

IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

LAND CASE NO. 2 OF 2014

RASHID MUSSA PAYAO.....1ST PLAINTIFF
BIBIE MOHAMED.....2ND PLAINTIFF
JANI MANZI ERASTO.....3RD PLAINTIFF
HASSAN SAID.....4TH PLAINTIFF

VERSUS

DIRECTOR NANYUMBU DISTRICT COUNCIL..... DEFENDANT

Date of last order: 20/10/2016

Date of judgment: 24/11/2016

J U D G M E N T

F. Twaib, J:

The plaintiffs herein have raised a claim against the defendant for payment of fair and full compensation in respect of the plot of land located at Kilimahewa, Mangaka Ward, Nanyumbu District in Mtwara Region. They alleged that on or around 21st November, 2011, the defendant wrote a letter to the plaintiffs, informing them of their intention to conduct a valuation of the disputed area without disclosing the reasons for the said valuation. And later, in 2013, they were summoned by the defendant and paid some compensation, but they considered this not fair. On that basis, they *inter alia* claim to be paid a total sum of Tshs. 334,565,161/= as reasonable compensation in respect of their portion of

land acquired by the defendant. They also prayed to be paid a general damages of Tshs. 100,000,000/= and costs of the suit.

The defendant denied the plaintiff's claim. She averred that the plaintiffs were informed of the reasons for acquiring their portion of land. That the plaintiffs were paid fairly and reasonable compensation on the basis of the crop compensation rate that was applicable at the time.

At the hearing of the suit before this court, the following issues were framed for the court's determination: **One**, whether the plaintiffs were fully and adequately compensated for their pieces of land. **Two**, what are the reliefs that the parties are entitled to?

In establishing their claim the plaintiffs relied on three witnesses who are Rashidi Mussa Payao (PW1), Bibie Mohamed (PW2) and Hassani Saidi Ligola. In his testimony (PW1) Rashidi Mussa Payao testified that he is a resident of Kilimanihewa village and that he came in this court because of injustice done to him by the Nanyumbu District Council.

He went on testifying that the valuation of his farm located at Kilimanihewa in Nanyumbu District was done in November, 2011 and he was supposed to be paid within 6 months. Those six months passed and no compensation was paid. So he knew that the District Council would not pay him and decided to develop his land. He testified that he was supposed to be paid Shs.61, 508,908/= for crops in the farm and a house. But instead he was paid TShs.13, 776,000/=. That he expected the higher figure because of a Government documents dated 7th February 2013 and a schedule attached thereto titled "TABLE NO.1 PERENNIAL CROPS 2012" which was admitted by this court as Exhibit P1.

He testified further that he was not notified by the defendants of any intention to take over his farm. That after being aggrieved, he sent demand letter to the defendant which was admitted in this court as Exhibit P2. He finally prayed for his claim to be granted.

When he was cross examined by Ms. Bitegeko Solicitor, the witness further testified that he was present when the valuers came to value his property. He showed them all his developments on the property. That during the valuation, there were seasonal crops, but the valuers said they would not include them for payment. He admitted that valuation is supposed to be done by a legally recognized valuer and that he did not know whether the person who did the valuation of his property was such a valuer.

As to how he came up with figure of Shs.61, 508,908/= the witness testified that the same is a market value for properties in that area and his calculation is based on the Government document [Exh.P1] and that he had no other valuation to explain shs 61, 508,908/= He added that Compensation was paid to him in August, 2013.

When he was examined by court the witness testified that even if he would have been paid within 6 months after the valuation, there would still be a dispute because the valuation of his crops was unfair.

The second witness Bibie Mohamed (PW2) testified that her claim is against the Nanyumbu District Council because he was not fairly compensated for her farm that was taken by the council. That the farm is at Kilimanihewa, Nanyumbu District in Mtwara Region and it has 40 acres. He had 688 fully grown up cashewnut trees, 329 younger cashewnut trees, 18 fully grown mango trees, 7 younger mango trees, 7 "mitanga" trees and 4 "miborea" trees. But the

compensation paid to her was inadequate as he was paid Tshs 47,000,000.39 instead of Shs.153, 753,482.99.

