

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT BUKOBA

LAND CASE NO. 3A OF 2012

LEONARD LAURENTPLAINTIFF

(Administrator of the Estates of Laurent Benedicto)

VERSUS

1. TANZANIA REVENUE AUTHORITY }DEFENDANTS

2. ATTORNEY GENERAL }

JUDGMENT

07.06 & 20.07.2018

BONGOLE, J.

In the plaint filed in this court on 20th day of March, 2012 the plaintiff, Leonard Laurent, the Administrator of the estates of the late Laurent Benedicto sued the defendants Tanzania Revenue Authority (TRA) and the Attorney General here in after referred to as the first and second defendants respectively claiming against the first defendant for vacant possession of the piece of land measuring 100 and 150 paces situate at Misenyi District within Kagera Region. Basing on the above contention, he prayed for judgment and decree against the defendants for the following reliefs:-

- i) Declaration that the land in dispute is among the estate of the late Laurent Benedicto*
- ii) Vacant possession of the land in dispute;*
- iii) Costs;*
- iv) Any other and further relief*

The defendants filed written statement of defence disputing the plaintiffs claim.

On the 28th September, 2016 the following issues were drawn:-

- i) Whether the disputed plot of land belongs to the plaintiff*
- ii) Whether the defendant trespassed upon the disputed plot of land.*
- iii) Whether the plaintiff's claims are within time.*
- iv) Reliefs*

After a long hiatus coupled with legal battle, eventually hearing of the suit commenced on 27th February, 2018. The plaintiff was represented by Ms.Bujiku learned Counsel while Mr. Swit learned Counsel championed for the defendants. The first plaintiff's witness was Leonard Laurent who featured as PW1. He introduced himself as the Administrator of the estates of the late Laurent Benedicto and that he is the resident of Mtukula, Misenyi District in Kagera Region. He tendered a letter of administration

of the estates and the same was admitted as exhibit P1. He testified that he was claiming the suit land belonging to Laurent Benedicto as it was forcefully taken by the first Defendant. That the suit land is in Mtukula village at Misenyi District in Kagera Region. He testified that in 2000 the Tanzania Revenue Authority (TRA) took the suit land measuring 100 × 150 paces valued Tshs.180,000,000/= including other properties say, buildings , bricks, guest house rooms, bar and four graves. He testified that in addition, the area had also unsurveyed open space which belonged to the clan.

It was his testimony that the late Laurent Benedicto inherited the suit land from his parent one Benedicto Bantalia who also inherited from his parents and the same belonged to the clan of **“WALANZI”**. He testified that when TRA invaded the suit land, Laurent Benedicto went to report to the village leaders but they told him that they had no information on such invasion. That he decided to report further to the Member of the Parliament who promised to work on the issue but he never worked on it.

PW1 went on to testify that he did not stop there but wrote a letter to the TRA on the matter but they replied that they had applied for a letter of offer in 1998. That being dissatisfied, he filed this suit to this court for redress. He prayed this court to

declare that the owner of the suit land is the late Laurent Benedicto and order the defendant to take away the properties from it and costs of this suit.

On cross examination by Mr. Swit, PW1 stated that the defendant occupied the land of other people but the same were compensated in 2012 while he was not compensated for unknown reasons.

Petro Kafwelo Mtasa testified as PW2. He stated that he is a resident of Mtukula and that he has been living there since 1993. He testified that he knows the late Benedicto Bantalia and that they were born of the same mother called Maria and that the children of Bantalia are Laurent Kagwa, Saraha, Maria and others who are deceased. He testified that Laurent Kagwa is also deceased since 2003 at Mtukula where he had a field and other properties which he inherited from his father one Benedicto Bantalia. That the said field is now in the hands of Leonard Laurent and other properties which were distributed.

It was his evidence that he saw the offices of TRA in 2000 at Mtukula on the land which formerly belonged to Laurent Benedicto (Laurent Kagwa). That before building the office, there was a house of the said Laurent Benedicto which was destroyed

during Tanzania Uganda war. That the TRA demolished the remnant house/buildings and erected their own offices. That there were also banana plants and houses used for commercial purposes.

