

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

LAND CASE 01 OF 2018

AMBONISYE MBILIKE MWANDEMBO

T/a UYOLE VOCATIONAL TRAINING CENTRE.....PLAINTIFF

VERSUS

AZULU MALONGO & 12 OTHERS.....DEFENDANTS

JUDGEMENT

Date of Hearing : 04/12/2020
Date of Judgement: 10/02/2021

MONGELLA, J.

The plaintiff herein is suing the defendants one Azulu Malongo, Leonard Riwa, Mariam Hassan, Torio Mafie, Severina Mwaifani, Tumsifu Mahenge, Yuda Mwakis, Edina Peter, Bupe Mwaijulu, Aron Pinga Mahinya, Samwel Nyaluke, Abdul Shabani Msimbe, and Karoli Augustine Mtani for trespass and vacant possession of the land in dispute harbouring Plot No. 186, Block B, Uyole area within Mbeya region.

In the plaint, the plaintiff claims that he is the legal owner of the suit premise having acquired it in 1995. The defendants without colour of right and with intention to disrupt the applicant's business, to wit, learning institution, have unlawfully entered into part of the suit land and created

[Signature]

permanent settlements and conduct farming at his detriment. He further claims that the defendants have taken building materials collected by the plaintiff and used the same to build their own houses. They have as well tempered with the foundation of the prospective classrooms, building materials and beacons. Following these claims, he prays for the following reliefs in this Court:

1. *A declaration that the plaintiff is the lawful owner of the disputed property.*
2. *An order for the defendants to vacate the suit property immediately.*
3. *Permanent injunction and demolition order against the defendants.*
4. *Specific damages to the tune of T.shs. 1,000,000/- for building materials; and T.shs. 500,000/- for the foundation tempered.*
5. *General damages for interfering with the plaintiff's business and land thereby preventing commercial development of the suit land by the plaintiff.*
6. *Costs of the suit.*

Both parties were represented. While the plaintiff engaged legal services of Mr. Ladislaus Rwekaza and Ms. Juliana Marunda learned advocates from MMR Law Advocates; the defendants engaged legal services of Mr. Mika Mbise, learned advocate.



To prove his case, the plaintiff mounted four witnesses and three exhibits. PW1 was Ambonisye Mbilike Mwandembo. He gave a sworn testimony to the effect that he is a Pastor and Director of Edi Secondary School. He said that the land in dispute is his property. He obtained the property after applying to be allocated the same to the Mbeya Municipal Council in 1994. The land in dispute was allocated to him in 1995.

He said that by the time the land was allocated to him it was bear having no activity. It was only used by road constructors as a dumping place. The Municipal Council gave him an offer with a condition that the land be used for education activities, the purpose he also applied the land for. He wished to tender the said offer, but could not manage as it was objected by Mr. Mbise for being a photocopy.

PW1 continued to state that after he got the offer he developed the plot and shifted the college named "Uyole Vocational College" to the developed plot. The name of the College was later changed to "Uyole Vocational Training Centre" as advised by VETA upon registration. He said that the name of the institution was changed in 1996, but the registration process was completed in 2002 by issuance of a certificate of registration. He said that after obtaining the certificate of registration for the institution they started following up on the title deed of the plot which was issued in 2010. However, before the title deed, they were issued a letter of offer with a changed name, that is, Ambonisye Mbilike Mwandembo t/a Uyole Vocational Training Centre. The title deed was also issued in the name "Ambonisye Mbilike Mwandembo t/a Uyole Vocational Training Centre." The letter of offer and certificate of registration of the vocational training

centre were admitted in evidence and marked "exhibit P1 and P2" respectively. The college was built in 1996 and in 2008 it was changed to secondary school which is there to date.

He continued to testify that between 2008 and 2009 the defendants started trespassing on the disputed land. He said that the defendants did not invade the land in dispute at the same time. They came into the land in groups whereby first it was Riwa, the 2nd defendant and Hussein, the 3rd defendant. Later other defendants came.

They reported the matter to the Town planning office but failed to get solution as the defendants refused to vacate after several meetings were conducted. He said that the Town planning officer told them to vacate the suit premise as they did not have any documents in ownership, but they have refused to vacate. They reported the matter to police, but were told that the police do not deal with land disputes. The planning officer advised them to file a case in court. In 2011 they filed a land case in the District Land and Housing Tribunal, but it was dismissed for want of pecuniary jurisdiction.

