

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA DISTRICT REGISTRY
AT ARUSHA**

LAND CASE NO. 3 OF 2019

MEPUKORI L. SALASH PLAINTIFF

VERSUS

NGOTOKE PARSEKO1ST DEFENDANT

NGOLEPO NANYALE.....2ND DEFENDANT

TIYA OLONYORI.....3RD DEFENDANT

MBAPA TAIKO.....4TH DEFENDANT

JUDGMENT

20/09/2021& 05/11/2021

MZUNA, J.:

In this suit, **Mepukori L. Salash**, the plaintiff herein, is claiming against the above mentioned defendants, among others for an order to be declared as lawful owner of the 70 and ½ acres farm located at Olmolog Village West Kilimanjaro as well as special damages to the tune of Tshs 235,000,000/= and general damages as shall be assessed by the court.

The brief background story is that the said plaintiff says acquired that land from his late father Kaete Salaash (67 ¼ acres) who passed away in 1972. The plaintiff bought another 4 ½ acres close to that land. He instituted the suit against the defendants because he says they

trespassed the suit plot and then demolished his house. The trespass caused his 50 cows, worth Tshs 25 million to die due to lack of grazing field. This ultimately led to his failure to harvest maize and beans (8 and 15 acres respectively). In order to prove his case, he called a total of four witnesses namely PW1 Mepukori Laizer Salaash (the plaintiff), PW2 Kidili Sanga Olesanare, PW3 Msanga Tolet and PW4 Yohana Ngoya. He is therefore seeking for this court to grant this suit with costs.

On the part of the defendants they say the land in question was customarily owned by respective owners way back before Operation vijiji and that the defendant shifted to that area later and then claimed to be his land. They called 5 witnesses who testified as DW1 Ngotore Parseko, DW2 Ngolepo Nanyale, DW3 Tiya Olonyori Laizer, DW4 Mbaapa Taiko Laizerto and DW5 Simon Kiserya Mollel. They prayed for dismissal of the suit with costs.

During hearing of this suit the plaintiff was represented by Mr. Samson Lumende, the learned advocate while all the defendants were represented by Mr Ramadhani Aliasa also a learned advocate. At the close of the defence case the court visited the land in dispute. Subsequently thereafter, the learned counsels filed their written submissions which is taken on board in this judgment.

Three disputed issues are subject for determination:- One, who is the lawful owner of the disputed suit land measuring 70 acres? Two, whether the defendants trespassed into the suit land? Three, what reliefs to which the parties are entitled thereto?

I propose to combine the first issue on ownership and the second issue concerning issue of trespass. Reading from the evidence of the plaintiff (PW1) and the amended plaint, he said to be the lawful owner of the disputed land measuring 70 and ½ acres located at Olmolog Village West Kilimanjaro. That he was allocated the suit land by the Olmolog Location Government and among the given acres of land 8 acres were used for cultivation of maize, 4 acres for cultivation of beans and the remaining 58 acres used for livestock keeping.

That, in the year 2008 the plaintiff built a residential house in the ½ acres, a year later in 2009 the plaintiff was recognised and approved by the Longido District Council to be the permanent owner of the suit land and was allowed to process the customary right of occupancy tendered as Exhibit P1.

That the said house was unlawfully demolished by the defendants in the year 2011 and that in the year 2018 the defendants unlawfully

entered into the plaintiff's land for the purpose of demarcating the land to other villagers.

As per exhibit P1 (Barua ya uthibitisho wa ardhi ya asili) it states that only 60 acres of land was allocated by the village government to one Kaete Salaash the father to PW1. PW1 further tendered photograph of a house, exhibit P2.

This court after going through the evidence, PW1 alleged that he bought 4 ½ acres from one Lesilutiyai, close to that land which was in addition to the 60 or 67 ¼ acres. He admitted that the allocation letter of the Village reads 60 acres but when he measured it was 67 ¼ acres.

