

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**CIVIL CASE NO. 69 OF 2013**

- 1. MWANAMKUU M. DADY.....1<sup>ST</sup> PLAINTIFF**
- 2. ABDULLAH FERESHI.....2<sup>ND</sup> PLAINTIFF**
- 3. MORRIS HINJU.....3<sup>RD</sup> PLAINTIFF**
- 4. MSAFIRI MNYAMBI.....4<sup>TH</sup> PLAINTIFF**
- 5. NICHOLAUS NCHIMBI.....5<sup>TH</sup> PLAINTIFF**
- 6. RAHMA HUSSEIN.....6<sup>TH</sup> PLAINTIFF**
- 7. RHODA MHANDO.....7<sup>TH</sup> PLAINTIFF**

**Versus**

- 1. THE PERMANENT SECRETARY  
MINISTRY OF LANDS HOUSING AND  
HUMAN SETTLEMENT DEVELOPMENT.....1<sup>ST</sup> DEFENDANT**
- 2. THE ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

In the present suit, the plaintiffs were dissatisfied with the compensation payments in respect of their houses and

other related payments following an order of this court of 23. 7. 2013 by the defendants after re - valuation. The said valuation exercise resulted in amounts which were inadequate (unjust and unfair) as compared to the valuation carried out by their private valuer. In view thereof in their amended plaint are praying interalia for compensation in respect of their houses and other related payments after re - valuation.

In response to the above cause of action, the defendants strongly opposed the suit to the effect that, the entire procedure of re - valuation and compensation was adequate and proper. The plaintiffs have been so paid all their compensation claims as per valuation that was conducted per the order of this court dated 23. 7. 2013.

For ease of determination of the case, the following were the agreed issues;

1. *Whether the plaintiffs were fairly and adequately compensated.*
2. *Whether the 6<sup>th</sup> plaintiff is entitled for compensation payment for the plot she occupied prior to her eviction.*
3. *Whether the valuation carried out by the Government Valuer was fair and just.*
4. *To what reliefs are the parties entitled to.*

The plaintiffs in proving their case have brought in evidence a number of eight (8) witnesses. These are MWANAMKUU DADY (PW1), ABDULLAH FERESHI ABDULLAH (PW2), MORRIS SIMON HINJU (PW3), MSAFIRI MATHEW MNYAMBE (PW4), NICHOLAUS KALAMBAI NCHIMBI (PW5), RAHMA HUSSEIN MUHINA (PW6), RODA MHANDO MUDU (PW7) and KAISHAZA PIUS BENGESI (the private valuer - PW8). These witnesses (incidentally the plaintiffs) were legally represented by Mr. Galikano learned Advocate.

On the opposing camp, the defendants summoned two witnesses namely ANDREW WILLIAM KAMBANGA (DW1) and EVANS RAPHAEL GOODLUCK (DW2) who were led by Mr. Daniel Nyakiha learned State Attorney.

The plaintiffs' evidence in its totality was to the effect that, the plaintiffs were all residents of Mivinjeni Kurasini Area within Temeke Municipality in Dar es Salaam Region. In 2009 the Government acquired the land for other uses which had been occupied by the plaintiffs. The valuation process was duly conducted but the plaintiffs are complaining on the amount of money awarded as compensation. They had hired a private valuer who came up with rates that materially differed with those of the Government valuer. The said report (Exhibit P.1) was prepared by PW8 from Trace Association Limited Company. The defendants had refused to adjust or accept the private valuation report (Exhibit P.1)

In conformity with Exhibit P.1 and what the plaintiffs had been paid, it was alleged that PW1 was paid Tshs. 56,444,400/= while he was supposed to be paid Tshs. 95,000,000/=; PW2 was paid Tshs. 179,355,600/= while he alleged that, was supposed to be paid Tshs. 218,000,000/=; PW3 was paid Tshs. 58,274,000/= while he was supposed to be paid Tshs. 101,000,000/=; PW4 was paid Tshs. 45,333,300/= whereas he claims more Tshs. 23,666,7000/=; PW5 was paid Tshs. 80,138,600/= whereas he further claim Tshs. 24,181,400/=; PW6 was paid Tshs. 37,083,700/= whereas he claims further Tshs. 37,031,7000/=; PW7 was paid Tshs. 119,046,500/= whereas he claims a further Tshs. 17,953,500/=. PW6 alleged to have been forcefully moved out from her house by the land Officers after which they had demolished her house. The plaintiffs generally explained that they are in disagreement with the amount which ought to be paid hence the court should provide a legal remedy.