He concluded that the defendants still occupy the land in dispute, but the plaintiff continues to pay land rent. The defendants are thus staying for free without paying land rent. He claimed that the 1st defendant, Azulu Malongo invaded the place and took building materials worth T.shs. 1,000,000/-.



On cross examination he stated that in 2010 the school and the invaders were in the disputed plot. The dispute arose in 2007. He obtained the first offer from the Municipal Council in 1995 on a plot with 27,190 square metres. The original copy of the said offer was returned and he was given a second one. When asked if the second offer mentions that it replaced the first offer, he replied that it does not state so. He also stated that the first offer did not bear his name like the second offer does. Describing the area, he said that there are other surveyed areas surrounding the land in dispute.

PW2 was one Frida George Mwasulamba, a legal officer at the Registrar of Titles' office in Mbeya. She testified that as per the records in her office, the owner of Plot No. 186 Block B Uyole, is Ambonisye Mbilike Mwandembo trading in the name and style of Uyole Vocational Training Centre, of P. O. Box 1736 Mbeya. The title deed to the plot is of 99 years starting from 1st July 2010, but was registered on 05th January 2011. To that effect she tendered the certificate of occupancy with no. 17153-MBYLR which was admitted as "exhibit P3." PW2 continued to testify that she does not know who the owner of the land in dispute was before the plaintiff. She said that in accordance with the office file, there is no other transaction and it was not issued to the plaintiff in transfer.

On cross examination, PW2 reiterated her statement that the plaintiff was given the right of occupancy on 1st July 2010. She said that the certificate does not show what was on the plot before 1st July 2010, it only shows what is on the plot currently, which is a training centre. She added that the right of occupancy was charged on mortgage at Tanzania Postal

Bank on 22nd March 2012. The Bank has already sold the plot in dispute, but the conveyance transaction is yet completed as the land is still in the name of the plaintiff. The title deed is still in the hands of the Bank.

One Advent Zakaria Tweve also testified as PW3. He works at the Land Department in Mbeya City office. He gave a sworn testimony to the effect that the plot in dispute was surveyed in 1995 and was allocated to Uyole Vocational College vide Offer No. 14100. After that the institution was registered and the name was changed necessitating him to be given another offer in the newly registered names. He said that the first offer had to be surrendered and cancelled. The new offer bears the names "Uyole Vocational Training Centre." It was registered in 2002 and the new offer was issued on 01st July 2010. The title deed was also issued on 01st July 2010 in the names of "Ambonisye Mbilike Mwandembo trading in the name and style, Uyole Vocational Training Centre." He said that as per the office records the file was opened on 19th December 1995 with No. MBRL/14100. The second offer was issued in 2010 through the same file with No. MBRL/14100.

PW3 testified further that history shows that before being allocated, the area belonged to Mbeya City Council and that is why the plaintiff applied to Mbeya City Council. He said that where an area is acquired a person found in the area is supposed to be paid compensation and the records are reflected in the original file of the plot. If there are no records then it means there was no original owner. He stated further that their records do not indicate that there was any person claiming for compensation over the land in dispute. He added that their records show that before 1995

there was no any transfer in ownership, but there was change of names in the offer due to change of names of the college upon registration. He prayed to tender the offer issued in 1995. The same was admitted as "exhibit P4."

He said that the title deed was issued for purposes of establishing a training centre only. He concluded that as per the office records the rightful owner of the land in dispute is Ambonike Mbilike Mwandembo trading in the name and style, Uyole Vocational Training Centre.

On cross examination he said that the plot was surveyed in 1995, but he did not have evidence as to when exactly the land was surveyed. He said that the survey was done by the Regional Land Department. The offer was issued by the Ministry of Lands and signed by the Regional Land Development Officer. When asked about the letter from the plaintiff for application to be allocated the land, PW3 stated that he did not have the said letter with him. He reiterated what he said that the land was first allocated to Uyole Vocational College. He added that for an institution to be allocated land, it has to be registered first.

On re-examination, PW3 stated that when a person applied to be allocated land he applies to the authority in which the land is located. He said in 1995 applications were made to the Land Development Officers and all documents belonged to the Ministry of Lands. He said that what can lead to two offers being given is the change of ownership before the title deed is issued. He added that when the first offer is surrendered it has



to be cancelled, but he did not know why the first offer in the matter at hand was not cancelled after being surrendered.

