

**THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

LAND CASE NO 24 OF 2017

HASSAN MKAMILA & 29 OTHERS PLAINTIFFS

VERSUS

**KESSY MKAMBARA 1ST DEFENDANT
KILOSA DISTRICT COUNCIL 2ND DEFENDANT
RASHIDI MATELEKA 3RD DEFENDANT
KIDOGO BASI VILLAGE COUNCIL 4TH DEFENDANT
SELEMANI KATAMBALA 5TH DEFENDANT
SALEHE KATAMBALA 6TH DEFENDANT
MOHAMED MHOLELE 7TH DEFENDANT
NASSORO MAUMBA 8TH DEFENDANT
NUNGAMO HASSANI 9TH DEFENDANT**

JUDGMENT

27/5/2021 & 31/8/2021

L.M. MLACHA, J.

The Plaintiffs, Hassan Mkamila, Tasiana Kifea, Halima Hassan, Yusufu Nyoka, Mohamed Salum Mkenange, Salum Mohamed Mwengio @ Mangoro, Ramadhani Mtenda, Hashimu Ngofwike, Stanslaus Masion, Godfrid Luvumbi, Mrs. Michael Mwakimata, Maliki Musa Ligema, Ramadhani Musa Mahuri, Hamisi Musa Ligema, Saidi Hamisi Mchanjo,

Mwamvita Ally Mkamila, Ramadhani Madute, Sofia Ngeja, Abdallah Nasoro Mpanga, Kassimu Mohamed Monaliche, Issa Mkamila, Musa Hassan Lijema, Abdallah Mangame, Salum Mkuya, Rashid Mkamila, Saidi Gebu, Yasini Mwengio, Rashid Kibuki and Rogers Temu filed a suit against the defendants, Kessy Nkambara, Kilosa District Council, Rashid Mateleka, Kidogobasi Village Council, Selemani Katambala, Mohamed Mholele, Nassoro Maumba and Nungamo Hassan filled a land case seeking vacant possession of a piece of land located in Kidogobasi Village allegedly in control of the defendants. They claim to own the land, each owning his respective piece, but were later removed by the defendants who destroyed their farms and took control of it.

It was stated in the plaint that the plaintiffs were allocated their respective pieces of land in the land, now under dispute, by the Village Council at diverse times and used the same to grow sugarcane. They stayed peacefully without disturbance up to 2004 when the 4th defendant made an attempt to remove them. They took steps by filling a case in the District Land and Housing Morogoro for Morogoro (the DLHT), Application No. 17/2004 which was decided in their favour. Further reference to this court in Land Appeal No. 21/2006 and Miscellaneous Land Application No. 27/2006 could not be successful. The decision of the DLHT was left intact. They remained in occupation of the land up to 10/2/2017 when the 1st,

2nd and 4th defendants called a meeting of villagers and declared the plaintiff's lands to be Village Land and ordered them to vacate. Soon thereafter, that is on 11/2/2017, just the following day, the 3rd, 5th, 6th, 7th, 8th and 9th defendants invaded the land and put the sugarcane on fire and destroyed them. They proceeded to uproot the sugarcane stems causing a big loss to the plaintiffs. They then took the land and are controlling it to date.

The plaintiffs pray for vacant possession, payment of Tshs. 250,000,000 compensation for destroyed sugarcane, Tshs. 100,000,000 being damages for hardship suffered, Tshs. 250,000,000 for uprooted sugarcane stems and costs.

The defendants filed their defence and denied the claims. The 2nd and 4th defendants denied to make the orders. The 4th defendant denied to allocate the land to the plaintiffs. The defendants in general denied the allegations. They asked the court to dismiss the suit.

With the assistance of counsel, the court recorded the following issues;

1. Whether the plaintiffs have any claim of rights over the disputed farms situated at Kidogobazi Village.
2. Whether the 3rd, 5th, 6th, 7th, 8th and 9th defendants uprooted plaintiffs sugarcane stems.

