

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI
LAND CASE NO. 24 OF 2017**

**SCOLASTICA INVESTMENT COMPANY LTD PLAINTIFF
VERSUS**

FREDRICK S. KISAMO DEFENDANT

25th November & 18th December, 2020

JUDGMENT

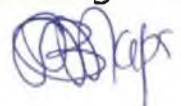
MKAPA, J:

The Plaintiff is a registered company incorporated under The Companies Act Cap 212 of the Laws of Tanzania and is suing Mr. Fredrick S. Kisamo the Defendant. At the centre of controversy between them is a piece of land measuring thirty (30) acres located at Kilototoni village Himo area, within Moshi District (suit land) registered to the Scolastica Foundation under Certificate of Tittle No. 18784 dated 7th September, 2004. It is alleged that the suit land was an open village space earmarked for village development projects. The plaintiff applied for and was granted ownership of the suit land for construction of a secondary school after fulfilling all mandatory requirements through the Village Council.



On the other hand the defendant claims that the suit land belongs to him as he had inherited the same from his late father way back in 1967. Each party therefore claims against the other to have trespassed into the suit land. The plaintiff is praying for the following reliefs and orders;

1. A declaration that the suit land registered in the name of Scolastica Foundation with Certificate of Title No. 18784 located at Kilototoni Village, Himo, Moshi District belongs to the Plaintiff.
2. A declaration that, the defendant is a trespasser to the suitland
3. An order for a permanent injunction against the defendant, his agents, workers and any other person claiming under him from trespassing into the suit land
4. An order evicting of the defendant and any other person claiming under him from the suit land.
5. General damages for loss of use of the land by the plaintiff in cultivating maize and beans for the use of school children from 09/03/2016 to the date of the judgment in terms of the averments contained under paragraph 15 of the plaint.
6. An Order for General damages for trespassing into the plaintiff's land
7. Costs of the suit.

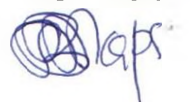


Before commencement of the trial, the following issues were framed for determination;

1. Whether the plaintiff is the lawful owner of the suit land.
2. Whether the suit land was an issue of dispute in Land Case No. 1 of 2003 at the High Court, Moshi District Registry.
3. Whether the defendant has trespassed into the suit land.
4. To what relief (s) are the parties entitled.

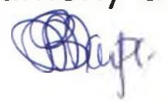
At the hearing, the plaintiff was represented by Mr. Philip Njau learned advocate, while the defendant had the services of Mr. Elias Fredrick assisted by Mr. Joseph Ngiloi and Ms. Flora Munuo also learned advocates. The plaintiff paraded four witnesses and the defendant summoned three witnesses as well to prove their case.

PW1, Edward Isaac Shayo testified that he resides at Himo town, as a businessman and owner of Scholastica Schools. That, his business is known as Scolastica Investment Company Limited dealing with hardware and runs schools including a nursery school named Scolastica Foundation, Scolastica Primary School and Scholastica Secondary School. He averred further that, the plaintiff is the one which runs and owns the schools situated at Himo of which he is the director and a manager of all Scolastica Schools. He testified further that, he started the business with a nursery school named Scholastica Foundation in 1997. Thereafter the suit land was trespassed and he had to



compensate four villagers among the trespassers. PW1 went on testifying that, after compensating the said villagers he successfully applied for and on 12th June 2005, was issued with a Certificate of Occupancy with Title No. 18784 Farm 1226 Kilototoni Village Moshi in the name of Scolastica Foundation. The same was admitted as Exhibit P2. PW1 explained further that, he started to operate Scolastica Foundation as a nursery school by informing the authorities including the District Education Officer and the Moshi Municipal Council through a letter referenced MK/ED/1/09 dated 3/3/1997. The same was admitted as Exhibit P1. Thereafter he started Scolastica Primary School in 2007 and applied for allocation of an additional land vide a letter to Kilototoni Village Council. PW1 asserted that a village meeting was convened and agreed to allocate him with additional 30 acres of land at Kilototoni. The additional land belonged to Kilototoni Village Council. Since then, he enjoyed the use of the suit land undisturbed until 30th December 2015 when he received a call from his shamba boy informing him that two persons named Fredrick Kisamo and Elias Kisamo had trespassed into the suit land claiming that the suit land belonged to them.

