

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

LAND CASE NO. 50 OF 2016

1. AHIMIDIWE GEOFREY MOSHI	1ST PLAINTIFF
2. AHMAD ABDALLAH KAVINGA	2ND PLAINTIFF
3. ALEX DAMSON KASINGA	3RD PLAINTIFF
4. ALLY JUMA NGASINDA	4TH PLAINTIFF
5. ANDREW LEVARIA SHIRIMA	5TH PLAINTIFF
6. APOLINARY MSHABAHA MAANGIRI	6TH PLAINTIFF
7. ASHA SALUM KISENGO	7TH PLAINTIFF
8. ATHANAS SEVERINE LUNGU	8TH PLAINTIFF
9. AYUBU MUHAMAD MKINGE	9TH PLAINTIFF
10. AZIZA HASSANI YOHANA	10TH PLAINTIFF
11. CHANDE IBRAHIM SAID	11TH PLAINTIFF
12. CHIKU ALLY MTONYI	12TH PLAINTIFF
13. CHRISPIN GERVAS CHILAMBO	13TH PLAINTIFF
14. COSMAS MTABALO SUNUNU	14TH PLAINTIFF
15. COSTANTINE ANTHONY CHACHA	15TH PLAINTIFF
16. DEOGRATIUS OSWALD RUGAZIA	16TH PLAINTIFF
17. ESTOMIH EPAFRA MATECHI	17TH PLAINTIFF
18. FATMA SULTAN PERA	18TH PLAINTIFF
19. HERRY ALLY HAMISI	19TH PLAINTIFF
20. JOHN GABRIEL KUKAYILWA	20TH PLAINTIFF
21. JOHN SAANANE MUSSA	21ST PLAINTIFF
22. JOHN SOLOMON MTUI	22ND PLAINTIFF
23. KASSIM HEMED MAGOGA	23RD PLAINTIFF
24. KHATOR SELEMAN KHATOR	24TH PLAINTIFF
25. MAGRETH MATHIAS HAULE	25TH PLAINTIFF

26. MANASE ELIA KAAYA	26 TH PLAINTIFF
27. MARICK HASSAN MLYANDE	27 TH PLAINTIFF
28. MGENI SELEMAN MGENI	28 TH PLAINTIFF
29. MOHAMED ABDALLAH KAVIGA	29 TH PLAINTIFF
30. MWAJUMA MUSSA MBONDE	30 TH PLAINTIFF
31. NATUJWA FANUEL MGONJA	31 ST PLAINTIFF
32. NELSON FRANK NGOWI	32 ND PLAINTIFF
33. OMARY BAKARI MWAMBUNGU	33 RD PLAINTIFF
34. FAIRA MOHAMMED RASHID	34 TH PLAINTIFF
35. RASHID JUMA KIGOTO	35 TH PLAINTIFF
36. RASHID BADI MSUYA	36 TH PLAINTIFF
37. REHEMA ABBASI TWALINGA	37 TH PLAINTIFF
38. RICHARD DOMINICK MBAMBAGA	38 TH PLAINTIFF
39. SADA MALIK SEIF	39 TH PLAINTIFF
40. SAID KHAMIS HEMED	40 TH PLAINTIFF
41. SALUM MUSSA KINGWANDE	41 ST PLAINTIFF
42. SEFU MUSSA MZIWANDA	42 ND PLAINTIFF
43. VERONICA DAUD NSHIRIMA	43 RD PLAINTIFF
44. WENCESLAUS BONIFACE MLEKE	44 TH PLAINTIFF

VERSUS

TEMEKE MUNICIPAL COUNCIL DEFENDANT

JUDGMENT

15th April & 28th May, 2021

BANZI, J.:

The Plaintiffs were among 161 persons who were affected by Lorry Parking Project at Kurasini area within Temeke Municipality, Dar es Salaam Region. Their landed properties ("suit properties") located at Kurasini Shimo

la Udongo area were acquired for that project. It is not in dispute that, all Plaintiffs received compensation. Their complaint is that, they were not adequately compensated. They are claiming for payment of TZS 3,198,514,511.00 as balance of the compensation paid to them for vacant possession of their suit properties. The particulars of their claims are pleaded in paragraphs 3 to 9 of the Plaint as follows; first, they were paid less than what they were expected to receive as compensation including given alternative plots and second, there was delay in payment as valuation was conducted in 2013 and they received their payment in 2015. The Defendant on the other hand, strongly opposed the suit claiming that, since there was no promise of given alternative plots, the Plaintiffs were adequately compensated and duly paid 8% as an interest for the delay of payment in accordance with the law.