3. Whether the plaintiffs still own their respective farms acquired from Kidogobasi Village authority under the scheme of bega kwa bega.
4. To what reliefs are the parties entitled to.

The plaintiffs had the services of Professor Cyriacus Binamungu while the 1st and 3rd to 9th defendants had the services of Mr. Thomas Eustace Rwebangira and Ngemela advocates. Mr. Lucas Marunde appeared for the 2nd and 4th defendants. The case went to full trial. I will start by presenting a summary of the evidence adduced in court.

The court received the evidence of PW1 Salum Mohamed Mwigiho Msiri in details. Later on, it was decided that the rest of the witnesses should give their testimony by affidavit. The defence reserved their right to recall any of them for cross examination. In this regard, 9 witnesses appeared for cross examination, making a total of 10 witnesses who appeared before the court physically. The court received affidavits of 29 people.

It was the evidence of PW1 that, he lives in Kidogobasi Village, Luwemba Ward, Kilosa District, Morogoro Region. He had been living in the Village since 1979. He is a farmer and cultivate different types of crops namely, sugarcane, rice, maize, cassava e.t.c. He said that the land in dispute is 80 acres but his claim is on 16 acres. The other area is claimed by other plaintiffs, he said. He went on to say that he got the land through leases; Salum Mkuya leased him 3 acres, Binti Mwinyi chande 1 acre,

Rashid Sikiliza 1 acre, Salum Njingwa 2 acres, Ngatianga 1 acres and Kisenga 2 acres. His second wife had one acre also.

PW1 went on to say that the Village Government attempted to evict them in 2004 but they succeeded to prevent them after obtaining a judgment from the DLHT. They remained peaceful up to 2017 when the current problems arose. Giving details, he said that there was a meeting of the Village Council at the village which included the District Executive Director Kilosa (the DED Kilosa) which is the root cause of the current problems. The DED and village leaders attended the meeting. The DED ordered the land to return to the village. He made an order putting the plaintiffs under arrest which was done. The decision allowed the 3rd, 5th, 6th, 7th, 8th and 9th defendants to move into the land. They burnt sugarcane and took the land. They prevented the plaintiffs to come in. They then decided to file the case to seek vacant possession and compensation.

PW2 Yusufu Nyoka was recalled for cross examination by Mr. Eustace and Mr. Malunde on facts stated in his affidavit and had this to say. That, he owns 8 acres but there is no place pleaded in the plaint that he own 8 acres. That, he never put a claim for 50 M in the plaint but it is in the affidavit. He said that their farms were burnt by the defendants. He met them burning the farms. And that, the guys who burnt the lands are the

ones who cultivate on it now. He went on to say that none of them was given a document after being allocated the lands. Land allocation was done freely in those days without documents. He went on to say that he came in the village in 1966 following the death of his father. In re-examination, he told the court that he owns 8 acres and that their lands were invaded following orders from the DED. He added that the DED declared the land to be village land but was later invaded by the defendants.

PW3 Godfrid Luvumbi (74) recalled for cross examination and told the court that his land is 3¹/₂ acres. He got the land from the village but they were not given any document of title. His land was damaged after being invaded. It was invaded by more than 5 people. He said that those who are mentioned (defendants) are just the bosses, there were others. It is now under the control of the village government. He prayed to be given the land and Tshs. 22 Million as compensation.

On being re-examined, he said that the DED ordered the land to return to the village. He made a further direction to send them to the lock up.

PW4 Hamisi Musa Ligema (52) was recalled for cross examination and told the court that he has a claim for Tshs. 6,250,000 and that his land is one acre. He proceeded to say that the defendants cleared, burnt the sugarcane and dug the stems. He said that he does not have any

allocation letter or minutes proving their allocation. And that, the land is now under the control the defendants. He added that the land, 80 acres was burnt on 11/2/2017. He went on to say that the 6 Million which he claims includes costs of the sugarcane and damage to the land.