PW1 further asserted that, he decided to report the matter to the office of the Ward Secretary and the trespassers were ordered to give vacant possession. It was PW1's further testimony that



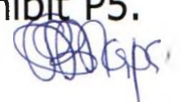
on the 9th of March, 2016 the same persons trespassed into the suit land for the second time and they brought a tractor and started cultivating the suit land. They claimed that there was a High Court decision in the case **of Augustino and Paul and 345 Others V. Director of District Municipal Council**, Land Case No. 1 of 2003 which the High court had decided in their favour. A copy of the High Court decision was admitted as Exhibit P3, and the parties were Augustine I. Temwa, Paulo F Lyimo and 345 others. The list of names of (345 others) in the said Land Case was admitted as Exhibit P4. PW1 went on explaining that the defendant's claim is only one acre. PW1 also testified that the Moshi District Council issued directive not to develop the suit land because of the pending case involving the suit land namely, Land Case No. 1 of 2003 which was yet to be determined. PW1 contended that, the said directives did not involve his 30 acres which he had been using for maize farming for supply food to his schools.

PW1 also testified that, due to the ongoing dispute he had not been able to effect expansion of the schools which had resulted into a loss of a hundred million shillings which he has to repay a bank loan. He prayed for this Court to declare the suit land belongs to the plaintiff. On cross examined, PW1 averred that he obtained a certificate of registration for Scolastica School and certificate of incorporation for Scholastica Investment Company



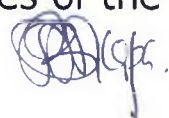
Ltd but he did not have certificate of registration for Scolastica Foundation Nursery School and further that he did not bring any evidence to the effect. It was PW1 further testimony that he used to harvest 100 bags of maize per field from the suit land and he acquired a 100 million shilings loan from CRDB Bank. That, as per the contents of para 9 of the plaint the certificate of title was issued to Scolastica Foundation which is not the plaintiff in this case. He also stated that he owns 50% of the shares in Scholastica Investment Company Limited.

PW2 Scolastica Edward Shayo testified that she is a business woman and the managing director of Scolastica Investment Company which runs a hotel, schools, farm and hardware since 2005. She went on explaining that, Scolastica School, comprises of a nursery, primary and secondary schools (O level and A level). The company also owns other assets such as motor vehicles machinery, infrastructure, hotel and 30 acre land situated at Kilototoni village which is surveyed with certificate of title in the name of Scolastica Foundation. The same was registered in 1999 after they had applied in 1997. The letter titled "Kusajili Shule ya Msingi Scolastica Foundation English Medium" Ref. No CEW/E.10/1VOL/II. dated 1st October, 1997 addressed to the Commissioner for Education, Ministry of Education Dar es saalam was admitted as Exhibit P5.



That, after the School was registered in 1999, they applied for additional land farm from Kilototoni village due to high demand. They were granted additional land but there were four trespassers whom they compensated and applied for the title deed in 2001 and were issued with the same in 2004. PW2 went on asserting that in 2015, the Defendant Fredrick Kisamo trespassed into the suit land claiming ownership of the same. on cross examination, PW2 stated that as a managing director of Scolastica Investment Company, she was aware of Miscellaneous Land Application No. 64 of 2017 but the same did not involve the suit land.

PW3 Anderson Mfinanga testified that he resides at Kilototoni Njiapanda Moshi Rural and that in 2004, he was a VEO for Kilototoni village. He stated that, on 5th April, 2004 they had a meeting at Kilototoni Village Council and the agenda was verification of PW1's farm boundaries situated at Kilototoni village. He further stated that, back in 2001 the village council agreed to allocate the suit land to PW1 and on 5th April, 2004 they surveyed the area in order to ascertain the exact size. PW3 averred that they were accompanied by a land officer since PW1 had applied for a certificate of title and land surveyors were the ones who installed beacons at the boundaries of the whole area which measured 30 acres.



PW3 also testified that, the suit land was an open space belonging to "Mangi" during the colonial era for development projects of the Kilototoni village. The said Mangi was a chief who ruled Kilema Kusini up to Kahe. He finally testified that, he was a village leader since 2001 until 2014 when he left Kilototoni and there had never been a dispute over the suit land although he heard about Land case No. 1 of 2003. When cross examined, PW3 stated that, application for land allocation was made by Scholastica Foundation in writing and copy of the application remained in the village council offices of Kilototoni village which handed over the 30 acres to PW1.