At the final pre-trial conference, the following issues were framed, thus;

- 1. Whether valuation of the Plaintiffs' properties was done properly;*
- 2. Whether compensation made to the plaintiff was adequate, fair and justifiable;*
- 3. Whether Plaintiffs were entitled to be given alternative plots; and;*

4. What reliefs are the parties entitled.

In a bid to establish their case, the Plaintiffs under representation of Mr. Saulo Kusakalah, learned Advocate called in two witnesses to testify, Alex Damson Kasinga, the 3rd Plaintiff who testified as PW1 and Wenceslaus Boniface Mleke, the 44th Plaintiff (PW2). Besides, they tendered four Exhibits. On her side, the Defendant under the representation of Ms. Shughudu Mvungi, learned Solicitor, brought one witness, Nyaganya Donald Mugeta who testified as DW1 and tendered one Exhibit.

In the main, the Plaintiffs' evidence through PW1 and PW2 was to the effect that, prior to acquisition, they were all residents of Kurasini Shimo la Udongo area, within Temeke Municipality. On 13th March, 2013, they received a notice about the intended acquisition of their suit properties by the government for purpose of Export Processing Zone (EPZ). However, they were not involved in the valuation process save for the public meeting when they were told that they will be compensated at the minimum rate of TZS 400,000.00 and maximum of TZS 700,000.00 per square metre for their suit properties. In the course of process, they were told that the acquired area is for lorry parking project and it was the officers from the Defendant who conducted valuation which took one and a half year. They were given

affidavits (Exhibit P2) as proof of ownership of suit properties. They further testified that; they were underpaid contrary to the agreement as articulated in Exhibit P1. PW2 prepared a schedule (Exhibit P4) showing the amount each Plaintiff was paid and what was supposed to be paid for each Plaintiff. After realising that they were underpaid, they complained to the Director of the Defendant but nothing was done. Following their decision to pursue their complaint before the court, they were called at the office of the Defendant and given affidavits (Exhibit P3) restricting them to claim for alternative plots and after signing the same, they were paid and given thirty days notice to vacate the suit properties. Upon given the notice, they prayed for injunction at the High Court but their houses were demolished before the expiry of court injunction. They collectively claimed to be paid TZS 3,198,514,511.00 as balance of compensation unpaid to them.

On the other hand, the Defendant through the testimony of DW1 who is the valuer claimed that, the whole process including valuation of the suit properties followed all procedures required by law. He produced the valuation report which was admitted as Exhibit D1. According to his testimony, any valuation whether conducted by private valuer or government valuer must be approved by Chief Government Valuer. He further testified that, the victims

were involved through the meeting convened by valuation team comprising of valuer, surveyor, authorised land officer and local authority leader from respective area. Through the meeting, the victims were informed their rights including the amount to be paid to them. He claimed that, Exhibit P4 relied by the Plaintiffs was not approved by the Chief Government Valuer. He went on and testified that, according to Exhibit D1, the Plaintiffs were paid TZS 323,270,000.00 per acre basing on the market value after conducting research. He finally prayed for the Plaintiffs' claim to be dismissed.

After the trial, counsel of both sides had opportunity to address the Court by filing written submissions and the same will be considered in the course of this judgment.

Starting with the first issue, according to the evidence of both parties, it is undisputed that, the Plaintiffs' suit properties were acquired by the Defendant for purpose of Lorry Parking Project. It is also not in dispute that all Plaintiffs were compensated following the valuation prepared by the qualified valuer and approved by the Chief Government Valuer as required under regulations 5 and 6 of the Land (Assessment of the Value of Land for Compensation) Regulations, 2001 ("GN No. 78 of 2001"). However, the contention of the Plaintiffs was that, they were not involved in the valuation

I have carefully considered the rival evidence from both sides. It is the considered view of this Court that, the claim by the Plaintiffs that the valuation was not properly done and they were not involved in the process is unfounded because of the following reasons. First and foremost, according to the valuation process mentioned by DW1, it is very clear that there are two stages where the victims are involved; sensitisation and identification of the area in question. So far as these stages are concerned, both PW1 and PW2 admitted to be involved in the public meeting and they showed their respective areas. Secondly, Exhibit D1 is signed by relevant persons mentioned by DW1 and approved/verified by Chief Government Valuer as required by law. Basing on that, it is my finding that, the Plaintiffs were involved in the process of valuation which was conducted in accordance with the law. Apart from that, the act of receiving and accepting the amount of compensation as exhibited in Exhibit D1 is a clear proof that the Plaintiffs were satisfied with the entire process of valuation with the amount of compensation stated therein. In that regard, the valuation was properly conducted, and this concludes the first issue which is answered in affirmative.

Reverting to the second issue, it is a common knowledge that, compensation arising from acquisition of land must be fair, adequate and

process. PW1 in his testimony stated that, they were not involved in the process of valuation that was conducted by the Defendant. According to him, they got the information about the valuation process through the meeting and flyers. They were also given documents such as Exhibit P1 titled "*Mradi wa Uendelezaji Upya Kurasini Ujenzi wa Kituo cha Biashara cha Kimataifa – Tanzania China Logistic Center*". It was also his testimony that, they were just told to show their respective pieces of land and everyone showed his area. Nonetheless, PW1 did not explain about such procedures which were required in valuation process and not followed by the Defendant by admitting that he does not to know them.