The defendants as per DW1 who is the 1<sup>st</sup> defendant's Valuer admitted the fact that, the defendants had acquired the plots which were originally owned by the plaintiffs. DW1 further insisted the process of valuation and compensation was done legally (Exhibit D.1). To this the plaintiffs were duly involved hence the amount paid were received without any objection. As to whether the plaintiffs were entitled to be given alternative plots, DW1 clearly stated they had no authority to order so.

Further DW2 a valuer too, insisted the valuation process was proper hence the amount paid to the plaintiffs was adequate in so far as Exhibit D1 is concerned. DW2 further alleged the Temeke's District Commissioner, the Regional Commissioner of Dar es Salaam and the Kurasini area Ward Executive Officer were fully involved in the entire process and subsequently they all signed Exhibit D.1. The process took place after the order of this court by Mwakipesile, J in

2013. The valuation report relied on (Exhibit P1) by the plaintiffs was not approved by the Chief Government Valuer.

After the close of the hearing the parties did file final submissions. The two sides articulately raised arguments to support their cases. On one side the plaintiffs stating they were to be paid the varied compensation while the defendants adamantly refusing to honour the said valuation which did not conform to the legal process.

Starting with the first issue on *whether the plaintiffs were fairly and adequately compensated*. From the outset, it is settled law that, civil cases are to be proved on a balance of probabilities. The same was underscored in the case of **ENGEN PETROLEUM (T) LIMITED VERSUS TANGANYIKA INVESTMENT OIL AND TRANSPORT LIMITED, CIVIL APPEAL NO. 103 OF 2003 (CAT-DSM) (UNREPORTED)** whereby the trial

court had ruled the plaintiff did fail to discharge the said duty hence at page 14 the Court stated;

*'From the evidence of PW1 and PW2 we are clear in our minds that the trial court rightly dismissed the suit for lack of proof on the balance of probabilities. We accordingly find no merit in ground two of the appeal.'*

Having in mind the above legal position and upon my objective perusal of the entire court record and the adduced evidence from both camps, it is crystal clear, the plaintiffs' grievances are levelled on the awarded compensations as being inadequate. As I had pointed earlier, each plaintiff claims an amount exceeding the compensation they had already received as per "Exhibit P.1 collectively" on the basis of the variations indicated by the private valuer's valuation which had shown different figures



On the other side, the defendants strongly oppose the allegations. They are of the firm stand that the entire process of valuation and compensation was fairly conducted. It was further alleged the leaders from the said area were involved as a result Exhibit D.1 was prepared and the plaintiffs signed together with their advocate therein and agreed to accept the amount awarded as compensation.

I have considered the two rival adduced evidence from both sides, I find the plaintiffs were fairly and adequately compensated. This is because, even though the plaintiffs appear to rely solemnly on Exhibit P.1 collectively however the same has no legal value. There is no evidence to indicate the defendants' officers be it the land officers or Government valuers were involved in the preparation of the said valuation report. PW1, PW2 in cross examination confirmed that the said valuation report never involved the government officers. PW8's testimony (the one who

prepared Exhibit P.1 collectively) clarified that the said valuation (Exhibit P.1 collectively) was never verified by the Chief Government Valuer as required by law.

PW8 admitted in principal that Exhibit P.1 collectively did not comply with the mandatory provisions of law, hence cannot be used to compensate any claim against the Government.

The conflicting sides agree that, there was indeed a first valuation of which the plaintiffs claim they had not been involved and the amount payable inadequate. The valuation was re-conducted after the court order and had involved the parties, including all the plaintiffs, their advocate and Government Officials. The two sides are also in agreement Exhibit P.1 did not involve the area leaders nor the Government Officials.

The law is very loud in that, it provides in terms of the provisions of Regulation 6 of the Land (Assessment of Value

of Land for Compensation) Regulation 2001 (GN No. 78 of 2001) that;

*'Every assessment of the value of a land and unexhausted improvement for the purpose of payment by Government or other Government Authority shall be verified by the chief valuer or government or his representative'*

The above provision is couched in mandatory terms hence the valuation assessment had by all means to have been assessed and verified by the Chief Government Valuer. In light of the foregoing analysis what the plaintiffs remain with is the valuation conducted in the presence of the plaintiffs, area leader, their advocate, government officers duly verified by the Chief Government Valuer which compensation the plaintiffs accepted payment therefrom. (Exhibit D1)

It is thus concluded by the court that the plaintiffs in that regard were fairly and adequately compensated.

