

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA

LAND CASE No. 13 OF 2021

MOTOMOTO AKIB SACCOSS 1ST PLAINTIFF
FAJENCE SALVATORY 2ND PLAINTIFF
MUSSA GODWINI BIKOGWA 3RD PLAINTIFF
MUKOSA LUCAS 4TH PLAINTIFF
LAURENCE R. BUKUKU 5TH PLAINTIFF
NESTORY MJWIGA 6TH PLAINTIFF

VERSUS

THE REGISTERED TRUSTEES OF CHAMA CHA
MAPINDUZI (CCM)DEFENDANT

JUDGMENT

29th June & 29th September, 2022

Kahyoza, J.:

Motomoto Akiba SACCOSS (Motomoto SACCOSS), Fajence Salvatory (Fajence), Mussa Godwini Bikogwa (Bikogwa), Mukosa Lukas (Mukosa) Laurence R. Bukuku (Bukuku) and Nestory Mjwiga (Mjwiga) sued the Registered Trustees of Chama cha Mapinduzi (CCM), (the defendant) praying to be declared lawful owner of the plots in dispute, to which the defendant trespassed onto in 2019. Further, the plaintiffs jointly claim for general damages to be assessed at Tzs. 20,000,000/=. The defendant

refuted the allegations of trespass and contended that she was not involved in sale transactions or did she authorized sale disputed plots of land to the plaintiffs. The defendant averred that the plaintiffs have no cause of action against her.

Having filed the written statement of defence, the defendant defaulted to appear for hearing so the case proceeded *ex-parte*. Hence, this is an *ex-parte* judgment. The following are issue for determination-

1. Whether the plaintiffs are lawful owners of disputed pieces of land;
2. If first issue is answered affirmatively, whether the defendants intended encroachment to the plaintiffs' pieces of Land is lawful;
3. Whether the plaintiffs have a cause of action to sue of the defendant in his own name; and
4. Reliefs that the parties are entitled to.

The plaintiffs occupy the disputed plots of land acquired at different period from leaders of Chama cha Mapindizi directly or indirectly. Some of the plaintiffs own disputed plots adjacent to the defendant's land, which they procured from other lawful owners. In 2019, the defendant trespassed to the plaintiffs' land claiming that the disputed land belonged to her. The defendant demanded vacant possession or payment of rent.

The undisputed facts are that the defendant obtained land through

her branch leaders sometimes in 1973. According to Mr. Abdallah Seif (Pw1), who was the Chairperson of Kasenga CCM branch, in 1999 envisioned to construct the party's office. They had no money to undertake the project. Leaders met and made a resolution to dispose part of their land to secure money to implement the project. They sought mandate from the defendant's district party leaders to sell part of the land and use the proceeds to construct the party's office. The district party leaders granted the mandate required. They sold part of the disputed land, which was 90 X 90 paces in size. Mr. Abdallah Seif (Pw1) deposed that they sold the land to three people who are Bukuku (**Pw3**), Cosmas and Kabadi. They executed a sale contract and Mr. Abdallah Seif (Pw1) signed it. He tendered a copy of the contract as exhibit P1.

The sale agreement (Exh.P1) demonstrates that Kasenga CCM Branch, which was represented by the secretary and chairperson of the branch, sold a piece of land to Bukuku (**Pw3**). After they disposed land, they built the defendant's office and Bukuku (**Pw3**) took possession of the disputed land. Bukuku (**Pw3**) supported the evidence of Mr. Abdallah Seif (Pw1), that he bought the land in dispute from Kasenga CCM Branch leaders.

Later in 2015, when Niclous Sebastian (Pw2) was a branch secretary,

he invited an investor to build a telephone tower. He was later promoted to a post of CCM ward secretary. He realized at the time he was a CCM ward secretary that the investor defaulted to honour the agreement. He reported to the party district leaders, who told him to make follow up. He had no means to pursue the matter. He sought mandate to sell part of the land. He reported to the party branch secretary, who convened a meeting and a resolution was reached to sell part of the land.

