

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

AT ARUSHA

LAND CASE NO. 15 OF 2018

SIARA LEYAN.....1ST PLAINTIFF
NGWARU NGILEPOI.....2ND PLAINTIFF
SOLOMON KISIKA.....3RD PLAINTIFF
LUCAS NANGAN.....4TH PLAINTIFF
LOPON MILEI.....5TH PLAINTIFF
ISAYA LEE.....6TH PLAINTIFF
OLONGISHU NGILAPOI.....7TH PLAINTIFF
LAANDARE NGILEPOI.....8TH PLAINTIFF
LEMALALI TULITO.....9TH PLAINTIFF
LEKOKO NGARASAA.....10TH PLAINTIFF

VERSUS

EMAIRETE VILLAGE COUNCIL..... DEFENDANT

JUDGMENT

16/09/2021 & 10/12/2021

GWAE, J

Through the plaintiffs' plaint filed in this court on 4th October 2018, the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th and 10th plaintiff herein above claim to be owners of distinct and separate parcels of farm land measuring 33 acres, 26 acres, 85 acres, 5 acres, 6th acres, 8 acres, 4 acres, 10 acres and 5 acres respectively, all pieces of land making a total of disputed pieces of land measuring 190 acres. All plaintiffs further claim to have procedurally

been allocated their respective disputed farm land by then the Emairete-Eliuwai village council in the year 1998 save the 3rd defendant who claims to have been allocated in the year 1989 by the then Engiki-Emariete village council.

The plaintiffs also claim to have been peacefully using their pieces of land for cultivation which is currently located in Emariete Village, defendant who is alleged to have started disturbing the plaintiffs by entering into the plaintiffs' farms and marking demarcation exhibiting its intention to possess the same. The plaintiffs being aggrieved by the alleged conducts of the defendant opted to file this suit against the defendant on the following orders;

1. Declaration order that the plaintiffs are the lawful owners of the suit land
2. Nullification order against any disposition whatsoever made in the disputed land
3. Vacation of the suit property by the defendant and or his agents, workmen, servants etc forthwith
4. Costs be provided for

5. Other relief (s) as the court may deem just and equitable to grant.

Through her written statement of defence filed on the 22nd October 2018, the defendant, Emariete Village Council seriously disputed the plaintiffs' claim of ownership of the suit land stating that the plaintiffs were illegally leasing the suit farm from Tanzania Breweries Ltd (TBL) as the defendant's consent was not sought and obtained by them and that, it was the decision of Emariete Village General Assembly which revoked all customary rights of occupancies illegally granted by the 1st and 3rd plaintiffs when they were village leaders. The defendant's defence is also to the effect that, the suit land belongs to her and that, the plaintiffs were unlawfully allocated pieces of farm due to reason that, there was no consent for such allocation in favour of the plaintiffs by the Village General Assembly. The defendant finally prays for the dismissal of the plaintiffs' suit with costs.

From the parties' pleadings and with court's consultation with the parties' advocates, the following issues were framed;

1. Whether the plaintiffs were lawful owners of the suit land.

2. If issue one is answered in affirmative whether allocation procedures were adhered to

3. To what extent of reliefs are the parties entitled.

Since each plaintiff is claiming to be a lawful owner of a separate and distinct piece of land from each other, each plaintiff was able to appear especially seven (7) plaintiffs out of ten plaintiffs named herein, those testified are; 3rd plaintiff, 1st, 4th 2nd, 9th, 7th and 8^t plaintiff who appeared during trial and testified as PW1, PW2, PW3, PW4, PW5, PW6 and PW7 respectively. However, the 5th and 6th plaintiff did not appear as per information received from Mr. Ngemela, the learned counsel for the plaintiffs that, they were not traceable and that, the 10th plaintiff had become unsound and incapable of granting power of attorney while the matter was pending in the court.

In proving their case, the 3rd and 1st plaintiff orally cemented what is contained in the plaint. The 3rd plaintiff (PW1) adduced to the effect that he applied for the allocation of his parcel of land (85 acres) and he was allocated with the same by the defendant in the year 1989 when he was also a member of village council. In substantiating his claim, PW1 was able

to tender a loss report (PE1), letter of offer dated 10th June 1989 (PE2), a minute of Engiki-Emariete village council dated 7th June 1989 (PE3), defendant's letter dated 16th May 2003 addressed to the PW1 requesting for allocation of 10 acres for construction of a nursery school (PE4), confirmation of the 3rd plaintiff's ownership of the suit land (PE5), a notice of intention to sue dated 10th day of August 2018 issued by the plaintiffs' advocate (PE6).

In his testimony, the 1st plaintiff (PW2) told the court that the dispute in question arose due to insertion of personal interests by either villager or village leaders and he eventually produced a customary right of occupancy (PE7) dated 25th day of February 2010 issued by the Mbulu District Land Officer.

Similarly, 2nd plaintiff (PW4), the former defendant's chairperson who testified to have applied for allocation and the one who also participated in the allocation of a total of 150 acres out of 170 acres. He then tendered an offer dated 16th February 1998 and a minute of the meeting of Village General Assembly held on the 12th December 1998 which were admitted as PE8 and PE9 respectively.