The last prosecution witness was one Langa Mgengeli (PW4) an officer at the Office of the Assistant Land Commissioner in Mbeya. PW4 said that Plot 186 Block B Uyole as seen in the records was applied for in 1994 at Mbeya Municipal Council by Uyole Vocational College by one Ambonisye Mwandembo. In 1995 he was given the letter of offer in the name of Uyole Vocational College. After the offer, in the year 2010 the process of preparing title deed began and was done by the City Council. The title deed was registered in the name of Ambonisye Mwandembo trading as Uyole Vocational Training Centre. He said that he does not know who used to own the area before, however the records show that it is Mwandembo who applied to be given the area. There is no other applicant.

On cross examination PW4 stated that in 1995 Uyole Vocational Training College was not registered. He was therefore not a legal person. A new offer had to be issued when the college was registered.

After closure of the prosecution case, the defence also mounted four witnesses. DW1 was one Samwel Nyaluke a resident of Uyole – Njia Panda area. He testified to have been living at that area since 1971 whereby he located to that place from Makete District. He said that upon arrival at Uyole he went to his friend one Merald Mahenge. He then bought a piece of land from Merald's in law and built a house. He then went to the local chief of that area named Malongo and asked for a piece of land to farm.


The local chief gave him the piece of land to farm. The said farm borders Uyole Primary School, other villagers' farms and the farm of the said local chief. It was not measured, only polls to mark the boundaries were put. Then the local chief gave him another piece of land and put poles to demarcate it. This farm also borders Uyole Primary School and a farm of one Mzee Bhaja. He then planted maize, sisal and trees in the said farms.

DW1 continued to testify that he used the said farms for a long time. Later he and his fellow farm owners in the area were summoned at the Ward Executive Officer (WEO) to a meeting. At the meeting they were told that Mwandembo needs land to build a school. They agreed as they saw that the plan was good for education purpose. They agreed into giving their farms but subject to being paid compensation as there were plants in the farms. An assessment of plants for purposes of compensation was conducted whereby it involved Ambonisye Mwandembo, the farm owners including DW1 and an officer from the WEO's office. However, despite this agreement as per the assessment conducted, the plaintiff never paid them any compensation. They waited for years but no compensation was effected.

DW1 proceeded to testify that they complained about the situation at the WEO's office at Uyole. The plaintiff was told to effect the compensation but he said he did not have money to pay compensation and thus he shall return their farms. They told him to write a letter committing to return the farms. He agreed to write the letter. The WEO then wrote a letter stating that their farms have been returned to them. The said letter was admitted as "exhibit D1." DW1 stated further that he attended the

meeting as one of the complainants. They were told to proceed with their pieces of land by farming, building or even selling. He personally sold his land to seven people including one Torio (the 4th defendant) and Leonard Riwa (the 2nd defendant). Some of his neighbours also sold their lands and others built houses. He mentioned, for instance, the 6th defendant, one Tumsifu Mahenge to have bought the land from one Penge, now deceased. He added that the one Aron, the 10th defendant got the land from his father who was his neighbour. The people to whom he sold the land have already built houses. He refuted the plaintiff's claim that he has invaded his land. He insisted that the land was his own property until he sold it to other people. He prayed for those who bought the lands and developed them not to be disturbed.

On cross examination, DW1 stated that he was allocated the land customarily by a local chief "Mwene." He said he was not given any document to signify ownership. He did not know if the land belonged to the government by 1971. He said the farms were returned to them on 1st December 2007. When asked if the WEO can return a land with a right of occupancy he replied that he was not aware if that can happen. He added that the letter, exhibit D1 was from the WEO to the Planning Office in Mbeya. He said he did not have any other letter from the land office allocating them the land in dispute. He added that when they were given the letter they were orally informed that they can proceed using the land. He said that the plaintiff signed the letter as E. Mwandembo. The letter does not contain the names of the plaintiff as Ambonisye Mbilike Mwandembo, but E. Mwandembo. He as well signed the letter, exhibit D1 on behalf of other farm owners.



On re-examination he said that "Mwene" the local chief gave him the land for free and there was no any document of ownership issued. He said that he was never involved in any process of issuing the right of occupancy to the plaintiff. He added that he was in continuous use of the land from 1971 to the date he sold it. The land owners continued using the land for farming while waiting for compensation. He insisted that the letter, exhibit D1 was signed by Ambonisye Mwandembo, the WEO and himself on behalf of other farm owners. He witnessed the plaintiff signing the letter and copies were issued to them.