PW5 Kasimu Mohamed Monaliche (55) was cross examined by counsel and told the court that he has lived in Kafinga Village for 20 years but is a resident of Kidogobasi. He had a piece of land in the disputed area which was taken.

PW6 Mwamvita Mkamila (39) was cross examined and told the court that he got the land from his father who got it from the Village Government. He went on to say that he spent 5.5 Million on the land and expected to get 12.5 Million.

PW7 Anatalia Damian (63) was cross examined and take the court that he got his land from the village government under the Bega kwa Bega program. She went on to say that she used the name of his late husband Michael.

PW8 Halima Hassan (47) was cross examined and told the court that her

mother got the land from the Bega kwa Bega project. It fell into her after her death. It has 1½ acres. He claims Tshs. 6,250,000 adding that one can get 3,500,000/= annually from the land.

PW9 Rashid Kibuki (44) was cross examined by counsel to tell the court that he got the land in 2007 from his grandfather. He has one acre.

DW1 Salehe Mohamed Katumbala (46) was led by Mr. Thomas Eustace to tell the court that he has been living in Kidogobasi Village since Childhood. He has land and a house. He denied to take the plaintiff's land. He accused the plaintiffs for failing to give the size of their lands and specific details. He however agreed that he knows them except 2. Most of them live in the village where he lives. He denied the existence of a village meeting on 10/2/2017.

DW2 Nasoro Maumba was led by his counsel to tell the court that he never invaded and burnt the farms. He accused the plaintiffs of failing to give particulars of their land in the plaint. He denied to burn any sugarcane farm in the area. He went on to say that the suit land is owned by the village government and is currently used by investors. They are the one in occupation of the land not him.

DW3 Selemani Katumbala told the court that he never happened to burn the lands. He went on to say that some people got land through purchase while others got it through the Bega kwa Bega program. He denied to be a village leader. He denied to take the land. He accused the plaintiffs of failure to give details. He described their claims as fake.

DW4 Rashid Makeleka (52) told the court that he came at Kidogobasi Village many years ago. He is a resident of the village. He got land from his late uncle where he cultivates sugarcane. This was land set aside to people under the Bega kwa Bega Project. Each resident was given an acre. He denied to invade the plaintiffs' land. He added that he was not in the village on 11/2/2017.

DW5 Kessy Juma Nkambala (43) told the court that he was working in Kilosa District Council as DED from 12/7/2016 up to 13/8/2018. He is now working with the office of the Regional Commissioner Coast region. He denied to have made the orders. He never happened to come at the village on the day. He denied to participate in the meeting. He denied to know the plaintiffs but accepted to know some defendants.

Mr. Kessy was recalled again to depone for the 2nd defendant as its X-DED. He agreed to be the DED in the period but denied to make the eviction orders. He denied to participate in the meeting.

DW6 Nassoro Kambenga (55) told the court that he was the Village Executive

Officer (the VEO) from 2009 to 2014. He went on to say that when he left, he handled the village farm, 118 acres to his successor. The village used to cultivate sugarcane in the area. Part of it was used by the village while the other part was used by investors. That, the villagers were using

72 acres. He denied to know the plaintiffs. During cross examination he said that operation Bega kwa Bega was done in 1975 but he never witnessed it.

Like DW5, DW4 was recalled to give evidence on behalf of the 2th defendant as its Chairman. He told the court that he is the village Chairman. He knows the plaintiffs. He knows the land under dispute. He went on to say that the suit land was set aside by earlier village governments for its use. The land measures 70 acres, he said. He added that it was there for a long time and was known as village land. DW4 went on to say that, the land at Kanguru Mwoga measures 70 acres while the land at Vidundani measures 118 acres. The land at vidundani has no dispute. It has been handled to investors.

Counsel had a chance to make final submissions. I plan to discuss them in the course of discussing the issues. Like the counsel, I will discuss issue number one and three together. They all talk about the ownership of the land. With them, I will also discuss to issues which were raised by counsel in the course of submissions; failure on the part of the plaint to give a clear description of the land and adding facts in affidavits which are not in the plaint. A discussion on other issues will follow.