When he was cross examined by Ms Bitegeko the witness testified further that his claim is based on the Government schedule. That he knew of the correct compensation due to him after seeing the new Government schedule of values. He also admitted that it is the valuer who is supposed to do a valuation and that his claim is not based on valuers estimates.

The last witness for the plaintiffs is Hassan Said Ligola (PW3). This witness also while being led by Mr. Ngonyani Advocate testified that his claim against the District Council is for adequate and fair compensation. That on 11/11/2011, an officer from the District Council came to his farm. He was accompanied by the village chairman, who told PW3 that the District Council had sent a valuer to make a valuation of his farm. That his farm is at Kilimanihewa village and it had 10 acres. The farm had 102 fully grown cashewnut trees, 83 younger ones, 395 timber trees. That after 6 months, without any information from the District Council; he decided to develop his farm. In August, 2013, he was informed that their payments were ready. But he was inadequately paid.

He testified that on February, 2013, the Government had published new values for permanent crops. That's why he was not satisfied within the amount of compensation paid to him. That he was paid compensation on the basis of the 2011 valuation. That he was not satisfied because more than six months had passed before they were paid. That he was paid Shs.19, 107,000/= instead of Shs.64, 971,483.06. He added that his claim is based on the Government's letter [Exh.P1].

When he was cross examined by Ms Bitegeko the witness stated that the new values were to take effect in March, 2013 and that no valuation was done in 2013. That's why he was surprised because there were already values for the developments.

That was all for the plaintiffs' case. The defendant's case had also three witnesses. The first was Dickson Raphael Makombe (DWI) who, while being led by Ms Bitegeko learned Solicitor testified that he is the Land Officer of Nanyumbu District responsible for all land transactions in the District, including Land allocation, transfers, preparation of certificates of occupancy, and supervision of payment of compensation.

He testified further that the dispute between the plaintiff and the defendant (District Council) is with regard to compensation paid to them in 2013 for their pieces of Land. They complied with the procedure of acquisition as per GN.78/2001 by inter alia informing the owners of the Government's intention to acquire their Lands for purposes of surveys and re-allocation for the development.

That on 23/11/2011 they met the villagers in company with the Village Chairman. They also had a Government Valuer. The valuer took various particulars and information for valuation purposes and it took two days to carry out the exercise as there were 16 of them. That he prepared a compensation schedule and the owners were duly informed after the Chief Government Valuer approved the valuations. After approvals, the scheduled was brought back to the District Executive Director for payment purposes and compensation was paid in August 2013.

He testified further that owners used to come and complain that it was taking too long for compensation to be paid. The GN requires them to pay within 6 months after the approval. In this case they were required to pay by May 2012. They could not meet the deadline, as the District council did not have money at the time. That it was until August 2013 when they paid them and the full amount paid was Tshs.90, 931,000/= to all 16 former owners.

That they called them and told them, that they were required by law to be paid a fixed account deposit interest which at the time stood at 6% per every six months. That only one of them Rashid Mussa Payao (1st plaintiff) and Bibie Mohamed Mlaka (2nd plaintiff) were not there. They asked those who came whether they would accept the payment without interest, as the District Council did not have money to pay the interest. They agreed saying since it was their own council; they did not have any objection. The witness testified further that the valuation was properly done and the rates were the ones applicable at the time. The witness tendered the Directive dated 7th February, 2013 which contains new rates. The same was admitted as Exhibit D3. According to him the Directive stated that all valuations done before the new Directive would not be affected by it.

When the witness was cross examined by Mr. Mkali advocate he testified further that they did not include the interest applicable after explaining the position to all owners who came for their cheques. He added that it was the responsibility of the District Executive Director to find the money to pay interest.

