room is part of the accommodation. All rooms were considered that's why the plaintiff he signed and he did not resist against any item in my presence. The human errors found in Exhibit P13 did not affect the compensation paid to the plaintiff whose house was among the ones found in good condition."**

The above piece of evidence points out the weaknesses obtained in the procedural aspects pertaining to the valuation exercise carried out by DW2 and DW3. First, though the fence wall and borehole well existed on site and were seen by DW3 on 12/10/2010 still the same were not initially included in the computation for compensation; two, apart from seeing and recording the shops in front of the main single storey residential building whose value might have

been added to Tshs.35,904,000/= paid for PW1's house, nothing more was said about those shops; and three, DW3's testimony did not reconcile the purported human errors in his report if whether or not were due to computation or typewriting as the two are not one and the same.

In view of the above therefore, this Court holds that the misrepresentations regarding PW1's property descriptions for whatever reasons, as evidenced DW3's above, when scaled up together with Exh.P.12, P.13 & P.14 which are a result of legally guided valuation exercises, renders the valuation exercise to have been procedurally partly improperly carried out by the 1st and 2nd defendant. The 2nd limb of the 3rd issue is thus accordingly settled.

As regards the 1st limb to the 3rd issue, this Court holds that, as long as per the evidence of DW1, DW2 and DW3 the valuation crew was guided by the Land (Assessment of the Value of land for compensation) Regulations, 2011 pertaining to the amount of compensation payable to the plaintiff the amount which was approved by Chief Government Valuer such valuation exercise was thus indeed legally carried out by the 1st and 2nd defendants. This settles the first limb of the 3rd issue.

The 4th issue is whether the compensation effected to the plaintiff was prompt and fair. Regarding the 1st part of the 4th issue as to whether the said compensation was prompt, as correctly testified by DW3, such compensation has to be effected within six (6) months. This is clear in terms of Regulation 13 of the Land (Assessment of the Value of Land for Compensation) Regulation, 2001 (supra) which provides that:-

> **"(1) The interest upon any compensation shall be paid by the Government or the local government authority only where there is no prompt payment of compensation made.**

(2) For the purpose of computing interest payable upon compensation "prompt payment of compensation" means payment of compensation within six months after the subject land has been acquired or revoked.

The testimony by PW1 was that on 31/01/2011, Hon. Magufuli convened a meeting at Ghadafi ground and apologized for the delayed compensation whereas he said that the payment was about to be effected. On 07/02/2011, they were summoned to the TANROADS Regional Officers where they were paid the compensation.

Besides, the testimonies by PW2 and DW1 are worth to consider in this aspect. It was the testimony by PW2 that the earlier valuation conducted in 2009 was later cancelled meaning that, another valuation was subsequently conducted. On his part, DW1 testified that the valuation conducted in 2009/2010 was cancelled and followed by the valuation conducted by the Property Marketing Consult Limited whose reports formed the basis of compensation.

This finding is also backed up by DW3's testimony that they first conducted valuation on site on 12/10/2010 and also Exhibit "P10" tendered by the very plaintiff in this case. Part of the contents in Exhibit "P10" signed by the then Deputy Minister for Works (Dr. H.G. Mwakyembe (MP)) dated 17/01/2011 reads at page 1 that:-

> **"Baada ya kufuatilia suala hili, napenda kuwapa taarifa kwamba, zoezi la tathmini kwa nyumba zilizopo kwenye barabara ya Jet Corner lilikamilika mapema mwezi Novemba, 2010 pamoja na barabara nyingine za kupunguza msongamano jijini Dar es Salaam. Hata hivyo, zoezi la kulipa fidia lilichelewa kutokana na kasoro zilizokuwa zimejitokeza katika zoezi la tathmini ambazo zilipelekea tena kurudiwa tena kwa zoezi hilo. .... Kazi ya kurudiwa kwa tathmini hivi sasa imekamilika. .... Hivyo naomba mvute subira kidogo kwani baada ya muda si mrefu zoezi hili lote litakuwa limekamilika. ......".**

Thus, as testified by PW1 (the plaintiff), since the said compensation was effected on 07/02/2011, then, the same was paid within the prescribed limit of

six months. After the first valuation was cancelled, it is therefore clear that the allegations by PW1 that the acquisition was effected in 2009 with the payments made on 7/02/2011 that is, after one year, are thus unjustified. This position however, only covers the first payment of Tshs.49, 234,700/= per Exh.P13.