The first and third issue seek to examine the ownership of the plaintiffs to the suit land before and currently. It is the submission of the counsel for the plaintiffs that some plaintiffs acquired their diverse pieces of land from the village government through allocation while others have inherited them from their parents who got them from the village government. He proceeded to submit that, in all, the land come to the plaintiffs under the program of *Bega kwa Bega* which goes as back as 1984. They enjoyed a peaceful occupation of the land since then up to 2004 when the 4th defendant made the first attempt to evict them. They moved to the DLHT and filed the case which was decided in their favour. There was no appeal leaving the decision valid and legal to date. Copies of the judgments were attached.

Counsel went ahead and said that the plaintiffs retained their respective pieces of land up to 2017 when they were evicted forcefully by the defendants who took control of the land, 80 acres to date. They gave the particulars of their lands in their affidavits which were received as proof of their respective cases. They were thus lawful owners and are still lawful owners of their respective pieces of land, he submitted.

It was the submission of counsel for the defendants that, the plaintiffs have failed to tender any document to prove ownership of the land. The defendants had two exhibits, they said. They proceeded to say that the

facts stated in the plaint and those in the affidavits are at variance. The plaint has no particulars of size and value of each plaintiff's land but the affidavits have those particulars. The disputed land is also not defined in both the plaint and affidavits. Even the judgment of the tribunal which they seek to rely cannot assist them because it was not tendered in evidence.

Counsel did not dispute the existence of the Bega kwa Bega program in the village. They accepted that each villager got a piece of land under the program. They however argued that the plaintiffs have failed to describe the location of their lands so as to know the particular area as each hamlet had a Bega kwa Bega program. Counsel cited the case of **First National Bank Tanzania Ltd v. Hussein Ahmed Salwar t/a Pugu Hardware (2000) and another**, Commercial Case No. 57 of 2019, **Charles Richard Kombe t/a Building v. Evaran Mtungi & others**, Civil Appeal No. 38 of 2012, **Baclays Bank (T) Ltd v. Jacob Muro**, CAT Civil Appeal No. 357 of 2019, **Bakari Mhando Swaga v. Mzee Mohamed Bakari Shelukindo**, CAT Civil Appeal No. 389 of 2019 and **Godfrey Say v. Anna Siame** (as legal representative of the late Marry Mndolwa), CAT Civil Appeal No. 114 of 2012 to demonstrate the position that a party have to abide to his pleadings. They argued that the plaintiffs have failed to establish their ownership to the land because the affidavits which they

have filed contain facts which are not in the plaint. They made further reference to **Backlay Bank (T) Ltd** (supra) where it was held among other things that;

"any evidence produced by the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored."

They lead the court to a quotation by Sir Jack I.H. Jacob which was cited in the case of **Backlay Bank (T) Ltd** (supra) which provide among other things that, *"each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made"*. Counsel concluded that the affidavits made additions contrary to what was pleaded in the plaint. And even the allegation that they got their respective pieces of lands from the village government was not backed by any village council minutes as provided under section 8 of The Village Land Act, Cap 114 R.E. 2019.

I had to time to read the plaint, the affidavits and the cited authorities repeatedly. I have considered the counsel rival submission carefully. I think I should start with Order VII rule 1 and 3 of the CPC which appear to be relevant in the subject under discussion. I will reproduce them as under: -

1. The plaint shall contain the following particulars: -

a. The name of the court in which the suit is bought;