The defense side also called one Gibson Jack Mwakalibule as DW2. He gave a sworn testimony that he has lived at Uyole, Ibara Street since 1993. He said that he served as the chairman of the local government from 2004 to 2014 before being elected a councilor in 2015. He testified that he witnessed the land dispute between the parties in 2005 whereby he was also a member of the Ward Development Committee. He said that Mwandembo was going on with his activities and there is an area where the defendants have put their structures. Mwandembo's area was small and he needed a bigger area.

DW2 stated further that in an endeavour to increase the area Mwandembo applied to the Municipal council to be allocated the plot, which includes the area built by the citizens. The DED told him to talk to the plot owners first to obtain the area. He thus gathered the land owners, and assessed the land for compensation purpose. However, it took a long time to effect the compensation. The land owners complained to the DED on the delay in compensation. The DED assigned the WEO, one Cyprian

Matola, to work on the complaints. Thereafter a meeting was conducted on 01st October 2007 whereby Mwandembo was one of the attendees. In this meeting it was ruled that, since Mwandembo has failed to compensate, the lands should revert to the owners. After the land was given back to the owners they became free to do anything with their lands. Others sold and others gave land to their children.

He added that as of today, the land in dispute bears residential plots as the defendants bought the plots and erected houses. He identified all the defendants with the properties they own in the disputed land. With regard to the 12th defendant, one Abdul Shaban, DW2 stated that he does not own any property in the area. He has been included as part of the defendants because he was found cleaning an area belonging to Uyole primary school of which the plaintiff also claims to be part of the disputed land. He concluded that the disputed land legally belongs to the defendants as they lawfully purchased the same.

On cross examination he stated that the plaintiff stopped the defendants from constructing claiming the land is his. When asked about the sale transactions involving the defendants, he said that he witnessed a number of them in his capacity as Mtaa Chairman. The sales include those of Severina Mwaifani, the 5th defendant; Tumsifu Mahenge, the 6th defendant; Yuda Mwakisui, the 7th defendant; Bupe Mwaijulu, the 9th defendant; and that of Karoli Mtani, the 13th defendant. He also said he was not aware of the plaintiff being given any offer or title deed on the disputed land.



DW3 was one Cyprian Matola, the WEO of Majengo Ward. He testified that before being shifted to Majengo Ward he worked as WEO at Itezi, Uyole, Nsalanga, and Maendeleo Wards. He said that from 2004 to 2007 he was the WEO of Uyole Ward. Regarding the dispute at hand, DW3 testified that on 01st October 2007 there was held a meeting between Mwandembo and residents bordering his school. Before that date the said residents went to his office with claims that they agreed with Mwandembo that he takes their land for building a college subject to paying them compensation. It appeared the compensation was never paid and the land owners wanted him to return their lands. Following the complaints he asked them to wait for one month. He called Mwandembo and gave him one month to effect the compensation and they agreed to have a meeting on 01st October 2007.

DW3 continued to state that up to 01st October 2007, on the date of the meeting, no compensation had been paid. In the meeting Mwandembo said that he had no money to compensate therefore the land owners should proceed using their land. So an agreement was reached to the effect that the land owners should proceed with their lands and it was reduced into writing. DW3 testified that he was the one who personally recorded the agreement. One Mzee Samwel Nyaluke, DW1 signed the agreement on behalf of other land owners. Mwandembo also signed. DW3 identified "exhibit D1" as the agreement reached between the land owners and Mwandembo. He claimed to know Mwandembo personally (pointing at him in the court) and said he was present at the meeting and signed as E. Mwandembo. He said the initial E was after the name of the school known as Edi Secondary School owned by Mwandembo.



On cross examination DW3 stated that the plaintiff is named Ambonisye Mwandembo. His school is named EDI Secondary School. He said that the agreement letter does not state Ambonisye Mwandembo or EDI Secondary School. He said that the letter does not show the boundaries of the disputed area or the name of the street, which is Ibara Street. He said the letter was addressed to the Town Planning Officer to notify him.

When asked about his powers to allocate land, he said that he does not have powers to allocate land within Mbeya Municipality or to nullify any offer. He said he did not know if Mwandembo was given any offer in 1995 because he did not mention it. He said that he did not know the amount of compensation that was to be paid and did not know if there was any process of assessment for purposes of compensation. He said that he found in 2007 that Mwandembo had an agreement with the residents but he did not know how long it took before the residents complained to him.