Other plaintiffs that is 4th plaintiff (PW3), 9th plaintiff (PW5), 7th plaintiff (PW6) and 8th plaintiff (PW7) adduced their testimonies to the effect the suit farm was allocated to the plaintiffs and that they had been in occupation of the same for more than 18 years cultivating maize and beans but surprising the defendant forcibly evicted them in the year 2018.

The evidence adduced by the plaintiffs as briefly shown herein above was supported by one Merusoli Lengida (PW8) who told the court that the dispute at hand arose during his leadership as the defendant's chairperson, the dispute which led to his resignation, He further told that court that there was a meeting that was held in 2016 for revocation of the plaintiffs' rights of occupancies but the plaintiffs were not involved. There was also another witness who appeared for testimonial purposes in favor of the plaintiffs, this was one Metui Solomoni who also testified that, the suit farms were allocated to the plaintiffs and he witnessed the allocation since he happened to be a ten- cell leader and that he was born at the suit farms.

In her defence, the defendant through her counsel namely; Mr. Mukama, the learned state attorney via her three (3) witnesses to wit; Grace Alphayo (DW3), Bariki Samuni (DW2) and Waziri Hatibu (DW3)

testified that, the plaintiffs were not legally granted suit farms since from 1981 to 1992, the same farm was leased to TBL by the defendant and that thereafter there were investors that were given the farm temporarily, these were; one Adam Yakas, Edwin Mutui and Eliakim Kimisa. The defence further adduced to the effect that, the plaintiffs did not follow the requisite procedures in acquiring disputed pieces of farms leading to villagers' complaints to the higher authorities including the office of the District Commissioner.

The defence further testified that the plaintiffs were trespassers who were eventually evicted after the Village General Assembly (VGA) had conducted its meeting and came up with its resolution dated 20th December 2016 (DE2) that the plaintiffs be evicted. The defence went on testifying that report of village Council dated 20th December 2017 was duly signed by PW8, in the capacity of chairpersonship. The resolution and its report were tendered by the defence through PW1, Village Executive Officer (VEO) as DE1 and DE2 and DE3. The defence further told the court that the defendant is a surveyed village and that it was officially established in the year 2015 and its certificate of registration was issued on the 26th September 2016 (DE3).

After close of the parties' case, the parties, the parties' advocates and the court found the necessity of visiting the locus in quo. The court visited the disputed farms however as the disputed farm is much bigger and therefore not easier to visit it thoroughly, the court together with the parties opted to have the testimonies of two persons whom we found in the suit land, these were; Eliakimu Kimisa (CW1) and Reginald Tesha, town planner (CW2).

CW1 testified that, he is familiar with the disputed land as a lessee who is currently and temporarily using parcels measuring 367 acres for wheat cultivation leased by the defendant and that, he previously happened to borrow 100 acres for seven years from the 3rd plaintiff. He added that there are no residential houses within the disputed land save homesteads surrounding the suit land whereas the CW2 told the court about historical background of the establishment of the defendant and other neighbor villages namely' Lendikinga village, Eluwai. He further told the court that the main activities in the suit land which was formerly being used by TBL are farming and pastoralism.

The parties' counsel sought and obtained leave to file their final or closing submission. The defendant's counsel was able to file his written

submission pursuant to the court order whereas the plaintiffs' counsel failed to his written final submission filed. I will however not reproduce the defendant's closing submission but I shall take it into account while determining the farmed issues herein above.

In the 1st issue, whether the plaintiffs were lawful \owners of the suit land.

First and foremost, it must be known that the suit parcels of land in dispute are located in the village, therefore, the body in authority over land affairs located in a village is a Village Council of its respective established village as per section 142 (1) of the Local Government (District Authority) Act Cap 287, Revised Edition, 2002. In our suit, the plaintiffs are claiming to have been allocated their respective pieces of farms by the village council after approval by the Village General Assembly but on the other hand the defendant is seriously contending that the plaintiffs had unprocedurally acquired the same that is why the defendant's General Assembly revoked their rights of rights of occupancies or letters of offers.

According to the PE2, PE3, PE4, PE5 and PE6, it is no doubt that the 3rd plaintiff was allocated with a total of 85 acres by the village known Enguiki-Emariete. Even the DE2, defendant General Meeting held on the

20th December 2016 is indicative that, there were villagers who were granted pieces of land located in the farm commonly known as TBL farm (Breweries). Equally, both oral evidence and documentary evidence (PE8 and PE9) tendered by 1st plaintiff (PW2) and his witnesses establish that the 1st plaintiff was undisputedly allocated twenty-two (22) acres of farm as well. It therefore follows that, the 1st, 2nd and 3rd plaintiffs were lawful owners of their respective parcels of farm. It is even worse for the plaintiffs who had not turned up for testimonial purposes, these are 5th, 6th and 10th plaintiffs. Thus, their claims are found to have been left unproven as was rightly decided by this court, Land Division sitting at DSM in **Peter Junior and 17 others vs, Mohamed Akibal and another**, Civil Case No. 104 of 2015 where it was found necessary for each claimant ought to adduce evidence in support of his or her claim (See decision in the case **Nafco vs. Mulbaw Village and others** (1985) TLR 88 and Order xviii Rule 3 of the Civil Procedure Code Cap 33, Revised Edition, 2019).

