

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

**LAND CASE NO. 36 OF 2019**

**LORIKU LENDOYA (Suing as Legal Representative of  
Lendoya Letayo).....PLAINTIFF**

**VERSUS**

**GODSON MBAAYO.....1<sup>ST</sup> DEFENDANT**

**JAMHURI MBAAYO.....2<sup>ND</sup> DEFENDANT**

**MBATITI MBAAYO.....3<sup>RD</sup> DEFENDANT**

**GABRIEL MBAAYO.....4<sup>TH</sup> DEFENDANT**

**LONIN'GO MBAAYO.....5<sup>TH</sup> DEFENDANT**

**JOSEPH LIKINJIE (Sued as the legal representative of**

**DAUDI MBATITI).....6<sup>TH</sup> DEFENDANT**

13<sup>th</sup> September, and 31<sup>st</sup> October, 2022

**JUDGMENT**

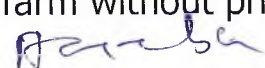
**MWASEBA, J.**

The plaintiff herein has sued the defendants jointly and severally claiming for ownership of the landed property and prays for judgment and decree against the defendants as follows:



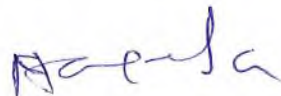
- i. Declaration that the land described in paragraph 12 of the plaint belongs to and is among of the estates of the late Lendoya Letayo.
- ii. Eviction order against the defendants jointly and severally from the land in dispute
- iii. An order of permanent injunction to restrain the defendants by themselves, their servants and or their agents or by whosoever from entering upon the plaintiff's land or part thereof.
- iv. General damages for trespass
- v. Interest at the rate of 7% in decretal sum from the date of the suit till payments in full.
- vi. Costs of the suit.

The gist of this matter as can be grasped from the amended plaint is that the disputed land belongs to the late Lendoya Letayo who inherited it from his late father in 1920's. He had been using it up to 1970's when he leased it to the late Mbaayo Minjili on agreement that they will be sharing the proceeds gained from the disputed land. They also agreed that the lessee would not plant permanent crops in the disputed land and would not cut trees that have been planted in the farm without prior



consent of the late Lendoya Letayo. In 1993 the lessee breached the agreement and cut off a big tree therein. He was fined and the lessor terminated the agreement and re-leased his land to Tumbaa Meirimiembele. Later, Israel Mbaayo and his mother and step mother requested him that he should leave the farm under the supervision of Israel. After having a discussion with his family, Lendoya agreed to heed to Israel's request and their agreement was put in writing on 17/06/1993. In August the same year, Lendoya Letayo (Lessor) met his untimely death. After his death, the plaintiff herein who was his second born, had been receiving the proceeds from the disputed land. In 2007 the family of Lendoya Letayo allowed Jackson Loriku to construct his house in the disputed land. In 2019 the plaintiff requested Israel to surrender the disputed land to Lendoya Letayo's family. He agreed and on 12<sup>th</sup> June 2019 he handed over the land to Lendoya's family in the presence of Maasai Elders (Malwaigwani). However, the defendants who were welcomed by Israel refused to vacate the disputed land.

The defendants on their side denied the allegation and averred that the disputed land was the property of their late father Mbaayo Minjili who inherited it from his father and used it for agricultural activities in part of his life and eventually divided it to his sons.



Therefore, they pray and ask this court to dismiss the suit with costs.

During the hearing of this case the plaintiff was represented by Mr Gwakisa Sambo while the defendants were represented by Mr Jackson Ndaweka. Both parties agreed that their matter should be determined without the aid of assessors.

To prove his case the plaintiff paraded six witnesses to support his case who are Loriku Lendoya **(PW1)**, Israel Mbaayo **(PW2)**, Saruni Logondagwa **(PW3)**, Kilamani Lendoya Letayo **(PW4)**, Torongey Lendoya Letayo **(PW5)** and Jackson Loriku Lendoya **(PW6)**. The defendant also called a total of seven witnesses who are Godson Mbaayo **(DW1)**, Mathayo Meagi **(DW2)**, Samwel Saing'waru **(DW3)**, Gabriel Mbaayo **(DW4)**, Mbatiti Mbaayo **(DW5)**, Loningó Mbaayo Minjili **(DW6)**, and Jamhuri Mbaayo **(DW7)**.

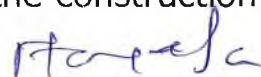
PW1, who is the secondborn of Loriku Lendoya and the administrator of his father's estate stated before this court that among the land left by his deceased father was that located at Siwandeti Village, Arumeru District within the City and Region of Arusha. The land was 390 meters by length and 52 meters by width. In the Northern part it is bordered by his uncle one Saloni, at the Southern part there is a road, Eastern part there is River Ngarenaro and on western part there is a road and a ditch

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of water. He testified further that he was born in 1945 and when he became of senses, he found his father on the said land and was using it for agricultural activities. The said land had 10 acres which his grandfather, Letayo divided it equally to his two wives. Thereafter, PW1's father being the eldest son of his mother (Letayo's wife) his mother's portion was put under his custodian.