Reading through the minds of the plaintiffs, it would appear on the face of it that, the plaintiffs were settled that since the valuation had been carried out and dully witnessed and verified then any amount varied could be simply assessed by even a private valuer. With due respect to the plaintiffs what was done is an assessment solely for **compensation**, since it is to be payable by the Government the same has to follow the legal procedure and be dully verified by the Government Chief Valuer.

In the event, I find the first issue is answered in the affirmative.

Regarding the second issue on *whether the 6<sup>th</sup> plaintiff is entitled for compensation payment for the plot she occupied prior to her eviction*. Considering the outcome of the first issue, I definitely find the second issue is to be answered negatively. The reason being that, PW6 merely alleged her house was forceful demolished prior to her

eviction. On the other side, PW6 received Tshs. 37,802,700/= as compensation exhibited by D. 1. In my settled view, the act of PW6 receiving the amount stated in Exhibit D. 1, indicates she was satisfied with the entire process of valuation with the stated compensation awarded therein. The reason for her coming back at the latter stage claiming an additional amount of money as per Exhibit P.1 collectively, in my settled view amounts to an afterthought. This stance is supported by **section 122 of the Evidence Act [Cap. 6 R.E 2002]**. For the sake of clarity, the same states as follows;

*'A court may infer the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.'*

In the event, I find the alleged varied amount claimed of Tshs. 37,031,700/= has not been proved to the required

standard in civil litigations. More so, there was no evidence to prove the said plot was her property prior to the eviction. As I have pointed out earlier Exhibit P.1 collectively" does not serve any useful purpose in proving this allegation. Exhibit D1 indicates PW6 was compensated for the unexhausted improvements but not the plot itself, she signed the same indicating that is what she was compensated for.

Coming to the third issue on *Whether the valuation carried out by the Government Valuer was fair and just.* What was in dispute was the assessment of the **amount to be payable** by the Government. This is why this court before Hon. Mwakipesile, J on 23/07/2013 did make an order to that effect. For ease of reference the same states: -

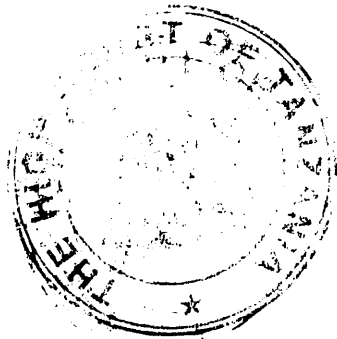
**“Order: -** Evaluation to be made in presence of both parties as agreed within three weeks, then after the parties to appear before this court for necessary orders”.

The burning contention is the variation between the amounts by the private valuer vis avis the amount they were paid by the Government after valuation. In that regard the court concludes that the valuation conducted was fairly done hence just.

Lastly, on the fourth issue to what reliefs are the parties entitled to. From the outcome of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> issue and in regard to the findings proclaimed in the case **ENGEN PETROLEUM (T) LIMITED's VERSUS TANGANYIKA INVESTMENT OIL AND TRANSPORT LIMITED, Civil Appeal No. 103 of 2003** (CAT – DSM) (UNREPORTED) where the court held, if there is failure of a plaintiff discharging his/ her duty of proof then the respective suit should be dismissed. I find the plaintiffs

have failed to prove their case on the balance of probabilities. The suit is hereby sanctioned to a dismissal with costs.

It is so ordered.



  
**B.R. MUTUNGI**

**JUDGE**

**22/6/2018**

Read this day of 22/6/2018 in presence of Mr. Galikana for the plaintiffs and Mr. Baraka Nyambeta (State Attorney).

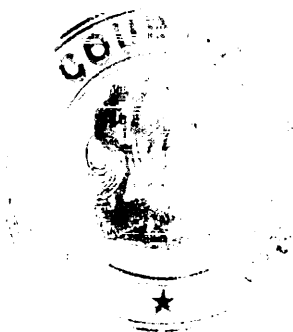


  
**B.R. MUTUNGI**

**JUDGE**

**22/6/2018**

Right of Appeal Explained.



  
**B.R. MUTUNGI**

**JUDGE**

**22/6/2018**