On the other hand, DW1 in his testimony explained in details the procedure of valuation including sensitisation of victims through public meeting, identification of the area subject matter of valuation, conduction of research in order to know the market value, involvement of local authority, preparation of valuation schedule which is signed by the field valuer, valuer in-charge or director of his company if valuation is conducted by private valuer, ward executive officer, the District Commissioner of relevant District and finally is verified/approved by the Chief Government Valuer.

prompt. According to regulation 7 of GN No. 78 of 2001, compensation shall include unexhausted improvement, disturbance allowance, transport allowance, accommodation allowance and loss of profit. Exhibit D1 which was verified by the Chief Government Valuer shows that compensation paid to all 161 persons including the Plaintiffs in this case included unexhausted improvement, disturbance allowance, transport allowance, accommodation allowance as well as 8% interest for delay. Also, the calculation in respect of everything was conducted at the rate provided under GN No. 78 of 2001. For instance, according to Exhibit D1, PW1 was paid a total sum of TZS 189,768,300.00 as compensation and TZS 15,181,464.00 as interest for the delay. The same amount is also featured in Exhibits P2 and P3. Thus, it is the considered view of this Court that, the claim by the Plaintiffs that they were underpaid is baseless and an afterthought with a desire to get more because they did not bring any valuation report to substantiate their claim in order to counter Exhibit D1.

Furthermore, Exhibit P4 tendered by PW2 is far fetched to be termed as valuation report which can be used to counter Exhibit D1. This is because, firstly, it was prepared by PW2 who admitted that he is not a valuer which is contrary to regulation 5 of GN No. 78 of 2001. Secondly, it was not approved

or verified by the Chief Government Valuer as required under regulation 6 of GN No. 78 of 2001. In that regard, Exhibit P4 has no any evidential value to substantiate the Plaintiffs' claim that, they were not adequately paid considering the fact that, they accepted and received payment stipulated in valuation report which was prepared according to the law and verified by the Chief Government Valuer. The contention by Mr. Kusakala that, the Plaintiffs were supposed to be paid basing on the agreed rate of TZS 700,000.00 stipulated in Exhibit P1 is also unfounded considering the fact that, apart from being secondary evidence, it was not verified by the Chief Government Valuer as required by law. Besides, Exhibit D1 shows that, the rate on value of land considered the market value prevailing at that particular time. On that basis, it is the finding of this Court that, the Plaintiffs were fairly and adequately compensated. Therefore, the second issue is also answered in affirmative.

Coming to the third issue, although in their Plaint the Plaintiffs have pleaded that they were promised to be given alternative plots but both, PW1 and PW2 did not testify about that claim. If we choose to rely on Exhibit P1, apart from being secondary evidence as stated herein above, its authenticity is also questionable because it is not signed by any member of the so called "task force" which prepared the same. Worse still, the promise of alternative

plots was not among the matters agreed between the two sides. Moreover, Exhibits P2 and P3 tendered by them show that, upon accepting the payment in respect of compensation and interest, the Plaintiffs declared to have no more claims against the Defendant including claiming alternative plots. Furthermore, the said claim is not included in Exhibit D1 which was verified by the Government Valuer being part of compensation. The cases of **Attorney General v. Lohay Akonaay and Joseph Lohay** [1995] TLR 80 and **Laiton Kingala v. Musa Bariti** [1975] LRT 40 cited by counsel for the Plaintiffs are distinguishable and hence, inapplicable in the particular circumstances of this case considering the fact that, the Plaintiffs herein were fairly and adequately compensated according to the law. Therefore, since compensation paid to the Plaintiffs was fair and adequate, it is the considered view of this court that, they were not justified to be given alternative plots. Thus, the third issue is negatively answered.

So far as the fourth issue is concerned, following the outcome of the first, second and third issues in the light of principle stated in the case of **Engen Petroleum (T) Limited v. Tanganyika Investment Oil and Transport Limited**, Civil Appeal No. 103 of 2003 CAT (unreported), since the Plaintiffs have failed to discharge their duty of proving their case on the

balance of probability, they are not entitled to any of the reliefs sought by them.

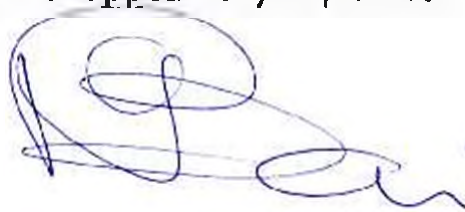
In the upshot, it is the finding of this Court that, the Plaintiffs have failed to prove their claim on the balance of probabilities, and consequently, the suit is accordingly dismissed. Each party shall bear its own costs.

It is so ordered.



I. K. BANZI
JUDGE
28/05/2021

Delivered this 28th May, 2021 in the presence Mr. Peter Mhando, learned Solicitor for the Defendant also holding brief of Mr. Saulo Kusakalah, learned counsel for the Plaintiffs. Right of appeal fully explained.



I. K. BANZI
JUDGE
28/05/2021