He went on testifying that as Laurent made follow up to village authority and TRA officers he was answered that their bosses had instructed them to occupy that land and erect offices. That he also informed the Member of Parliament who promised to work on the issue but he never honoured the promise until when Laurent died.

When cross examined he stated that the guest house and bar were there before the war but after the war they were not rebuilt.

That marked the end of the plaintiff's case.

In defence, Chris Mkanja featured as DW1. He introduced himself as a TRA officer working in Domestic Revenue Department as Property Tax Rates Manager since 2016. He testified that before 2016 he was the Manager of Estates Administration. That in that capacity he was dealing with land and buildings management of TRA within Tanzania Mainland and Zanzibar.

He went on testifying that at Mtukula TRA owned land and buildings including the suit land which was acquired by way of being allocated by the Government. That before being allocated, the said land used to be owned by Customs and Internal Revenue Department within Treasury. He testified that in 1996 TRA was established and took all the properties of and duties of Customs and Internal Revenue Department which was abolished. That in 1998 the Government handed all the properties of the Customs and Internal Revenue Department to the TRA some of which were located at Mtukula.

It was his evidence that as TRA was autonomous, they requested to be allocated the suit land from Bukoba District Council where they were given a letter of Offer after paying all levies and later on they occupied it after being given a certificate of Occupancy in 1998. He testified that TRA never found the plaintiff in occupation of the suit land and even the structures which were there in are still in existence.

DW1 made it clear that there were once some claims from Mtukula residents who demanded compensation and that the plaintiff was one of them. That they amicably settled the matter to the effect that it was Idd Amin war which caused destruction of their properties by then in 1978 and not TRA. That following

that settlement, 14 claimants were paid but the plaintiff was not paid for failure of proof that he owns a parcel of land at that area. He testified that they were allocated the suit land but the plaintiff came to claim compensation in 2012 in court after 14 years.

Pendaël Mkufu featured as DW2. He stated that he works with the TRA Headquarters in Dares Salaam in the Human Resource and administration Department and that he is stationed in the Estate Unity where he deals with securing, administering land, buildings construction as well as administering of the buildings of TRA as a whole.

He testified that TRA has plots in all regions and districts in main land Tanzania and in all borders. That when TRA was established in 1995 they were given plots and Houses by the Treasury and other plots were allocated by district councils while others were bought from individuals for purposes of construction of offices.

He acknowledged that the plot which the plaintiff is claiming is at Mtukula at Misenyi District but was quick to assert that the same belongs to TRA. He clarified that formerly the suit plot belonged to the Ministry of Finance in the customs department but when TRA came into being all these properties were ordered to be

transferred to TRA thus it was received by virtue of the law in 1998. He testified that by the time the suit land was acquired by TRA there were two residential houses and the land was very close to the border.

It was his evidence that having been officially established, the TRA wrote a letter to Bukoba Municipal Council in order to get granted right of occupancy of that area and upon that letter, the Bukoba Municipal Council prepared a letter of offer and handed the same to TRA in October 1998. He tendered the letter of offer and it was marked as exhibit **D1**.

DW2 went on testifying that having received the offer they complied with the conditions therein by paying all the requisite fees then, they were given a certificate of occupancy which was signed by the officer, the TRA and it was subsequently sent to the Commissioner for lands for his signature and registration purposes. He added that till then the certificate is not yet returned to TRA. He clarified this delay to have been caused by what he called a new re-surveying of Mtukula area thus registration had to wait as the new drawings are not yet finalized. He was emphatic that when they acquired the suit land the owner was the Treasury Customs Department and not the plaintiff.

Hence, he stressed that TRA was not a trespasser as contended by the plaintiff.

It was his further evidence that in 2012 the plaintiff presented his claim with other claimants who had similar claims but the plaintiff later on withdrew himself from negotiation and decided to file this suit in court. He testified that the position of TRA in the plaintiff claim was based on humanitarian grounds but after withdrawing himself from negotiation he was no longer qualified to be compensated. He concluded his testimony by emphasizing that TRA is never a trespasser in the suit land thus the plaintiff should not be paid anything.