As regards the 2nd payment of Tshs. 3,005,100/= per Exh.P.12 & P14 it is clear that the payment was effected on 24/02/2012 and the payment was prompted by the plaintiff's complaints on his dissatisfaction to the effected compensation to Dar es Salaam Regional TANROAD Manager and TANROAD Chief Executive officer dated 7/5/2011 and 12/4/2011 respectively (Exh.P9). In response, the TANROAD Chief Executive officer wrote the Managing Director, Property Marketing Consult Limited dated 10/05/2011 (Exh.P15) seeking their clarification on the said dissatisfaction.

Two weeks and half after the said letter (Exh.P15), that is, by 01/06/2011, the plaintiff was given two valuers who revisited the evaluation. Eventually, on 24/02/2012, PW1 was paid Tshs. 3,005,100/= for the water borehole well and fence wall.

Remarkably, this Court is aware of the position of the law regarding payment of compensation within six (6) months as is provided for under Regulation 13(3) of the Land (Assessment of the Value of Land for Compensation) Regulation, 2001 (supra). Regulation 13(3) provides that:-

> **"Where amount of compensation remains unpaid for six months after acquisition or revocation, interest at the average percentage rate of interest offered by commercial banks on fixed deposits shall be recoverable until such compensation is paid".**

Now, considering that the second payment was prompted by the plaintiff's complaints as exhibited by Exh.9 and that though DW3 had on 12/10/2010 seen the properties covered by the second payment (made on 24/2/2012 as per

Exh.P12 & P14) but still did not include them in the first payments (made on 7/2/2011 as per Exh.13), it is therefore clearly undisputed that that second compensation for PW1's forgotten properties was not promptly made.

In view of the above, this Court thus finds it appropriate to hold that as a matter of right the valuers (DW2 and DW3) from day one (on 12/10/2010), ought to have included the borehole well and fence wall in the first payment effected to the plaintiff on 7/2/2011 and not 24/2/2012. The plaintiff is therefore entitled to the difference calculated basing on the interest at the average percentage rate of interest offered by commercial banks on fixed deposits minus Tshs. 3,005,100/= which was paid to him on 24/2/2012 being unpaid interest of late compensation for the borehole well and fence wall.

Additionally, this Court safely adds that, if by 12/4/2011 and 7/5/2011 as per Exhibit Exh.P9 the plaintiff was still complaining against his uncompensated properties, the fact which is supported by DW1, DW2 and DW3 testimonies as is exhibited by the TANROAD Chief Executive officer's letter dated 10/05/2011 (per Exh.P15) and the 2nd payment made to the plaintiff on 24/2/2012 (as per Exh. P12 & 14), the defendant's complaint that the suit by being instituted on 14/2/2012 was time barred is therefore unfounded in law. To this Court, the plaintiff was entitled to file his suit after 7/5/2011 (when his complaint was already lodged with the 1st Defendant) and he could as well file it file it after 24/2/2012 (after the 2nd payment) but not after 24/2/2013.

The above account in composite, settles the 1st part of the 4th issue that whereas the first payment of Tshs. 49,234,700/=was promptly paid on 7/2/2011, the 2nd payment of Tshs.3, 005,100/= paid on 24/2/2012 was not and further that the suit was well instituted within time.

Regarding the 2nd part of the 4th issue as to fairness of the compensation, this Court is satisfied that the 1st and 2nd defendants appropriately employed the Land (Assessment of the Value of land for compensation) Regulations, 2011 in computing the payments of Tshs.49, 234,700/= as well as Tshs.3, 005,100/= but with the requisite adjustment for the payment of interest of late compensation for the borehole well and fence wall that should be made to the plaintiff as held above.

On the other hand, it is equally clear to this court that the evidence amassed from both the plaintiff and the defendants herein establishes that by the time the two valuers, that is, DW2 and DW3 conducted their valuation at the plaintiff's home they found three (as per DW1) or two (as per the pleadings and the rest evidence) shops/shop frames in front of his main building. The evidence by DW3 above and Exhibit 13 establishes that no value was at all considered for those shops/shop frames. What was apparently considered was six rooms only which were part of the main building in respect of which Tshs.4, 320,000/= was paid to the plaintiff as compensation.