They sold a piece of land to Bukuku (**Pw3**), who was a neighbor. He tendered the sale agreement between Kihura CCM branch within Kasenga ward to Bukuku as exhibit P.2. He added that after they disposed the land they made follow up, got money and build a conference hall. Bukuku (**Pw3**) supported the evidence of Niclous Sebastian (Pw2).

The evidence further revealed that defendant or her leaders never owned some of the disputed plots. Mussa Godwin Bukogwa (**Pw4**), who was a chairperson of Kasenga Marketing Cooperative Society (Society) sold part of her land to Mateso Salvatory. They sold the dispute land to pay remuneration to a guard and a cleaner. Mussa Godwin Bukogwa (Pw4), tendered a sale agreement as exhibit P. 4.

Later in 2003, the Society sold another piece of land to Mussa Godwin Bukogwa. Josia Jemusi, the branch chairperson of the Society, John

Jacob, the secretary of the Society, Mr. Hamis M. Kavula (surveyor) and two members of the Society represented Society. Mussa Godwin Bukogwa (Pw4), tendered also a sale agreement between him and the Society as exhibit P. 4.

There is other evidence on record that Kihura CCM branch sold her land to Akiba SACCROSS in 2003. Josia James (**Pw9**) deposed that he was Kihura CCM branch chairperson from 2000 to 2005. And that on 4/12/2003 they sold a piece of land to a group of people, referred to as AKIBA SACCROSS. They sold the disputed land to rehabilitate their office. They executed sale deed. He identified the sale deed (Exh. P. 8). The sale deed was tendered by Sigfried Domitian (Pw5), who was the treasurer of the SACCROSS.

Josia James (**Pw9**) deposed that party members, who were Cleaophas Petro, Oliver Gonzalgos and Bahati Matayo attended the meeting, which resolved to sell the party's land to Akiba SACCROSS.

Mukosa Lucas (**Pw6**) gave evidence that he bought a piece of land from Celestin Chiza on 29/4/ 2004. He tendered a sale agreement as exhibit P.9. He occupied the disputed land from immediately from 2004. Hamis Madebe Kavula (**Pw10**) witnessed the sale agreement between Mukosa Lucas (**Pw6**) and Celestin Chiza. He identified the sale agreement (Exhibit

P.9).

Nestory Njwiga (**Pw7**) deposed that he occupies the land, which was allocated to him by the village government in 1986. He built the house on the plot in that year and he occupies. He added that at time the village government allocated him land, the chairperson was Leonard Sekitangu and the secretary was Reginald. Nestory Njwiga (**Pw7**) testified further that his land was close to CCM office and that he had occupied the land for 23 years when CCM branch office was built. He prayed to be declared the lawful owner of the suit land.

Fulgence Salvatory (**Pw8**) deposed that he occupies land, which belonged to his deceased brother. He added that Mateso Salvatory, his late brother purchased it from Kasenga Marketing Cooperative Society. He tendered a sale agreement between his late brother and Kasenga Marketing Cooperative Society. Mussa Godwin Bukogwa (**Pw4**), who was a chairperson of Kasenga Marketing Cooperative Society

I propose to commence with the third issues which is a legal issue that is the whether the plaintiffs have a cause of action to sue of the defendant in his own name.

Does the Complaint disclose a cause of action against the defendant?

I propose to commence with third issue whether the plaintiffs have a cause of action to sue of the defendant in his own name. A cause of action means every fact which will be necessary for the plaintiff to prove if traversed, in order to support his right to judgment. A cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it dependent on character of the relief prayed for by the plaintiff. See **Mohammad Khali Khan V. Malibub Ali Mian** (AIR) 1949 PC 28 AT 86. The position in **Mohammad Khali Khan V. Malibub Ali Mian** (supra) was adopted in the case of **Mukibi V. Bharsar** (1967) E.A 477 and **John Byombalirwa V Agency Martine (T) Limited** [1983] T.L.R. 1, where it was held that in order to decide on whether there is a cause of action, the court needs to look at the plaint and documents attached thereto to determine if it discloses a cause of action or not.