When he was re-examined by Ms. Bitegeko the witness further testified that the plaintiff's only entitlement would have been the interest, but they themselves agreed to dispense with it.

The second witness Donald Masunga Kilunga (DW2) testified that he being a government valuer conducted valuation on the plaintiffs' properties. That was in November, 2011 and there was no complaint during the valuation. That in conducting the said valuation he was guided by the Land Act, No. 4 of 1999 and the Official Directive of December, 2009 (Exhibit D4) whose application began on 1/1/2010. The Official Directive and the Valuation Report were admitted in this court as exhibits D4 and D5 respectively. He added that the 2009 Directives were replaced in February, 2013. The rates applicable at the relevant time were the 2009 Directives

The last witness for the defence was Abbasi Muhidin Mwira (DW3). He testified that he was chairman of Kilimanihewa village, since 1993. He resigned in 2003 but was re-elected in 2008. As village chairman his duties included peace and security, and to supervise the implementation of the decisions of village authorities. He stated further that in 2011, the District Council acquired an area in the village for development purposes. The area is within his Jurisdiction. He was involved in the process. He was also at the scene when the valuation for purposes of compensation took place. After the valuation, the owners signed certain forms that showed that they agreed within the valuations.

Having analyzed the parties' testimony the issue for determination are: **One**, whether the plaintiffs were fully and adequately compensated for their pieces of land. **Two**, what are the reliefs that the parties are entitled to?

On the first issue the testimonies of PW1, PW2 and PW3 indicate that the valuation of their parcel of land for acquisition purpose was done on 11th November, 2011. That after the said valuation they were expecting to be paid within six months. After six months had expired they believed that they would not be paid and decided to develop their land. That they received their compensation

in August, 2013 and discovered that the same was inadequate and did not correlate to the rates indicated in the Official Directive of February 2013 (Exhibit P1).

That in view of the said new rates the 1st Plaintiff was expecting to be paid Shs.61, 508,908/= for crops in the farm and a house. But instead he was paid TShs.13, 776,000/=. The 2nd Plaintiff was expecting to be compensated tshs Shs.153, 753,482.99 but was only compensated Tshs 47,000,000.39. And the 3rd Plaintiff was paid Shs.19, 107,000/= instead of Shs.64, 971,483.06. The plaintiffs admitted in their testimony that they arrived to those figure on the basis of the Government document (Exhibit P1) and not a valuation report.

On the other hand the defendant's witnesses DW1, DW2 and DW3 testified that the valuation of the plaintiffs properties was done in 2011 and by then the rates which were applicable in the said valuation were provided by Official Directives of 2009 (Exhibit D4). The said document (Exhibit D4) was replaced by a new Official Directives in 2013 (Exhibit P1) which is the basis of the plaintiffs' claim. They added that the new directives indicated that it was not applicable to valuation made before 2013. The rates that were applicable to valuation made in 2011 were in the Official Directive of 2009 (Exhibit D4) which came into operation in 2010.

In this case the defence witnesses admitted that compensation to the plaintiffs was not paid within six months after the approved valuation. That the valuation was done in 2011 but payment was done in 2013. They also admitted that in view of that delay the plaintiffs were entitled in law to be paid compensation together with a fixed interest which at the time stood at 6%. That they could not pay the said interest because the District Council had no money and that they

explained the situation to the owners who agreed to receive their compensation without interest.

Looking at this testimony it is my settled view that the plaintiffs are basically not in dispute of the acquisition of the parcel of land. Their disputes are mainly based on the compensation. To them the compensation paid in 2013 was inadequate. First on the grounds that after the valuation was done in 2011 they were expecting to be paid within six months, but six months expired before payment and they decided to redevelop the land. Therefore when the payment was made in 2013 they were expecting for a new valuation to be made so as to cover the new development made between 2011 and 2013.