It was his further submission that, when his father left Siwandeti to Mosikito in 1950 the area was given to Mbaayo Minjili to keep it for the consideration of sharing the products coming from the said farm. In 1992 their relation went soar after Mr Mbaayo Minjili felled big trees and he was ordered to pay a fine of Tshs. 10,000. Thereafter a farm was given to Lodondawa Meirie Miembere who used it for three months and it was given to Israel Mbaayo for the agreement that they would be sharing the products. Later on, in 2019 the said land was returned to their families in the presence of "Laigwani" and other families including the family of Lendoya Letayo and the family of Israel. The same is exhibited by Exhibit P2 (handing over agreement).

It was his further submission that, after receiving the land from Israel they were not able to use it since the same was invaded by other people who kept bricks in their area ready to start the construction. The matter



was reported to divisional Secretary who issued a letter to stop using the disputed land until the dispute is settled (exhibit P3). The invaders disobeyed the order and the plaintiff reported the matter to the District Commissioner but they refused to attend a situation which led the matter to be reported to the police station and later he filed a suit before the court. It was also submitted that his son Jackson was using part of the disputed land where he built a house, he is currently living in. Even after filing this suit the respondents are still using the disputed land. During cross examination, he stated that he had no evidence of the handing over the disputed farm from his father to Mr Mbaayo.

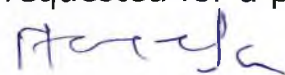
On his side PW2 (Israel Mbaayo) agreed that the disputed land was given to his late father (Mbaayo Minjili) by the appellant's father, the late Lendoya Letayo and the same was given to him in 1992 after his father started felling big trees in the disputed land. On 17/06/1993 they executed a written agreement as evidenced by Exhibit P4. It was submitted further that when the land was handed over to him no one was using the said land except for himself and he knew the defendants who are his relatives and each one has his own land away from the disputed land which is more than one and a half acres. More to that, the person who built on the disputed land is Jackson Loriku the son of the plaintiff and he declared that on 12/06/2019 he returned the said farm

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to them. During cross examination he stated that it was the 2<sup>nd</sup> defendant who put bricks on the disputed land and he never saw Mbatiti Mbaayo cultivating the disputed land before he gave back the land to the owner. He further stated that he was paying around Tshs. 300,000/= to the plaintiff after every harvest as proceeds of using the leased land. Regarding the agreement entered in 1993 as per exhibit P2 he said that his mothers did not sign the agreement as the land was not given to them. His father knew that he went to Lendoya to ask for the said farm.

His evidence was supported by that of the PW3 (Saruni Legondagwa), PW4 (Kilamani Lendoya), PW5 (Torongey Lendoya) who also testified that the disputed land was owned by the plaintiff's late father and later on it was leased to Mr Mbaayo Minjili who started to fell the trees which caused the disputed land to be given to Israel Mbaayo the son of Mbayo Minjili who leased it until 12/06/2019 when he returned it to the appellant. They also stated that it was the plaintiff's son, Jackson who built the house on the disputed land.

On his side PW6 (Jackson Loriku Lendoya) submitted that he moved to Siwandeti in 2007 and he was given a land by the family of Lendoya Letayo who was his grandfather. When he requested for a place to build





a house, he was told that Mr Israel would show him a place and the same was done. It was his further submission that he knew the defendants, his uncles, and one of them is his cousin and no one has done any development on the disputed land.

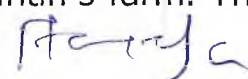
On the other hand, DW1, Godson Mbaayo testified that, he is the son of Mbaayo Minjili Meyaseki, and that the disputed land belongs to his late father and its size is 375 x 53 steps. Regarding the boundaries, on the North there is Mr Saloni Letayo, East side there is Mr Matayo Miage and on the West side they are bordered by the road going to Tumbaa Minyembe, on the South they are bordered by James Meshiyeki and there is a road going to Kimnyaki crossing the farm. He stated that, besides the said road they are bordered by James Loirish, Pastor Jumbe Loirisho, Saluni Lodondawa, Lembiriti and Sokoine Sugu. He testified further that, he was born in that area and they had planted trees and banana plants and upon the death of their father in 2014 the said farm was distributed to his eight (8) children. On his part, he was given his portion in year 2000 whose size is 25x 120 steps and he planted coffee. The mentioned Jackson is living on the disputed area as his mother was given that portion by their late father as Jackson's mother is also his sister.