The plaintiffs claimed to own and occupy different plots of land. Some of the plaintiffs alleged to buy the disputed land from the defendant's leaders while others claimed to procure the disputed land from previous owners who do not trace title from the defendant. Almost all plaintiffs attached sale agreement. It is alleged under paragraph 6 of the Plaint, that in 2019 the defendant trespassed onto plaintiffs' land claiming that the land belongs to her. The defendant threatened to take legal action against

the plaintiffs. They alleged further that the defendant demanded for vacant possession or payment of rent.

It is trite law that when determining the issue whether the Plaintiff discloses a cause of action, the court should examine the plaint only. I have no doubt in mind that the facts narrated above from the plaint if traversed by the defendant establishes a *prima facie* case for the plaintiff to sue the defendant. I resolve the third issue that the plaintiffs' plaint disclosed a cause of action against the defendant.

Are plaintiffs lawful owners?

Motomoto SACCOS, Fajence, Bikongwa, Mukosa, Bukuku and Njwiga sued the Registered Trustees of CCM (the defendant) for declaration that they are lawful owners of the disputed land. The defendant opposed the claim, pleading that she is the owner of disputed land, which she obtained in 1973 and that she has never authorized any one to dispose her land. As demonstrated, the defendant did not appear to defend the suit. The only evidence available is that of the plaintiffs and their witnesses.

The evidence on record shows that some of the plaintiffs do not trace title from the defendant's land. The defendant did not tender evidence to link their title with her land. There is ample evidence proving that the

defendant has never occupied the land in dispute. Mussa Godwin Bukogwa (**Pw4**), Akiba SACCROSS, Fulgence Salvatory (**Pw8**), trace title over the land in dispute from Kasenga Marketing Cooperative Society. Leaders of Kasenga Marketing Cooperative Society at the time title over the land they occupy passed to them, testified and tendered or identified sale agreements. There is no evidence to the contrary since the defendant did not testify.

I find sufficient evidence proving that, the land Mussa Godwin Bukogwa (**Pw4**), Akiba SACCROSS, Fulgence Salvatory (**Pw8**) occupy belonged to Kasenga Marketing Cooperative Society. I also find it proved that Kasenga Marketing Cooperative Society transferred her land to Mussa Godwin Bukogwa (**Pw4**), Akiba SACCROSS, Fulgence Salvatory (**Pw8**). I have no duty to find out whether the transfer was lawful or not. It is my firm opinion that Mussa Godwin Bukogwa (**Pw4**), Akiba SACCROSS, Fulgence Salvatory (**Pw8**) have lawful titles to the plots of land in dispute. They have a better title as compared to the defendant.

There is a second category of plaintiffs, who trace title from neither the defendant nor from Kasenga Marketing Cooperative Society. They are Mukosa Lucas (**Pw6**) and Nestory Njwiga (**Pw7**).

Mukosa Lucas (**Pw6**) gave evidence that he bought a piece of land

from Celestin Chiza on 29/4/ 2004. Hamis Madebe Kavula (**Pw10**) witnessed the sale agreement. He tendered a sale agreement as exhibit P.9. He occupied the disputed land from immediately from 2004. There is no evidence to the contrary or to demonstrate that Celestin Chiza trespassed to the defendant's land later disposed it. I considered the defendants written statement of defence, which showed that the defendant obtained land in 1973. The bounders of the defendant's land was not stated. I cannot construe Mukosa's land to belong to the defendant as it was not established to be within the boundaries of the defendant's land. I am of the view that Mukosa has proved by balance of preponderance that he is the lawful owner of the land in dispute.

Nestory Njwiga (**Pw7**) deposed that the village government allocated the disputed land to him in 1986. He occupied the disputed land an interrupted from 1986 to 2019. There is no evidence to the contrary. I find that, Nestory Njwiga (**Pw7**) proved his claim that is a lawful owner. Consequently, I declare him the lawful owner.