In principle once a notice to acquire the land is issued by the government and the valuation for the purpose of compensation is made, the parties are not required to make further permanent development, even if there is a delay in payment of the allocated compensation. Any development made after valuation are done at the parties own peril as no payment would be made on the subsequent re-development.

Second the plaintiff's claims to be paid the stated figure of the basis of the Government directives of 2013. I agree with the testimony of the defence that the plaintiffs cannot claim payment on the basis of the directive of 2013 (Exhibit P1) because the directives was inapplicable to the acquisition and valuation made in 2011. For easy reference Exhibit P1 partly reads:

Kwa barua hii napenda kuwafahamisha kwamba Majedwali hayo yaanze kutumika kuanzia mwezi Februari mwaka 2013. Hii ina maana kuwa kwa uthamini wote was fidia utakaofanyika kuanzia Februari 2013 utumie viwango hivyo vipya.

In our case the valuation of the plaintiffs' property for the purposes of compensation was done in 2011 and therefore payment of their compensation was governed by the directives of 2009 (Exhibit D4) which was applicable at that time. The claim of compensation on the basis of the 2013 directives (Exhibit P1) is unfounded.

As rightly testified by the defence witnesses, once there is a delay in payment of compensation after the government has acquired the land the owners are entitled to be paid along with their compensation a interest of 6 % per annum. This is also provided under section 15 of the Land Acquisition Act Cap 118 R.E. 2002 which provides:

*15. (1) Subject to the provisions of subsection (2), where the President, in pursuance of a notice under section 7, has entered into possession of any land before the compensation has been paid to the person or persons entitled to the same, or before compensation awarded by a decree of the Court in respect of such land has been paid into the Court, as the case may be, **the Minister shall pay to such person or persons, in addition to the compensation, interest thereon at the rate of six per centum per annum from the date when possession is taken until such compensation is paid to such person or persons entitled to the same or is paid into the Court.***

As said above the defendant witnesses admitted that the plaintiffs were entitled in law to be paid interest, but they were not paid because the District Council had no money. The relevant part DW1 of his testimony reads:

*The full amount paid was Tshs.90, 931,000/= to all 16 former owners. They were all called and told that we were required by law to pay a fixed account deposit interest which at the time stood at 6% per every six months. Only one of them Rashid Mussa Payao (1st plaintiff) and Bibie Mohamed Mlaka (2nd plaintiff) were not there. **We asked those who came whether they would accept the payment without interest, as the District Council did not have money to pay the interest.** They agreed, saying since it was their own council, they did not have any objection*

The testimony of DW 1 insisted that in the said payment they did not include interest which was required by law. His testimony when responding to the question posed by Mr. Mkali learned Advocate during cross examination further reads:

***We did not include the interest applicable.** I gave the reasons why, and that we did that after explaining the position to the owner who came for their cheques. It was the DED's responsibility to find the money to pay interest. The owners agreed to accept their payments after we explained to them. The plaintiff's also agreed, which was why they took their cheques.*

In view of the testimony above I'm satisfied that the plaintiffs were inadequately compensated mainly for not being paid interest after the delay of payment of compensation. The claim by the defence to the effect that the plaintiffs opted not to receive interest is not supported by any evidence. The reason that the District Council did not have money that is why they did not include interest cannot be a ground for not paying such interest.

I therefore answer the first issue in positive only with regard to the interest. The amount indicated by the plaintiffs had no basis as the Government directives of 2013 was not applicable to them.

On the last issue, it is clear from the above that the plaintiff are entitled to be paid interest, in terms of section 15 of the Land Acquisition Act, at the rate of 6% per year from the date when possession was taken by the Government until the date of payment of compensation. The interest that was payable on the date compensation shall also attract interest at the same rate (6% per annum) until the date the same shall be paid in full.

To the extent explained above, the plaintiffs' suit succeeds in part. There shall be no orders as to costs.

DATED and DELIVERED at Mtwara this 30th day of November, 2016.

F.A. Twaib
Judge