I am however of the firm view that, a claim of ownership over a parcel of land, in my considered opinion, must be sufficiently proved and not by mere assertions that a certain person was allocated a parcel of land by the village authority without reliable documentary evidence. Disposition

of a village land, in my thoughtful view could not be effected without any documentation. Hence, I am not in agreement with other plaintiffs that, they were allocated with pieces of farms within the so-called Breweries Farm as opposed to the 1st, 2nd and 3rd plaintiff whose evidence is found to be more credible taking into account that there was approval by the village council as established by minutes of village council (PE3), approval by the relevant authority (PE9). This position was demonstrated in a judicial jurisprudence referred by the counsel for the defence in the case of **Methyselaha Paul Nyagwaswa vs. Christopher Mbote Nyribu** (1985) TLR 103 where it was held among other things that;

“There was no transfer because the village council did not approve it. Right to land held in a registered village could only be transferred with approval of the village council”

In our instant case, the defendant prior to the year 2015 was not registered nevertheless its village council evidently approved allocation in favour of the 1st, 2nd and 3rd plaintiff. Similarly, the right of customary right of occupancy would not be granted in favour of the 3rd plaintiff if the allocation to him was not approved by the defendant's village council. Hence, I find the 1st, 2nd and 3rd defendant to have been allocated parcels

of farm and they were therefore lawful owners of their respective farms unlike other plaintiffs since those other plaintiffs have failed to prove on the balance of probabilities as required under section 110 of the Tanzania Evidence Act, Revised Edition, 2019. Had the Minute of the Village General Assembly held on the 8th December 1998 mentioned or listed the names of other villagers who either applied for allocation or those said to have been affected by the reservation natural resources, plaintiffs inclusive the finding of this court would have been in the favour of other plaintiffs who appeared and prosecuted their case provided that they are listed.

In relation to the 2nd issue one namely; whether the plaintiffs were lawful owners of the suit land' is answered in affirmative whether allocation procedures were adhered to

According to the defendants, the plaintiffs were not procedurally allocated their farms. Issues that were raised by the defence are; absence of meetings held by Village General Assembly, the purported allocation of more than 50 acres by the village council. In his final submission, the counsel for the defence urged this court to make reference to the decisions of this court in **Peter Junior (supra)** and the case of **Essau Mpinga @ Tanzania vs. Juma Shabani Kitundu**, Land Appeal No. 69 of 2019

(unreported) where it was held that, village councils are not empowered to grant more than 50 acres unless they are more applicants.

In our present case, I therefore hesitate or not prepared to hold that the current law, village land Act, Cap 114 Revised Edition, 2019 relating to the powers of the village councils to grant one applicant for allocation of land is limited to not more than 50 acres (See Regulation 77 of the Village Land Regulations GN. No. 2001), is applicable to the case at hand where it is plainly evident that the 1st, 2nd and 3rd plaintiff were allocated parcels of land before prior to an enactment of the Village Act. I am saying so simply because according to both oral and documentary evidence adduced during trial, nothing suggestive that the 3rd plaintiff was allocated a total of 85 acres after the Village Land Act (supra) had become into operative, the same piece of legislation is not therefore applicable. Therefore, the Peter's case (supra) is distinguishable.

As to the contention that, the 1st 2nd and 3rd plaintiffs were allocated pieces of land simply because they were the then defendant's leaders, I think that argument and evidence are irrelevant since even a leader, like any person, is therefore not excluded from being allocated with a piece of land unless fraud is established to the required standard.

Even if the 1st, 2nd and 3rd plaintiff would have not procedurally acquired their respective pieces of land yet the defendant was supposed to have revoked the plaintiffs' rights over the claimed farms in accordance with the laws of the land since even the DE2, minutes of the defendant's General Assembly dated 20th December 2016 directed that, the village leaders would write to the alleged land trespassers directing them to surrender their documents in order the lawfulness of the use and occupation of the disputed would be realized.

Lastly, on the reliefs that the parties are entitled,

In the circumstances of the case and the parties' evidence, the claims by the successfully plaintiffs (1st, 2nd and 3rd plaintiffs) and defendant where her defence is successfully, those to whom the verdict has been entered in their favour as herein above must be declared lawful owners of the suit land and in case the defendant is desirous to dispose them with their ownership, she had to adhere to the required land revocation procedures as stipulated by the law but as for now the 1st, 2nd and 3rd plaintiff are entitled to vacant possession of their respective pieces of the farm from either the defendant and his agents or workmen.

Consequently, the plaintiffs' suit partly succeeds and it is dismissed to the above extent. Considering the circumstances that led to the rise of the dispute between the parties, each party shall bear his own costs.

It is so ordered.



M. R. GWAE
JUDGE
10/12/2021

Court: Right of appeal to the Court of Appeal of Tanzania fully explained



M. R. GWAE
JUDGE
10/12/2021