The last defence witness was Herman Charles Mbanga, DW4. He testified that he is currently the Mtaa Executive Officer (MEO) of Mwafute Street, Ilemi Ward. He was born at Ibara Street in 1972 and has always lived there. He said he knows Ambonisye Mbilike Mwandembo as his neighbour. Mwandembo owns a school in the area named EDI Secondary School. He testified further that Mwandembo went to the area and he called the residents, him included, and requested for an area to build a vocational college. He convinced the residents that the college shall be beneficial to them as he shall take some of their children to study for free in accordance with the agreement with the residents. The residents agreed



on a condition that he should compensate for their plants being: trees, coffee, fruits and sisal.

He continued to testify that to date no compensation has been paid. No general assessment was done as he would deal with the land owners individually and they would agree depending on the properties found in a particular farm. As no compensation was paid, the residents later reclaimed their lands. They complained to the Executive Director's office. The director took the matter to the ward level to be resolved. In 2007 he was called as a neighbour to the WEO's office at Uyole Ward. There was an issue regarding the conflict between the residents and Mwandembo. Present at the meeting was Mwandembo, Cyprian Matola (the WEO), Mzee Nyaluke and others. An agreement was entered between Mwandembo and the residents whereby they agreed that he should not develop the land until compensation is paid.

He continued to testify that, Mwandembo pleaded with the residents and told them that he has failed to compensate and allowed them to continue utilizing their land. Some of the residents then developed their lands by building houses and others sold to other people. Later it was revealed that the land in dispute was surveyed and Mwandembo was given an offer. DW4 stated that he saw the offer in 2010. He said that as of today the area has residential houses harbouring more than fifty people. He concluded that Mwandembo illegally obtained the title over the land in dispute as the residents were not involved in the process.



On cross examination he said that it is the City Director who is responsible for allocating the land. He said that it is possible that procedures might not be followed by the director in issuing the title deeds. He said he is not part of the conflict and has never witnessed any sale agreement. In the 2007 agreement the only present defendant was Mzee Nyaluke. DW4 was only invited as an observer in that meeting. He added that the agreement was between the residents represented by Mzee Nyaluke and Mwandembo. He added that E. Mwandembo is a popular name of Mr. Mwandembo because of his school named EDI secondary school. He insisted that he knows Mwandembo and pointed at him in court.

He further stated that Mwandembo came to the area in 1994. The meeting (when Mwandembo first requested for land from the residents) was held at Ibara area at Chief Silinjanje. The said chief chaired the meeting and the secretary was one Simwanjia. The chief was the local supervisor, he did not allocate land. He added that the area had people already. He refuted the allegation that the area was empty and un-owned. He said the area had people and plants.

After summarizing and considering the testimonies of the witnesses and documentary evidence as presented by both sides I shall proceed to deliberate on this matter. During the final pre-trial conference four issues were framed as follows:

1. *Who is the lawful owner of the disputed land?*



2. *Whether the defendants had their rights on the disputed land at the time the offer of the right of occupancy and later the certificate of right of occupancy were issued as per annexure 1 and 2 of the plaint.*
3. *Whether the defendants or any of them used the plaintiff's building materials in construction of their houses in the disputed area.*
4. *To what reliefs are the parties entitled to.*

Beginning with the first issue, the pleadings and evidence presented indicate that both sides, with the exception of the 12th defendant, claim to be the rightful owners. DW2 testified that the 12th defendant, Abdul Shaban Msimbe does not own any property. He was included in the suit because the plaintiff found him cleaning an area belonging to Uyole primary school of which he also claims to be part of his land. This fact was not disputed or cross examined by the plaintiff and thus taken to be true by this court. See: **Damian Ruhele v. Republic**, Criminal Appeal No. 501 of 2007 (CAT, unreported); **Nyerere Nyague v. Republic**, Criminal Appeal No. 67 of 2010 (CAT, unreported); **George Maili Kemboge v. Republic**, Criminal Appeal No. 327 of 2013 (CAT, unreported) and **Bakari Abdallah Masudi v. The Republic**, Criminal Appeal No. 126 of 2017 (CAT, unreported). In all these cases the Court of Appeal ruled that failure to cross examine on an issue entails admission on its truth. To this juncture I can therefore rule that the plaintiff has no cause of action against the 12th defendant.