- b. The name, description and place of residence of the plaintiff including email address, fax number, telephone number and post code if available;*
 - c. The name, description and place of residence of the defendant including email address, fax number, telephone number and post code if available, so far as they can be ascertained;*
 - d. Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;*
 - e. The facts constituting the cause of action and when it arose;***
 - f. The facts showing that the court has jurisdiction;*
 - g. The relief which the plaintiff claims;*
 - h. Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and*
 - i. A statement of the value of the subject matter of the suit*** *for the purposes of jurisdiction and of court fees, so far as the case admits.*
2. ...
3. Where the subject matter of the suit is ***immovable property***, the plaint shall contain ***a description of the property sufficient to identify it*** and, in case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number.
(Emphasis added)

I have interest in the underlined words. One, facts constituting the cause of action and when it arose. Two, A statement of the value of the subject

matter of the suit and three, where the subject matter is immovable property (land), a description of the property sufficient to identify it. There is no doubt that the plaint contains facts constituting the cause of action and when it arose. Equally, there is no doubt that it contains a statement of the value of the subject matter. The controversy is on the description of the property sufficient to identify it. It is alleged by the defence counsel that the plaint fails short of particulars which can enable one to identify the suit premises.

Reading through the plaint in paragraph 5, I could see a statement that the plaintiffs severally own sugarcane farms of varied sizes in Kidogobasi village for many years. And that the said farms were acquired through varied means but mainly through allocation by the village governments at different epochs. Paragraph 6 states that the plaintiffs have been in occupation of the said farms without interruptions for decades except in 2004 when the 4th defendant made an interruption but they were defeated through a court action made by the DLHT. Copies of the decisions were attached. Then paragraph 7 and 8 takes us to the way they were invaded. No clear description of the suit land was given in the Plaint other than specific details which were given in affidavits.

The respondents are now challenging the plaintiffs case saying that it is bad in law for failure to give the descriptions. They also say that it was

wrong to add some information in the course of giving evidence. They call this as adding new facts something which is barred by the above cited authorities. The plaintiffs have the view that they never added facts but were just giving elaborations to facts already pleaded.

With respect to the counsel for the defendants, much as I agree that the plaint must contain a description of the suit property sufficient to identify it, but I think that the plaint is not expected to contain each and every detail of the case. The rule is that, it must be precise and concise, meaning that it must be short and clear stating the relevant facts only. Details are usually given at the stage of giving evidence. It can give the facts but is not expected to give the evidence. It is not even practicable to show all the details in one document. It could not be possible in this case for instance, to give the details of size, location and value of the land owned by each plaintiff in the plaint. That could make the plaint too big.

Details are given by the parties in the course of giving evidence. And in so doing, as correctly observed by counsel for the plaintiff, they are not adducing new facts so long as they limit themselves to giving clarification/elaborations only. With this in mind, the authorities cited are distinguishable for the plaintiffs did not bring any new facts or contradicting facts in the affidavits but just clarifications and elaborations.

What about failure to give a specific description of the land in the plaint as required by order VII rule 3 of the CPC? Truly, the plaint does not give a proper description of the land, other than saying that it is in Kidogobasi village. No further description was given. It should have said for instance, land 80 acres in Kidogobasi village which is adjacent the road or a certain river moving to the west or south of that river or road. And that each plaintiff have a plot therein. That description is missing.

But reading through the evidence of both parties, it is clear that each party is aware of the suit land. The plaintiffs refer it to as their sugar cane land which was grabbed and occupied by the defendants. That, they took it by force and are using it todate.

DW2 is recorded at page 47 and 48 of the typed record saying;

"It is owned by the village government but has investors. I don't have land which they call theirs. It is in the hands of the village via investors."(Emphasis added).

DW4 was is the village Chairman is recorded at page 52 saying the following;

"Village land is there. It was never given to people. The Village has put some investors there for purposes of planting sugarcane."

DW2 went on to say at page 60 as under;

*"The plaintiffs say that their lands have been taken by the village. **I know the land.** ... it was set aside for the village by earlier governments."*(Emphasis added).

So, in essence both parties are fully aware of the suit land. The question now is whether the failure to describe the land in the plaint should be allowed to defeat the course of justice. I think that so long as the parties are fully aware of the land, the subject matter of the case, this irregularity can be cured under section 3A of the CPC for the failure to give the description did not cause any failure to justice to the defendants who are fully aware of the suit land.