PW4 Emmanuel Hasan Mkubwa testified that, he is a retired Village Executive Officer of Kilema Kusini. That, on 15th July, 2005, he called a meeting of ODC for Kusini Ward with the only agenda of confirming land allocation (30 acres) to PW1 for construction of a secondary school. That he had to convene a meeting since there were about ten complainants from same villagers who claimed the suit land belonged to them. However, after going through the records it was discovered that the suit land legally belonged to PW1 after being allocated the same for the construction of Scholastica School whose owner is Mr. Edward Shayo. However, the village leaders advised PW1 to settle the matter and when he left Kilototoni village in 2008, PW1



had constructed houses for them and there were no more complaints.

In his defence DW1 Fredrick Semali Kisamo, testified that the plaintiff trespassed into the suit land which he inherited from his father, the late Semali Kisamo in 1967. That, he used the suit land which is approximately 25 or 26 acres for cultivation and he had two houses situated therein. Further that, he had been the custodian of the suit land since the demise of his late father whereas appropriately 10 or 15 acres of the suit land was used for agriculture and the rest was for livestock keeping. DW1 asserted further that Between 1962 to 2014 the Moshi District Council informed him that the suit land was meant for village development projects but nobody approached him to inform him that the suit land was allocated to PW1. DW1 further stated that, there was a Land Case No. 5 of 2002 which he was a party and involved Kilototoni village, Moshi District Council and the villagers who were disputing surveying procedure of suit land. He tendered the receipt proving his claims i.e. Stakabadhi ya Fedha No. 212997 in respect of payment of advocate fees in Land Case No. 5/2002. The same was admitted as Exhibit D2.

DW1 also disputed the fact that he occupied only one acre since when he inherited the suit land from his late father he was never told that the suit land belonged to the plaintiff. Thus, the plaintiff had trespassed into the suit land, demolished his houses and cut

down trees. He prayed for this court to order vacant possession of the suit land by the plaintiff and be compensated for the loss he had incurred since when the whole ordeal started. On cross examination, DW1 stated that he did not know when the plaintiff was allocated the suit land, neither does he recall when he last developed the suit land and on his part he did not abandon the suit land. He also stated that, when he inherited the suit land, it was not surveyed and nobody including the plaintiff claimed it prior to institution of Land Case No. 1 of 2003.

DW2 Vicent Camil Mmbando testified that, he happened to know DW1, Mr. Fredrick Kisamo since his childhood as they were neighbors at Njia Panda Kitongojini. That, his farm is situated on the eastern side of the suit land which he knew since he was a little boy as he used to graze cattle therein. He also stated that, he had been engaging in vegetable farming for the past 10 years and he was informed that the suit land was sold to PW1 but he never witnessed the said sale. Further that, he knew the suit land was leased by PW1 for farming as he happened to know one person named Saimon who had leased 2 acres this year. He prayed for this court to declare that the suit land belongs to the defendant, Mr. Fredrick Kisamo.

DW3 Moses Simoni Msangi testified that he had been residing at Kilototoni village for the past 63 years thus familiar with the land in dispute. He stated that, previously Kilototoni used to be part



of Kilema Pofu (Kilema Kusini) that in 1984 the village was subdivided to form Kilototoni and Kilema Pofu. That, Fredrick Kisamo's farm is situated at Njia Panda Mashariki in Otomoro Ward. Further that, he used to be a tractor driver with the department of agriculture Kilimanjaro Region from 1978 to 1997 and in 1999 he vied for and successfully elected to the position of Ward Chairman for Otomoro for two terms (2000 – 2004) and (2005 – 2009). DW3 further testified that, Kilema Pofu village was subdivided in 1984 which he participated as a member of the committee responsible for such division. Kilototoni was left with Njia Panda Primary School, Mount Otomoro, part of Mount Kisumbu and Mabuyo canal, while Kilema Pofu remained with a Godown, village office and another canal named Ndepondeko, thus there was no village land left.