With the exception of the 10th and 11th defendants, the rest of the defendants purchased plots in the land in dispute from different owners. For instance, as testified by DW1 who is the 11th defendant, the 2nd and 4th defendants purchased from the 11th defendant, Samwel Nyaluke. He also owns a plot in the disputed land. The 10th defendant claims to have gotten the plot in the land in dispute from his father.

On the other hand, the plaintiff claims to have been allocated the land in dispute by the Mbeya Municipal Council way back in 1995. He claims to have been given an offer in 1995 in the name of his college "Uyole Vocational College." As adduced in evidence by the plaintiff (PW1) and his witnesses PW3 and PW4, it is this offer (exhibit P4, tendered by PW3) that gave rise to the second offer and certificate of right of occupancy issued in 2010 whereby the name was changed from "Uyole Vocational College" to Ambonisye Mbilike Mwandembo trading in the name and style of Uyole Vocational Training Centre. Discerning from the testimony of PW1, the plaintiff did not previously own any land customarily or whatever until 1995 when he was allocated the same by the Mbeya Municipal Council vide exhibit P4. At this point I find it pertinent to determine on the validity of this offer.

As presented in the testimony of PW1, PW3 and PW4, Uyole Vocational College was not registered by the time it was allocated the land in dispute in 1995 vide exhibit P4. The college harboured in the suit premises was registered in 2002 in a different name being "Ambonisye Mbilike Mwandembo t/a in the name and style of Uyole Vocational Training Centre." In my settled view, not being registered "Uyole Vocational

College" was not a legal person capable under the law to enter into any legal relations including purchase of property. It was in fact a non-existent entity. Under the circumstances I wonder how Mbeya Municipal Council could allocate land to a non-existent entity. The allocation of land falls under contract of sale of land. Thus the requirements of a valid contract, to wit capacity to contract being one of them, have to be fulfilled. Not being registered, Uyole Vocational College lacked the capacity to contract. The lack of capacity to contract vitiates the contractual transaction. Exhibit P4, that is, the offer issued to Uyole Vocational College in 1995 was null and void. The same being null and void, I would be justified to conclude that the plaintiff owned no land until 2010 when the offer and certificate of right of occupancy (exhibit P1 and P2, respectively) were issued to Ambonisye Mbilike Mwandembo trading in the name and style of Uyole Vocational Training Centre. He therefore cannot track his ownership from 1995 as the offer was a nullity for the reasons I have stated earlier.

Having reached this point, I now proceed to determine the issue basing on the offer and certificate of right of occupancy issued to the plaintiff in 2010, exhibit P1 and P2, respectively. It is the defendants' version that the land in dispute was owned customarily. Most of them purchased from those who previously owned the land, including the 11th defendant. The 11th defendant claims to own the land since 1971 whereby he was given the land by the local chief "Mwene." The 10th defendant claims to have been given his portion of the land by his father who used to own it.



It was the testimony of all the defendants' witnesses that Ambonike Mbilike Mwandembo approached the land owners through their local leaders requesting to be given land for purposes of building a college. The land owners agreed to let go of their portions of land subject to being paid compensation. They testified that a long time passed without him paying compensation as agreed thus they complained to authority, that is, the DED. The DED directed the matter be resolved at the Ward level under the WEO. In a meeting held at the WEO's office on 01st October 2007 between Ambonisye Mbilike Mwandembo and those who claimed compensation for their land, Mwandembo declared failure in financial ability to compensate. It was thus agreed that the land owners should proceed with their lands anyhow they wished. Following this agreement, some of them built houses while others sold their lands to other people including the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, and 13th defendants. Among those who sold was the 11th defendant (DW1). Others gave their lands to their children. The 10th defendant for that matter claims to have been given the land by his father. On these bases, the defendants claim to be the rightful owners of the portions of land they possess in the disputed land. The defendants tendered a letter signifying the agreement, "exhibit D1" which was addressed to the Town Planning Officer notifying him on the outcome of the meeting.

On the other hand, the plaintiff claims to be the rightful owner of the land in dispute being allocated the same by the Mbeya Municipal/City Council in 2010. He denies having approached the residents of the area requesting for land and promising to compensate or entering into any agreement with them to the effect that they should continue using the

land after his failure to compensate. He claims to have applied to be allocated the land directly to the Municipal/City Council. He challenged "exhibit D1" saying that it bears the name E. Mwandembo while his name is Ambonisye Mbilike Mwandembo. He also denied the signature signed against the name E. Mwandembo to be his. PW2, PW3 and PW4, who work at the land department in Mbeya City Council, while testifying in favour of the plaintiff claimed that the land in dispute rightfully belongs to the plaintiff. They testified that the said land was surveyed in 1995 by Mbeya Municipal Council, thus was the property of Mbeya Municipal Council before being allocated to the plaintiff. They said that prior to that there was no previous owner.