What about ownership? The evidence reveals that there was a Bega kwa Bega program which made land allocations to people. The plaintiffs say that they came to the land under that program. Some got it direct, some inherited from those who got it under the program and others, like PW1 got it through leasing. The defendants do not deny the existence of the program but say that it related to other pieces of land. The land in dispute was not included. It remained as village land.

Having considered the evidence closely, I find that there is no clear evidence that the land fell to the plaintiffs under the Bega kwa Bega program. None of them could give a clear explanation of what it was all about and when it happened. Much as this program is accepted by the defence but the evidence on this aspect is wanting. But it is clear that the

land was given to the plaintiffs or those who gave them title by the former governments under some arrangements. It is also clear that the land have some economic value which have attracted some people in the current government to draw an interest in it. So, the plaintiffs exist legally but their continued existence is opposed.

But taking things to the extreme that the land is village land, can it be said that it was legal to evict them? I think that in whatever situation there was no need, in my view, to take the land from the plaintiffs who are fellow villagers and give it to some other people be it the defendants or the investors by force. Principles of good government required the village government to take the matter to the Land court and get a decree and an Eviction Order. They also demanded it consider those who were in physical possession of the land before allocating it to some other people, for in the end, all these are Tanzanians and needed food and other supplies to their families through the land.

Looking at the evidence on record, I do not see any colour of right on the part of the defendants to take the land from the plaintiffs in the manner in which it was done. Force was used without any eviction order from the court suggesting some hidden agendas. The plaintiffs appear to be law abiding people otherwise there could be a bloodshed.

Going by the background of the matter as reflected in evidence and the judgment of the DLHT which I read and took judicial notice of it, one can see that the existence of the case in 2004 suggest that there was a conflict between the people who are using the land and the 4th defendant. Much as the people in the two cases are not exactly the same but the land appear to be the same. The 4th defendant was defeated and could not appeal. It means therefore that, the land or at least part of it, is legally owned by the plaintiffs or at least part of them through the judgment of the DLHT. It was not proper therefore to evict them and take the land simply like that.

My further reflection show that the word "village" is just used to give rights to some other people to own or take the land for some economic benefits to some people especially leaders. It is out of logic for example, to see the DED attending a village meeting and making orders. The DED act through the District Council not through the village council. I think that his appearance and attendance at the village meeting indicates some personal interests or hidden agendas outside his official duties making all what he did and what followed illegal.

What about the eviction? It is obvious that the plaintiffs are not occupying the land, otherwise they could not have a reason to file the case. They say that they were evicted forcefully on orders of the 2nd and 4th

defendants which were executed by the rest of the defendants. They allege that they were evicted forcefully, their sugarcane burnt and the stems uprooted. The defendants deny to evict the plaintiffs and or to take possession of the land. They say that the land in question is now under the control of investors but do not say how it shifted to the village investors. I think they are just denying the obvious.

An issue was raised that 7 people could not evict 30 people. But there was evidence from the plaintiffs that the defendants were not alone. They were with other people (agents) and Policemen. Some of them were arrested and sent to the lockup to allow the exercise to be carried out. It is not correct therefore to say that the exercise involved the parties to this case alone making it impossible for the defendants to evict the plaintiffs. Further to that, the defendants cannot challenge the eviction on the basis that they were not in a position to do so but at the same time agree that the land is now in the hands of investors. Who then can be said to be the one who took the land from the plaintiffs and handle it to the investors? If that is the case, the defendants must be the one who did it. But the parties live in the same village and know each other. The plaintiffs are saying that the land is not in the hands of anybody but the defendants. My look at them did not suggest that they were speaking lies. It follows that the idea of there being an investor was just introduced to defeat the

course of justice. And if anything, it could not be proper to take the land from the plaintiffs who used it for a long time and hand it to an investor without any notice, compensation or court order. For as it was said in **Amani Rajabu Njuluma V. Thomas Amiri** (1990) TLR 8, much as the village government may allocate land to anyone but it has no power to take the land of one person and give it to another. This is also reflected in section 3 (1)(h) of the Village Land Act cap 114 R.E. 2019 which prohibits the taking of people's lands under any circumstance without compensation.