DW3 also testified that, he knew DW1's farm since he used to plough his farm occasionally when DW1 was employed by Coffee Curing Company. That he had heard of the existing land dispute concerning the plaintiff and the defendant on the suit land acquired by PW1 Mr. Shayo but he was not involved as a village leader. Further that, he was not involved in the exercise of surveying the suit land though he was a member of the village council. He also explained the procedure to be followed when a person wants to be allocated land to the effect that for the village council has to convene a meeting after the applicant has

submitted an application. Then the chairman has to introduce the applicant first and villagers acceptance is required before granting of the application.

It was DW3's testimony that for the whole duration he had served as chairman of Otomoro Ward, he did not recall to have convened a village Council Meeting in respect of the suit land. Furthermore, in 2016, he was informed by one Sophia that Mr. Shayo had trespassed into Mr. Fredrick Kisamo's Land and he advised her to report the matter to the land registry which had discovered that the suit land was actually owned by Scholastica Foundation of Himo Moshi. Land Registry (Form LR65) (Application for official search by Sophia Fredrick Kisamo in Respect of Tittle No. 18784, Kilototoni Village Moshi District) was admitted as Exhibit D3. Likewise official search was conducted to that effect to the Ministry of Community Development which revealed the same results. A letter from the Ministry of Heath Community Development, Gender, Eldely and Children Ref. No. EF. 168/196/03K/336 dated January 3, 2018 titled 'Request for Official Search' was admitted as Exhibit. D4.

He finally prayed for this court to declare the defendant as the rightful owner of the suit land. When cross examined DW3 stated that Mr. Fredrick Kisamo was among the plaintiffs in Land Case No.1 of 2003 and the Judgment was in favour of the plaintiffs to the effect that they should be fairly compensated.

After the testimonies from both parties, parties' counsels filed the following final submissions. Mr. Njau counsel for plaintiff's submitted in respect of the first issue the fact that, PW1 managed to establish ownership of the suit land by testifying that he is a long time business man dealing with hotels, hardware shops and private schools. That, he started in 1997 by operating a nursery school by the name of Scolastica Foundation but due to growing in number of the students in his school, he successfully applied and was granted the suit land by Kilototoni Village Council. Further that he registered the suit land in the name of Scolastica Foundation and the same was exhibited by Exhibit P2. He challenged DW1's testimony that he inherited the suit land from his father back in 1967 since there was no proof to substantiate such claims and he was not even sure of the actual size of the suit land. Therefore, since the plaintiff was in undisturbed occupation of the suit land since 2001, the defendant has unlawfully trespassed therein since 2015.

On the 2nd issue as to whether the suit land was an issue in Land case No. 1 of 2003, Mr. Njau submitted that, Exhibit P4 which shows the list of names party to the case, the defendant's name shows that he claims one acre from Kolototoni village. This implies that, defendant's claim is on one acre and not the whole 30 acres as he alleged. More so, the suit land was not in issue in the said case since the final order by the court was for the

villagers to be given monetary compensation rather than going back to their respective lands.

On the third issue, Mr. Shayo submitted in relation to the first issue that, the defendant has no claim over the suit land and prayed for this court to declare him a trespasser. Lastly on reliefs entitled to the parties, learned counsel submitted that the prayers prayed in the plaint be granted as sought.

Disputing the plaintiff's submission, Mr. Ngiloi for the defendant submitted that, DW1 is owner of the suit land as he inherited the same from his father the late Semali Kisamo who died in 1960's. In respect of the 1st issue he submitted that the plaintiff was duty bound to prove that she has a good title to the disputed land, in order to discharge this legal duty. He challenged the legal status of the plaintiff since PW1 testified that he is the Managing Director of the plaintiff which was incorporated on 15th March, 2005. Learned counsel argued that, according to Exhibit P1 the plaintiff owns Scolastica Nursery School called Scolastica Foundation, Scolastica Primary school and Scolastica Secondary school. However, PW1 did not adduce any certificate of registration showing the said schools were owned by plaintiff making his legal capacity to sue questionable and she has no right to lay claims against the suit and. He finally argued that, the plaintiff is therefore not a lawful owner over the suit land. To support his argument he cited the case of **Yusuph Juma Sadiki**

Case No. 26 of 2008 where it was held that;

"a person without good title to the property cannot pass a title to the transferee than his own"

Regarding the second issue as to whether the defendant has trespassed to the suit land, Mr. Ngiloi's submitted that, since the first issue is answered in negative, the defendant cannot be declared as a trespasser since he had proved on balance of probability the fact that he is the lawful owner of the suit land since 1960's. On the third issued as to reliefs entitled to the parties, Mr. Ngiloi prayed that the suit be dismissed with cost and the defendant be declared the lawful owner of the suitland.