It is true that "exhibit D1" names the plaintiff as E. Mwandembo and not Ambonisye Mbilike Mwandembo. DW3 explained in his testimony that the initial E. was after the plaintiff's school named EDI secondary school and they used to call him Edi Mwandembo. The plaintiff as I said denied to have participated in the meeting and signed any document. Under the circumstances I shall disregard exhibit D1 and proceed to consider the oral testimonies of witnesses of both sides. The law accords credibility to every witness so long as the court finds the witness and the evidence provided credible. This position was settled in the case of **Goodluck Kyando v. The Republic**, Criminal Appeal No. 118 of 2003 (CAT, unreported) whereby it was held:

"...it is trite law that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness."



The plaintiff on one hand, as I stated above, claims to have been allocated the land by Mbeya Municipal Council. PW2, PW3, and PW4 stated that the land was surveyed in 1995 by Mbeya Municipal Council thus the land belonged to Mbeya Municipal Council and it could allocate it to anyone. They also stated that the land was bear and belonged to no one. I am not convinced with this version of testimony on the following reasons:

First, PW2, PW3 and PW4 being officers in the land department at the City Council Office failed to explain how the land was acquired in 1995. The Land Acquisition Act, Cap 118 R.E. 2019 under section 3 empowers the government/president to acquire land for public use. However, under section 6 and 7 the law directs that a notice of intention to acquire be issued to the affected persons through the Minister responsible for lands. Section 11 obliges payment of compensation on the unexhausted improvements on the land. The plaintiff's witnesses did not explain how the acquisition process was carried out. They claimed that no compensation was paid as there was no improvement on the land. They could however not explain how they came to establish that.

Second, if at all acquisition was done the process must have involved the local government/leaders. There was no explanation from the plaintiff's witnesses as to which local government leaders were involved in the process of acquisition. The office of the WEO must have been aware of the acquisition, but it appeared that there was no such information in the WEO's office. DW1 testified to have sold other portions of land to other people not sued by the plaintiff. In my considered opinion, if the area at

Uyole was acquired as claimed by PW2, PW3 and PW4, DW1 would not be able to sell the land to these other people without intervention by the local government or the Municipal Council.

On the other hand, I find the defendants' version of testimony to be credible of the following reason. All defendants' witnesses gave consistent testimony regarding the complaints on compensation promised by Ambonisye Mbilike Mwandembo and the final resolution to allow the land owners to proceed with their lands. DW1, Samwel Nyaluke, who was one of the land owners, DW3, the WEO, who convened and chaired the meeting and DW4, a resident in the area since 1972 and attended the meeting as an observer, were able to identify the plaintiff in the judge's chambers as the person whom they had a meeting with on 01st October 2007 and agreed that the lands should revert back to the owners for failure to compensate. The testimony of DW1 was corroborated with that of DW4 who testified that he was present at a meeting held in 1994 through a local chief, one Chief Silinjanje, whereby Ambonisye Mbilike Mwandembo requested for land to build a college and the owners agreed subject to being compensated for their plants.

DW2 who in 2007 was the chairman of the local government and later elected a councilor testified to have witnessed a number of sales of land by the land owners to some of the defendants including Severina Mwaifani, the 5th defendant, Tumsifu Mahenge, the 6th defendant, Yuda Mwakis, the 7th defendant, Edina Peter, the 8th defendant, Bupe Mwaijulu, the 9th defendant, and that of Karoli Mtani, the 13th defendant. He testified that the sale of land to these defendants was effected after

Mwandembo returned the land in dispute to the owners upon failure to compensate them.

Considering the fact that PW2, PW3 and PW4 failed to show how the Municipal Council acquired the land, I find the testimony of the defendants more credible. The law is very clear as to the obligation to prove. Under section 110 and 112 of the Evidence Act, Cap 06 R.E. 2019 it is categorically provided that the one who alleges must prove. See also: **Lamshore Limited & J. S. Kinyanjui v. Bizanje K.V.D.K** [1999] TLR 330. It is thus my settled view that the plaintiff through his witnesses has failed to prove that the land in dispute belonged to the Municipal Council upon acquisition for it to be entitled to allocate it to another person as it did. It is my settled opinion that not having legally acquired the land in dispute, the Municipal Council had no good title to pass to the plaintiff. The law prohibits a person to transfer a better title than he himself has "*nemodat quod non-habet.*" See: **Bishopgate Motor Finance Corporations Ltd v. Transport Brakes Ltd** (1949) 1 KB 322 and **Farah Mohamed v. Fatuma Abdallah** [1983] TLR 205.