It is thus my finding that the plaintiffs were evicted from the land by the defendants illegally who took the land and are still in occupation of the same.

What about the quantum of damage? The plaintiffs claimed for special damages Tshs. 500,000,000/= being compensation for the burnt and uprooted sugarcane. They also prayed for Tshs. 100,000,000/= being general damages for the hardships suffered. Counsel for the defendants have the view that the amount of Tshs. 500,000,000/= cannot be awarded because of lack of particulars in the plaint and supporting documents. No evidence was led to prove the claims, they submitted. Counsel for the plaintiffs say that despite the absence of details in the

plaint but each of the plaintiffs have brought evidence to prove his claim which if added can establish the amount claimed.

Having examined the rival submissions closely, I am in agreement with counsel for the defendants that the plaint cannot support the claim for special damages. In law, special damages must be pleaded specifically and proved strictly. In other words, the plaint must have specific paragraphs explaining the damages suffered, the way it happened and supporting documents. No particulars given in the plaint. No supporting documents from the sugar company and or agricultural officers brought to prove the claims. That approach, with respect, was wrong and is not part of our practice. It follows that the claim for Tshs. 500,000,000 being damages for burnt

sugarcane and uprooted stems lack legal base and is dismissed.

Next for consideration is the claim for general damages. General damages are awarded at the discretion of the court taking into account the circumstances of each particular case. The plaintiffs have lead evidence showing the way they were invaded by the defendants. The way their farms had been burnt and stem uprooted. The way they have been harassed by the police and locked up. They have also said the way they have lived without income from the sale of the sugarcane. They are now out of the land for some years. The eviction, the burning of the sugarcane

and uprooting of the stems must have caused some stress and mental torture to them. Those who were sent to the lockups must have suffered a lot but even those who were left behind were not at peace as the police could return and pick them at a later stage. Both of them must have suffered greatly. All things measured and weighed carefully, I think it will meet the ends of justice if each of the plaintiffs is awarded Tshs. 3,000,000/= as general damages for hardships suffered.

What about the call to return to their land? It was said that the land has a total coverage 80 acres. This was pointed out by the plaintiffs in the course of giving evidence and was not disputed by the defendants. They actually agreed that it is 80 acres. But, as pointed out the plaint did not give its description other than saying that it is in Kidogobasi village.

Much as it was necessary to give the description of the suit land in the plaint as required by rule 3 of order VII of the CPC, but for reasons stated above, the description given by the parties in the course of hearing are enough to identify the land which is a piece of land measuring 80 acres, currently occupied by the 3rd, 5th, 6th, 7th, 8th and 9th defendants at Kidogobasi village.

Finally, having examined the matter closely, I make the following orders;

1. I declare that the plaintiffs were evicted illegally from the land, 80 acres situated at Kidogobasi village currently occupied by the 3rd,

5th, 6th, 7th, 8th and 9th defendants and must return to the land with immediate effect.

2. I declare that the 3rd, 5th, 6th, 7th, 8th and 9th defendants are occupying the land illegally and must vacate immediately.
3. I order payment of Tshs. 3,000,000/= to each plaintiff as general damages, total Tshs. 90,000,000/=. The amount to be paid by the dependents jointly and severally.
4. The plaintiffs shall have the costs.



A handwritten signature in blue ink, appearing to read 'L.M. Mlacha'.

L.M. Mlacha

JUDGE

31/8/2021

Court: Judgment delivered through virtual court. Right of Appeal is Explained.



A handwritten signature in blue ink, appearing to read 'L.M. Mlacha'.

L. M. Mlacha

JUDGE

31/08/2021