The parties prayed and were granted leave to file written submissions on 15.03.2018 but they failed to do so and later on prayed this court consider the evidence adduced during hearing and deliver the judgment.

I will commence with the first issue that is, whether the disputed plot of land belongs to the plaintiff. It was the evidence of the plaintiff that he inherited the suit land from his father one Laurent Benedicto who is now no more. The latter is said to have inherited from his late father one Laurent Bamtalia and that the entire land generally belonged to **Walanzi** clan. On his part, the

defendant, Tanzania Revenue Authority referred to by its acronym as TRA; defended itself that the suit land formerly belonged to the Treasury and Customs Department but after the TRA came into being the properties of the former the suit land inclusive, were given to TRA in 1998. After that they processed to be the granted right of occupancy and in the process they were given a letter of offer pending the title deed. That the title deed was returned to the Commissioner for Lands for signature and registration after the suit land was re-surveyed. The letter of offer dated 28th October, 1998 was admitted and marked as exhibit **D1**. My observation on this issue basing on the evidence of both sides is that albeit the defendant occupied the suit land and later on processed for a titled deed; it appears that the plaintiff's father Laurent Benedicto, had previously occupied it and managed to erect structures. This was evidenced by DW1- Chris Mukaja who on cross-examination admitted that the plaintiff was among the civilians whose land was acquired to the extent that he was among the 14 civilians who were compensated but he withdrew himself from the negotiation and filed this suit. In a way, DW1's evidence corroborated that of PW1 and PW2 on the ownership of the suit land. Although DW1 defended himself that the 14 claimants were compensated on humanitarian ground, it appears

that the truth of the matter is that the said 14 claimants and the plaintiff's claim have some degree or connection to the suit land to the extent that TRA was convinced to compensate them. I thus answer the first issue in affirmative.

I now revert to the second issue that, whether the defendant trespassed upon the disputed plot of land. Having answered the first issue affirmatively, it follows legally and logically that the defendant trespassed into the suit land by erecting offices without first compensating the former occupier. This is supported by the fact that the litigants had once a discussion on compensation though it was not fruitful hence the present suit. The second issue is thus answered affirmatively.

The third issue is whether the plaintiff's claims are within time. According to the evidence on record this issue was once raised in the preliminary objection by the defendant in the written statement of defence. As per the ruling of this court delivered on 29th August, 2013 the objection was overruled to the effect that the claim was and still is within time. To this end the third issue is answered affirmatively.

The reliefs sought by the Plaintiff are basically three. From the fact that the issues framed have been answered affirmatively, it is

trite that the first prayer is granted to the effect that the disputed piece of land is among the estate of the late Benedicto. A fact that the defendant (TRA) has already occupied the suit land and erected offices therein, the defendant is duty bound to compensate the plaintiff the value of the said land the amount to be assessed by an Authorized Government valuer. It is so decided basing on the fact that the Plaintiff never produce evidence to prove what he alleged in the Plaint to be the value of the said land i.e Tshs. 180,000,000/=.

As to whether costs should be awarded or not, I have taken into consideration the nature of the case and how the defendants came to be part in the suit and judiciously find that this is a fit case where each part bares own costs.

Wherefore, that been said and done the Plaintiffs claims are granted to the extent as demonstrated above and each part bares own costs

Accordingly ordered.



S.B. Bongole

Judge

20/7/2018



Date: 20/7/2018

Coram. Hon. S. B. Bongole, J.

Plaintiff: Present

1st Defendant: Absent

2nd Defendant: Mr. Haruna for 2nd Defendant

B/C: Peace M.

Mr. Haruna:

My Lord, the suit comes for judgment and we are ready.

Court:

Judgment delivered.



S.B. Bongole

Judge

20/07/2018

Right of Appeal explained.



S.B. Bongole

Judge

20/07/2018