The evidence by PW1 which was not disputed was to the effect that in Exhibit P13 the paid compensation of Tshs.49,234,700/= was for the House (Tshs.35,904,000)/=, rent size 240 sqm @ 15,000/= (Tshs.3,600,000/=), Crops/Ashock trees (Tshs.32,500/=), Tshs.13,000/= for a pawpaw, transport allowance Tshs.150,000/=, Accommodation Tshs.4,320,000/= for 6 rooms 20,000/= per room for 36 months, loss of profit Tshs.3,240,000 for Tshs.30,000/= per room for 36 months and disturbance allowance Tshs.1,975,200/=.

Now, in view of the above, it is therefore clear that the two payments made on 7/2/2011 and 24/2/2012 as per exhibits P.12, P13 & P14 were thus

only fair for PW1's properties which were well covered therein, but were not adequate and fair for leaving out the two shop rooms or two shop frames which were pleaded and proved to have constituted PW1's property. For completely leaving out two shop rooms or two shop frames makes both the 1st and 2nd payments made on 7/2/2011 and 24/2/2012 unfair. This settles the second limb of the 4th issue.

Building from above, this court holds a strong view that the evidence amassed is sufficient to warrant compensation to be made in favour of the plaintiff in respect of the two shop rooms found on site. The same formula applied for the six rooms in exhibit P13 should thus be followed, that is, two rooms x 20,000/= x 36 months making a total of Tshs.1, 440,000/=. This amount should be paid with interest at the average percentage rate of interest offered by commercial banks on fixed deposits since the same have not been paid at all (from 7/2/2011 to the date of payment).

As regards the plaintiff's claims for loss and specific damages, it is trite law that specific damages like those claimed must not only be pleaded, but must also be strictly proved (see: **Bolag vs. Hutchson** [1950] AC 515, **Kantilaz Barkrana Cars Ltd vs. Kagau** [2002] 2 EA 14, **Zaburi Augustino vs. Anicet Mugabe** [1992] TLR 137, **Bildad Mwangi Gichuki vs. TM – AM Construction Group** [2003] 1 E.A 83 and **Msakuzi Community Saccos Ltd. vs. Respick Tesha,** HC Civil Appeal No.101 of 2014, (Dar es Salaam Registry), (Unreported).

In **Bolag vs. Hutchson (supra)** it was held at page 525 that:-

> **"......... They do not follow in the ordinary course. They are exceptional in their character and therefore, they must be claimed specifically and proved strictly".**

As displayed by the evidence above, so far the plaintiff has not substantiated the claimed special damages.

It is worth adding that, the prayer by the plaintiff (PW1) that he ought to have been paid for the area of 480 sqm is unjustified for though only 389.6 sqm was involved in the acquisition and compensation, the evidence amassed proved that PW1 (the plaintiff) subsequently repaired his house and continues to live there. PW1's own evidence and photographs (Exh. P.6 & P8) are to that effect. Therefore, ordering to the contrary will tantamount into abuse of the Court process because the law stands to restore any aggrieved party to his original position and not otherwise.

To this Court, the plaintiff failed to establish his prayer for payment of special damages to the tune of Tshs. 20,520,000/= being loss of business and an order for payment of Tshs. 7,000,000/= being special damages for costs incurred in drilling a borehole well. Being special damages, the plaintiff was duty bound to establish the same to justify an award.

On the other hand, upon taking into account the evidence adduced by PW1, DW1, DW2 and DW3 it is clear with this Court, as is also exhibited by Exhibits P.9, P.11, P.14, P15 and P.16 that in pursuing for the second payment for compensation of his forgotten properties the plaintiff was involved into rigorous follow up. It is also on record that he was first booked in the 2009 valuation conducted by Temeke Municipal Council whose report was subsequently cancelled. The evidence tells it all that throughout the plaintiff offered his cooperation to the 1st defendant and the valuers. The time he spent in all valuation processes and further pursuit for his right obviously would have been spent in other productive activities.

It is considering those realities, the plaintiff is hereby awarded the payment of Tshs. 20,000,000/= being general damages for the frustrations, anger, pain and suffering he suffered. It is clear to this Court that, had it not been his complaint to the 1st defendant whose subsequent actions led to the 2nd payment as exhibited by Exhibits P.11, PW.12 and P.14 nothing would have been taken on board as no one cared the propriety of the valuation exercise that had left out some of his properties.

In the premises, and with regard to the 5th issue as to the remedies the parties are entitled to, the suit is allowed only to the extent demonstrated above, with costs. The rest claims and prayers are dismissed.

Order accordingly.

Right of appeal is explained.

DATED at Dar es Salaam this 8nd September, 2016

E.M. FELESHI
JUDGE