

**IN THE HIGH COURT OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**LAND CASE No. 36 OF 2017**

**WANKURU MARWA MASWI ..... PLAINTIFF**

**VERSUS**

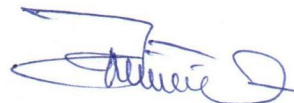
**END TIME CHURCH OF GOD MINISTRY .....1<sup>ST</sup> DEFENDANT**  
**ONESMO BALIKULE.....2<sup>ND</sup> DEFENDANT**  
**DR. MWIJARUBI.....3<sup>RD</sup> DEFENDANT**  
**ADAM IKWADU.....4<sup>TH</sup> DEFENDANT**  
**FILBERT F. SELEMAN.....5<sup>TH</sup> DEFENDANT**  
**LUCAS MBOGOYO.....6<sup>TH</sup> DEFENDANT**  
**SIMON L. MINYIRI.....7<sup>TH</sup> DEFENDANT**  
**ESTHER DEUS .....8<sup>TH</sup> DEFENDANT**  
**ANDREW G. LIMBE.....9<sup>TH</sup> DEFENDANT**

**JUDGMENT**

05<sup>th</sup> October & 9<sup>th</sup> December, 2020

**TIGANGA, J**

The plaintiff in this case, an individual going by the name of Wankuru Marwa Maswi, jointly and severally sues nine defendants whose names are listed herein above, for trespassing, invading and developing plots No. 299 -303 and 304 – 307 located at Bwiru Block B, in Ilemela District, Mwanza



Region, without any justifiable reasons. He in this suit seeks a declaratory order that he is a lawful owner of the suit plots as the same were allocated to him by the Commissioner for Lands in 2006 by granting him the right of occupancy over the said plots and had the plots registered in his names by the Registrar of Titles.

According to the plaint, the plots were for business purposes but before the plaintiff secured building permit, the defendant trespassed and developed the plots. Having noticed the trespass and invasion, on 07/11/2016, the plaintiff reported the matter to the Municipal Director of Ilemela Municipal Council, who on 21/11/2016 wrote a letter to the Ward Executive Officer of Pasiansi directing him to inform the persons around the area to attend the meeting to be held on 23/11/2016 which aimed at identifying the true owner of the disputed plots and resolving the dispute.

After identifying the true owner, the Ilemela Municipal Council Executive Director, through his officers, gave a seven days notice to those who were identified as intruders demolish their building and vacate the premises leaving exclusive use of the plots same to the plaintiff. However, the intruders refused to do so.





The plaintiff also averred that, the defendant refused to cooperate even where he tried his best to settle the matter in a friendly manner. It was when he decided to institute this case. He estimated the value of the suit plots to be Tshs. 500 millions.

At the end he prayed the judgment and decree on the following orders;

- i) Declaratory order that the plaintiff is the lawful owner of plot No. 299-303 and 304-307 Block B, Bwiru – ilemela District in Mwanza region with title No. 1890 and L.O No. 252227,
- ii) An order for the exclusive use of the land or plots by the plaintiff,
- iii) An order evicting the defendants from the suit land/plot and perpetual injunction restraining the defendants from further trespassing and erecting permanent structures on the suit land,
- iv) The general damages,
- v) Costs of the suit and any other relief as the court may deem fit and just to grant.

Physical service to the eight defendants was not possible, after some had refused to be served, while others were not found at all as exhibited by the street chairman of the street where the plots are located, and where



the parties are found, on the proof of service filed in court. However, on 01/08/2017, the second defendant filed the written statement of defence together with the notice of preliminary objection, against the suit on the ground that the plaintiff has no cause of action against him. Despite that notice, the second defendant did thereafter not appear in court to argue his preliminary objection, consequence of which, the same was not dealt with because the 2<sup>nd</sup> defendant did not appear to argue it.

Following that state of affairs, this court ordered the substituted service by way of publication, to other defendants who were not found and physically served, the summons was published in the Mwananchi Daily News Paper of 01/06/2020 but yet still none of the defendant appeared. While the rest of the defendants except the 2<sup>nd</sup> did not file their written statement of defence, and all failed to appear and defend their case, the court ordered the case to be heard exparte against all defendants.