Mukosa Lucas (**Pw6**) and Nestory Njwiga (**Pw7**) are entitled to the disputed land by adverse possession, if at all the disputed land they occupy belonged to the defendant. They have occupied the disputed land for more than 12 years uninterrupted.

I now turn to plaintiffs who alleged that they purchased the disputed land from party branch leaders. They are Bukuku (**Pw3**), AKiba SACCOS and Cosmas Paul. Indisputably, Bukuku (**Pw3**), AKiba SACCOS and Cosmas Paul procured the disputed land from branch leaders of the CCM. According to Mr. Abdallah Seif (**Pw1**), who was the Chairperson of Kasenga CCM branch, in 1999, the party planned to construct the party office. They had no money. They resolved to dispose part of the land and construct the office. The branch leaders sought and obtained mandate from the district party to leaders to execute the plan. They executed. Mr. Abdallah Seif (**Pw1**) deposed that they sold the land to Bukuku (**Pw3**), Cosmas and Kabadi.

The defendant did not attach to the written statement of defence documents of title or documents to show how she acquired the disputed land. The defendant attached minutes of the meeting between the Kasenge village executive council and the party ward secretary convened to identify boundaries of the defendant's land. The minutes showed among other things that the defendant's land was bordered by Mr. Mateso Salvatory and Mussa Bikongwa. It is nowhere stated that the defendant gave authority for to people who attended the meetings to represent her. The evidence on record proved that the party's leaders at branch or ward level are the

ones who obtained land on behalf of the defendant. They believed they had mandate to dispose party's property by passing a resolution and later obtaining approval from the district party office. I find people who baptized the disputed land to be the party's property are the same persons who stripped the defendant's title. It should not escape our minds that the disputed land was not registered.

Had the disputed land been registered, it is the registered person who would have transferred it. In a situation where, party branch leaders acquired and later disposed of the disputed land, which was not registered through valid meeting, I find the disposal not unlawful. Thus, I hesitate to hold that Bukuku (**Pw3**) and AKiba SACCOS to be unlawful owners of the disputed land.

Is defendant's intended encroachment lawful?

After answering the first issue as I did, the issue is whether the defendant's intended encroachment to the plaintiffs' pieces of Land is lawful. The answer is simple, that is the defendant's intended encroachment is unlawful. The defendant did not prove her title to the disputed land by documents or oral evidence. The defendant's encroachment is not justifiable.

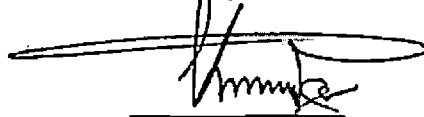
What reliefs are parties entitled to?

Given the above findings, the plaintiffs are entitled to the disputed land. The plaintiffs' claim for general damages to be assessed at Tzs. 20,000,000/= . I find no evidence to substantiate the claim. Consequently, I dismiss the claim for general damages.

In the end, I declare the plaintiffs to be lawful owners of the disputed land. I will not make an order to costs as the defendant did not contest the claim by assembling evidence.

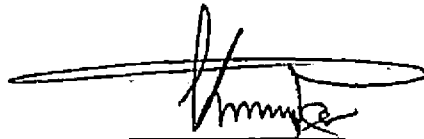
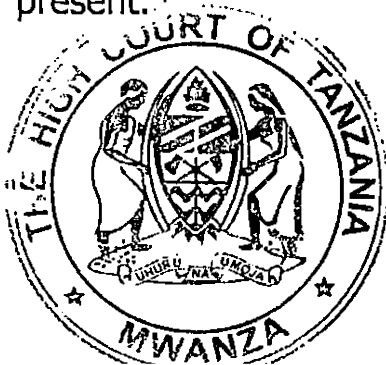
It is ordered accordingly.

Dated at **Mwanza** this **29th** day of September, 2022.



John.R.Kahyoza.
Judge.

Court: Judgment delivered in the virtual presence of Mr. Hezron the plaintiffs advocate and Mr. Bugoti advocate for the defendant . B/C Jackline present.



John.R.Kahyoza.
Judge.
29/9/2022