Having satisfied myself that the land in dispute was never acquired by the Mbeya Municipal Council, I am of the view that it was imperative for the Municipal Council to adhere to procedures relating to allocation of unregistered land to an individual before purporting to allocate it to the plaintiff. The Municipal Council ought to have assured itself that the land has been legally purchased by the plaintiff through village/local government and compensation to the land owners duly paid. Having not adhered to these procedures the Municipal Council acted illegally in

allocating land to the plaintiff. The offer with Ref. no. MBRL/14100/13/EMJ and certificate of title with number 17153-MBYLR issued to the plaintiff in 2010 are hereby found to be a nullity. The defendants are therefore found to be the rightful owners of the disputed land.

With regard to the second issue, I have gone through the documents attached to the plaint as annexure 1 and 2. Annexure 1 contains the offer issued in 1995 and 2010 collectively and annexure 2 contains the certificate of right of occupancy issued in 2010. These documents were admitted as exhibit P4, P1, and P3 respectively. From the evidence adduced, the 11th defendant owned part of the land in dispute before the right of occupancy was issued to the plaintiff in 2010, that is, since 1970s. The 12th defendant owns no portion of land in the land in dispute and thus the plaintiff has no cause of action against him. The 10th defendant was given the land by his father whom in accordance with the testimony given owned the said land. The rest of the defendants purchased their pieces of land from those who owned the land though there was no explanation as to the dates these defendants purchased the land in dispute. Nevertheless, given the fact that this court found that the Mbeya Municipal Council never acquired the land in dispute as required under the law, thus making the right of occupancy issued to the plaintiff a nullity, this whole issue becomes redundant.

Coming to the third issue, the plaintiff in his plaint appears to claim specific damages to the tune of T.shs. 1,500,000/- against all defendants. This claim arises from the allegation that the defendants took building materials worth 1,000,000/- and tempered with foundation worth 500,000/-

However, during his testimony he only mentioned the 1st defendant, Azulu Malongo, as the one who took the building materials. He mentioned the materials taken to be stones worth T.shs. 1,000,000/-. He never gave any explanation regarding the claim of T.shs. 500,000/- though while concluding his testimony he included the figure as part of the reliefs claimed.

In my settled view, the plaintiff has not proved the specific damages he claims to be awarded in this court. He has just provided mere assertions with nothing to back up the assertions. The law is very clear with regard to award of specific damages. It requires the same to be strictly proven for the court to award. In the case of **Stanbic Bank Tanzania Limited v. Abercrombie & Kent (T) Limited**, Civil Appeal No. 21 of 2001 this Court, (Kalegeya, J.) held:

*"The law is that; special damages must be proved specifically and strictly. Lord Macnaghten in **Bolag v. Hutchison** [1950] 8 AC 515 at page 525 laid down what we accept as the correct statement of the law that special damages are...such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and, therefore, they must be claimed specially and proved strictly."*

Also in the case of **Zuberi Augustino v. Anicet Mugabe** [1992] TLR 137 the Court held that *"it is trite law, and we need not cite any authority, that special damages must be specially pleaded and proved."* See also: **China Henan International v. Salvand Rwegasira** [2006] TLR 220. On the strength of these authorities, this court cannot award special damages as the plaintiff failed to strictly prove the same.



The fourth issue regards the reliefs entitled to the parties. From the observation I have made hereinabove, it is my finding that the right of occupancy issued to the plaintiff is a nullity for failure to adhere to legal procedures in its issuance. The defendants are therefore declared the rightful owners of the portions of land they possess in the land in dispute. The plaintiff's suit lacks merit and is dismissed with costs.

Dated at Mbeya on this 10th day of February 2021.


L. M. MONGELLA
JUDGE

Court: Judgement delivered in Mbeya in Chambers on this 10th day of February 2021 in the presence of all parties and Mr. Dickson Mbisu, counsel for the plaintiff.




L. M. MONGELLA
JUDGE