Throughout the trial, the plaintiff was represented by Mr. Frank Kabula, learned Advocate. Three issues were framed as the issues upon which this suit rests, as follows;

- (i) Whether the plaintiff was the lawful owner of the suit premises,





- (ii) Whether the defendants have trespassed into the suit premises,
- (iii) To what reliefs are the parties entitled.

The case is mainly built on the testimony of the plaintiff who testified as PW1, but was supported by the evidence given by Anatory Wilson Bwekumburwa who testified as PW2. The sworn testimony of PW1 is the replica of the plaint, he told the court the way he applied to be allocated the plots, the fact that he was given a title deed which however got lost, and the fact that, he wrote a letter to the Registrar of Titles that the same was lost, the fact which he proved by tendering that letter as exhibit P1.

According to him, he thereafter conducted the official search to prove as to whether he is still the owner of the plots in question, and found he was still the owner as the plots were still registered in his names. To prove that, he tendered the official search of plot No. 299-303 as exhibit P2, while that of 304-307 as exhibit P3.

It is his evidence further that, having received the letter exhibit P1, the Registrar of Titles acknowledging to have received, he tendered letter in respect of Plot 299-303 as exhibit P4 while that in respect to plot 304-307 as exhibit P5.



He thereafter went to report the loss of the title deed to the police where he was given a loss report, the loss report in respect of plot No. 299-303 was tendered as exhibit P6 while that in respect of Plot No. 304-307 as exhibit P7.

It is his testimony also that, he was thereafter instructed to go to the primary court to swear an affidavit that, the plots are his which he did, he tendered that affidavit as exhibit P8.

He said in his testimony that he had the photocopies of the right of the occupancy, which he made from the original, he tendered that in respect of plot No. 299 – 303 as exhibit P9 while that in respect to plot No. 304 – 307 as exhibit P10

He said after he had discovered that the plots were invaded, he wrote a letter to the Municipal Director informing him of the fact that the plots were invaded, he tendered that letter as exhibit P11. Following that letter, the director issued a notice to the trespassers to vacate from the suit land; he tendered the notice and was admitted and marked as exhibit P12.





He said the trespassers are so bitter, they do not allow any person to visit the plots; he said he went there for the last time in the year 2017 and when he was threatened, he has never gone there again.

He asked to be declared as the rightful owner of the plots, and he be paid compensation for the loss suffered, costs of the suit and any other relief as the court may think fit and just to grant.

PW2 was a cartographer in the office of the Registrar of titles; his duty is to examine the draft of the Right of Occupancy before they are submitted to the Registrar of Titles for approval. He remembered on 03/04/2007 at 13.00 to have received a title deed No. 17775 which was given to the plaintiff and since then up to when he was testifying, the plaintiff was the one in the register, registered to be the owner of plots. No. 304 – 307 Block B Land Office No. 252228, which is 1.47 hectares.

Also that on 26/06/2007 his office received Title deed No. 18790 from the Commissioner for Lands, that was in respect of Plot No. 299 – 303 Block B Bwiru Mwanza City Land Office No. 252227 which was 1.96 hectares. It was, in the registered plan number 39351 and that up to the time he testified, the register reads Wankuru Marwa Maswi of Po. Box. 2197 Mwanza, the plaintiff in this case.



The plaintiff opted not to file final closing submissions; he closed his case, and asked for judgment and decree as prayed and requested in the plaint.

As earlier on pointed out, that the 2<sup>nd</sup> defendant filed his WSD, in which he said he is a stranger to the disputed property Plot No.299 – 303, 304 – 307 Block "B" located at Bwiru Ilemela, Mwanza but he is the owner of the property located at Jiwe Kuu – Kitangiri on Plot 6 Block A. He therefore disputed to trespass the landed property owned by the plaintiff on Plot No.299 – 303, 304 – 307 Block "B" located at Bwiru in Ilemela Municipal, Mwanza City. The second defendant disputed to have committed any wrong against the plaintiff or his property mentioned in the plaint.

That being the comprehensive summary of pleading and the evidence by the plaintiff and the second defendant, I will now straight away start to discuss the first issue as framed. This issue is whether the plaintiff was the lawful owner of the suit premises.