Having elaborated testimonies from the parties, summary facts and the final submission by both counsel I now turn to consider the framed issues beginning with the first issue which I consider it to be the thrust of the suit.

1. Whether the Plaintiff is the lawful owner of the disputed land.

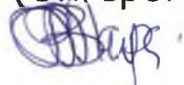
The plaintiff herein, Scholastica Investment Company Limited was incorporated on 15th March, 2005 and in proving ownership of the suit land, he summoned PW1, PW2, PW3 and PW4 together with exhibits P1, P2, P3, P4 and P5. Exhibit P2 which I consider it critical evidence, tendered by PW1 and corroborated



by PW2 which established the fact that in 2004 the plaintiff was issued with a Certificate of Occupancy with Title No. 18784, Farm No. 1226 Kilototoni Village Moshi in the name of Scolastica Foundation. According to PW1 and PW2, they acquired the suit land after complying with the application process through the village Government which undisputedly allocated them the suit land in 2004 and they have since enjoying peacefully and undisturbed physical possession. PW3, a Village Executive Officer by then also acknowledge the said allocation.

On the other hand the defendant disputed the plaintiff's testimony and claimed that he inherited the suit land from his father from 1967. To support his contention he summoned DW1, DW2 and DW3 together with Exhibit D1, D2, D3 and D4. According to him in the **Land Case No. 1 of 2003's** judgment which was admitted as Exhibit P4, DW1 was a party to the suit and the suit land was also on issue.

Having regard to the facts and circumstances of the case, it is plain clear the fact that, the plaintiff is a legal person capable of suing, being sued even owning a property. The Court of Appeal in **Amina Maulid Ambali & 2 Others V. Ramadhani Juma Civil Appeal No 35 of 2019 CAT** at Mwanza (Unreported) had this to say;

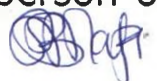


"In our considered view, when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be a lawful owner unless it is proved that the certificate was lawful obtained;

The evidence on record particularly Exhibit P2, has undoubtedly established the fact that Scolastica Foundation which is yet another juristic/legal person, vide a Certificate of Title No. 18784 is considered as the lawful owner of the suit land . However, no material evidence had been adduced to the effect that the suit land acquired by the said Scolastica Foundation did pass on to the plaintiff. Thus it is established the fact that, the plaintiff is not the owner of the suitland. It has further caught to my attention the fact that, the plaintiff was not even in existence when the suit land was allocated in 2004 as the plaintiff was incorporated in 2005. **Section 40 of the Land Registration Act**, Cap 334, R.E. 2019 provides that;

"A certificate of title shall be admissible as evidence of the several matter therein contained."

The above provision may simply mean that, the contents stating the location, size, time of occupancy and name(s) of person(s) appearing in the title deed is a proof of ownership to the person registered to that land. In the circumstance, what is contained in exhibit P2 is evident that the owner is a different person other



than the plaintiff hence the plaintiff lacks the prerequisite *locus standi* to either entertain this suit or claim ownership over the suit land. *Locus standi* is pertinent in every proceeding in order to establish whether or not a person, be it natural or legal entity, have a capacity to sue and in order to have such capacity that person must be able to demonstrate that his interests or rights has been breached or interfered or likely to be breached or interfered. This is illustrated in the cases of **Gervas Masome Kulwa V The Returning Officer and Others** (1996) TLR 320 and **Lujuna Shubi Ballonzi Senior V Registered Trustees of Chama cha Mapinduzi** (1996) TLR 203.

In the light of the above finding to the effect that the plaintiff is not the lawful owner for lack of *locus standi* my view is, the first issue which is the thrust of this suit suffices to dispose of the 2nd 3rd and 4th issues thus, discussing rest of the issues will amount to a mere academic exercise since it has been established the fact that the applicant is not the lawful owner of the suit land.

Accordingly, the suit is hereby dismissed with costs. It is so ordered.

Dated and delivered at Moshi this 18th December, 2020.




S.B. MKAPA
JUDGE
18/12/2020