Where a document like this which is a written one contradicts with oral or verbal evidence, the documentary one must supersede. Second, the alleged allocation of the land, all the witnesses including PW4 said that there was no such procedure of written document after allocation. More seriously, there cannot be allocation of land by Village Council without approval of the Village General Assembly. That was held in the case of **Udaghwenga Bayay and 16 Others vs. Halmashauri Ya Kijiji Cha Vilima Vitatu**, Civil Appeal No. 77 OF 2012, CAT at Arusha (unreported). The court held that:-

*"...there is nothing to show that the **Village Council** and the **Village Assembly** were involved in allocating the land in issue. It was imperative that it be established **first** in evidence that the 1st respondent allocated the land to the 2nd respondent in line with the procedures set out by the law **before** a suit against the appellants could be sustained successfully. Apparently no such evidence was forthcoming in the case..."*

The alleged exhibit P1 falls in the same shortfalls. More seriously, it does not show the demarcations of the said 60 acres of land and neighbouring people be it Western, Eastern etc. It is not a genuine document. It is no wonder that PW1 when he was cross examined said that exhibit P1 shows that he was allocated only 60 acres, after measuring it, he discovered it was 67 ¼ acres.

~~If PW4 said PW1 was allocated 4 acres of land by the village council~~ where he built a boma and that during the allocation there was no any allocation letter, what makes the other farm now in dispute to have allocation letter? There was no plausible answer which was given.

DW1 said at the time when he was the Village Chairman, there was raised a complaint by the Villagers that the plaintiff blocked a pathway for

grazing Villagers' cattle. Among them are the 2nd to 4th defendants who are the rightful owners of the suit land.

The defendants No. 2, 3 and 4 all adduced evidence that they owned their respective suit plots ranging from 10 acres, 6.56 acres and 11 acres which however one can say needs intervention of the Village leaders concerned to see the clear demarcations. I say so because they were not certain though there is clear proof that they had been tilling the land before the plaintiff defied the order which restricted them not to till it. This was gathered after visiting the suit plot and from the evidence of DW5.

The Court witness one Loomone Olesiyatu testified that he is the Laigwanan and they once convened a meeting to place the demarcation between the plaintiff and the 3rd defendant and that the alleged plot by the 3rd defendant belonged to the plaintiff. He did not however give any proof why he said the suit plot belonged to the plaintiff.

When the court witness was cross examined by Mr Alias for the defendants, he stated that if the plaintiff claims up to the main road, he is a liar and 3rd defendant is telling lies and that formally there was no issuing of title by letter and that the Olmolog village was there since Operation vijiji in year 1972.

That being the case, the evidence that Olmolog village was registered in year 1980 by DW5 had no backing. I tend to agree with the defendants that the disputed land had never been owned by the plaintiff. It had never been trespassed by the defendants.

Now on the reliefs. There was also issue of specific damages. In the case of **Anthony Ngoo & Another v. Kitinda Kimaro**, Civil Appeal No. 25 of 2014 CAT (Unreported) which cited with approval the case of **Stanbic Bank Tanzania Limited versus Abercrombie & Kent T. Limited**, Civil Appeal No. 21 of 2001 CAT (unreported) it was held that,:-

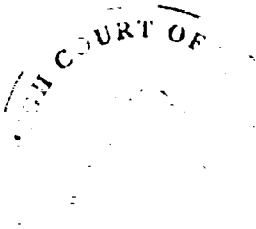
"In relation to special damages, the law is settled. Special damages must be proved specifically and strictly."

The alleged demolition of the house has never been proved. The photograph exhibit P2 has different back view landscape. Even the current structure has different structure of windows. There were no remains of demolished debris. The same logic extends to the allegation that there were 50 cows which died due to hunger let alone the loss for failure to cultivate maize and beans.

The claim for a specific damage to the tune of Tsh 235,000,000/= arising from the loss of profit from the cultivation of maize, beans, selling of milk as well as the materials for construction fails.

On the issue of general damages, having found that there was no trespass, there cannot be grant of general damages. That said the claim by the plaintiff fails. I direct that proper management of the disputed plot be done by the Village council/s concerned with a clear Village plan on ownership. This should be done within two months from today.

This suit stands dismissed with costs.



M. G. MZUNA.

JUDGE

05/11/2021