In this country, land ownership is regulated by Land Act, [Cap 113 R.E 2019] or Village Land Act [Cap 114 R.E 2019]. While Land Act regulates the ownership under the granted right of occupancy, the Village Land Act regulates the ownership under the deemed right of occupancy. In





this case the plaintiff claims to be the owner of the granted right of occupancy of the disputed plots, that is Plots No. 299 -303 and 304 – 307 Block B, located at Bwiru, Ilemela District in Mwanza city.

Now for a person to be allocated land, he must first apply to the Commissioner for Lands under section 25 of the Land Act, who shall determine the application under section 26 of the same Act, and if satisfied, grant the right of occupancy under section 29 of the same Act.

After the person has been granted such right of occupancy, he then becomes the owner of the right of occupancy for the period specified in the said right of occupancy as prescribed under section 32 of same law which does not exceed 99 years.

After the Commissioner for Lands has issued the right of occupancy, the same must be registered by the Registrar of Tittles, under the Land Registration Act, [Cap 334 R.E.2019] in the land registry and the information in the land registry portrays the correct position of the ownership of land at the material time. Section 2(1) of the Land Registration Act (supra); defines the 'Owner' to means *"in relation to any estate or interest, the person for the time being in whose name that estate or interest is registered."*



In this case the land in dispute is Plot Nos. 299 - 303 and 304 – 307, Block "B" Bwiru, in Ilemela Municipal in Mwanza city and region. In this case, in effort to prove his ownership, the plaintiff produced exhibits P9 and P10 which are the copies of the title deeds of Plots No. 299 – 303 and 304 – 307 respectively. These were tendered as photocopies because the plaintiff proved before the court that the original Title Deeds were lost.

He also called a public officer from the office of the registrar of titles, who testified as PW2 and testified that the land in dispute was registered in the names of the plaintiff, and therefore the plaintiff was the registered owners of the said plots which means that the plaintiff is the lawful owner of the Land in Plot No. 299 – 303 and Plot 304 – 307 Block "B" Bwiru, in Ilemela Municipal in Mwanza city and region. By that evidence, the plaintiff has been proved to be the lawful owner of the plot in question; the first issue has thus been resolved in affirmative.

On the second issue, whether the defendants have trespassed into the suit premises, having resolved that the plaintiff is the lawful owner of the plots in dispute, then it goes without saying that all other persons in occupation of land, are not legally occupying it. They are nobody else but





trespassers to that land. To that effect, the second issue is also resolved in affirmative.

Regarding the third issue which is to what reliefs are the parties entitled, having resolved the 1<sup>st</sup> and 2<sup>nd</sup> issues in affirmative, it goes without saying that the plaintiff is entitled to some orders and in my opinion the following orders are appropriate and will serve the purpose of justice.

- i) The plaintiff is hereby declared the lawful owner of plot No. 299-303 and 304-307 Block B, Bwiru – Ilemela Municipal in Mwanza city and region with title No. 1890 and L.O No. 252227.
- ii) That the plaintiff has exclusive right to use the land on plots No. 299-303 and 304-307 Block B, Bwiru – Ilemela Municipal in Mwanza city and region with title No. 1890 and L.O No. 252227.
- iii) Having resolved that the defendants and all other persons in occupation and use of the land are trespassers, they should be forthwith evicted from the suit land, which is Plots No. 299-303



and 304-307 Block B, Bwiru – Ilemela Municipal in Mwanza city and region with title No. 1890 and L.O No. 252227.

- iv) They are also perpetually enjoined and restrained from further remaining in occupation or use or trespassing and erecting permanent structures on the suit land. Where it will be proved that there is permanent structure on the disputed premises, then the defendants be allowed to remove them, failure of which demolition will be carried out.
- v) The defendants are condemned to jointly and severally pay general damages to the tune of 50,000,000/= say fifty millions. They also pay the cost of the suit.

Having so found and held, I find the claim to have been proved to the extent explained above.

It is so ordered.

**DATED** at **MWANZA** on this 10<sup>th</sup> day of December, 2020.



J. C. Tiganga

Judge



Judgment delivered in open chambers, in the presence of Mr. Frank Kabula, learned counsel for the plaintiff. Right of appeal explained and fully guaranteed.



  
**J. C. Tiganga**

**Judge**

**10/12/2020**

ORIGINAL