He submitted further that what transpired in Exhibit P4 is a mere cheating since the disputed land never belonged to the plaintiff's father as they were residing at Mswakini Village. Prior to this case the plaintiff took them to the Division officer, then to Arumeru District Commissioner and they were once arrested by police officers who were forcing them to leave the disputed land which was inherited from their father. When he was cross examined, he stated that PW2 is his brother but that alone cannot prove that he is telling the truth and he has documents to prove the ownership of the disputed land although he did not bring them before the court. He added that he was not aware of the meeting conducted in 1993 as he was not part of it even if Exhibit P4 indicated that it was between his brother (PW2) and the plaintiff's father, he is not aware of the dispute between his father and the plaintiff's father. His evidence corroborated the evidence of DW4, DW5 and DW6.

On his side DW2, Mathayo Meagi who is a neighbour to the disputed land testified that he inherited the disputed land from his father, Meagi Sainamie whose size is  $\frac{3}{4}$  acres and it is bordering Mbatiti Mbaayo to the South, Ngarenaro River to the East, Ledondawa Merinyendele to the North, James Meshirieki to the South and Mbatiti to the West although he had no document to prove the same. He became aware of the dispute in 2021 and he is not aware of the plaintiff's farm. The disputed



land belongs to Mbaayo Minjili and after his death his children became the owners and on the disputed land there is a house of his grandson. On cross examination, he admitted not to witness any handing over of the disputed farm to DW1's father by the plaintiff's father and he never witnessed the late Mbaayo giving his wives and sons the disputed land, but he just saw them using it. Also, he saw Israel using the disputed land since 1992. Thus, apart from seeing the children of Mbaayo using the disputed land he was not aware of any other things.

DW3, Samwel Saing'waru told the court that he has been a ten-cell leader of Siwandeti since 2012 to date and he was not aware that there was a dispute at the disputed land. To his understanding, the disputed land belongs to Mbaayo Minjili and was inherited by his children. He does not know Loriku Lendoya and the plaintiff herein and that they do not have any landed property at his area of jurisdiction.

After having a summary of the evidence adduced before this court I go back to the agreed framed issues which are as follows:

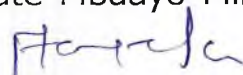
- i. Who is the lawful owner of the disputed land
- ii. To what reliefs are the parties entitled



Regarding the first issue as to who is the lawful owner of the disputed land, the evidence is clear that both sides claimed that they acquired the said land through inheritance. The plaintiff herein stated that his late father inherited the disputed land from his late father. And that in 1950 his father leased the said land to Mbaayo Minjili with the agreement that they would be sharing the proceeds from the said farm. The defendants had the same story that the disputed land belongs to their late father who inherited the same from his late father. Nobody has a documentary proof of the inheritance of the said farm.

To prove his allegation, the plaintiff told the court that his father leased the disputed land to Mbaayo Minjili in 1950 but they did not put it in writing. In 1993 they put it in writing when his father re-leased it to Israel Mbaayo as well stipulated in Exhibit P4 and Exhibit P2 in which Israel was returning the land to the plaintiff herein. In both agreements Mbaayo's family was not involved.

On the defence side DW1, DW4, DW5 and DW6 told the court that they inherited the land from their late father and they had been using the land since they were born. To prove their case they called DW2, Mathayo Meagi who is their neighbour to the disputed land and told the court that the disputed land belongs to the late Mbaayo Minjili and his



children inherited from him. They also called a ten-cell leader of Siwandeti area where the disputed land is located. He firmly told the court that he had been a ten-cell leader of that area since 2012 to date and he had not been aware that there was a dispute on that land. He said the land belongs to Mbaayo's family and Mbaayo's children have been using it. He said the late Loriku Lendoya and the plaintiff herein have no landed property at his area of jurisdiction. And he insisted that he does not know Loriku and the plaintiff.

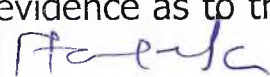
It is a settled principle that he who alleges must prove and this is well provided under **Section 110 and 112 of the Evidence Act**, Cap.6 [R.E 2022] that: -

*"110 -(1) Whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist"*

The same had been decided in the case of **Serengeti District Council and Another Vs. Maruko Sendi** [2011] TLR 334 that: -

*"It is an elementary principle that he who alleges is the one responsible to prove his allegation."*

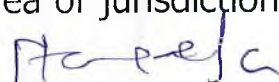
That being the legal position, it goes without saying that the plaintiff herein has the onus of proving his allegation. However, the fact that his late father was the owner of the disputed land and in 1950 he leased it to Mbaayo Minjili is unfounded. There is no any evidence as to the said



agreement which is alleged to be entered between Loriku Lendoya and the Mbaayo Minjili in 1950. The plaintiff has neither produced any documentary evidence nor brought any witness credible to testify the circumstance. Unfortunately, neither of the plaintiff's witnesses witnessed the said agreement. So, this is a mere allegation.

It is further stated that the agreement they entered is that the plaintiff Loriku Letayo would be receiving proceeds from the disputed land. There is no proof on that as well. The plaintiff's evidence is full of contradictions. For instance, it is pleaded that PW1 was receiving the proceeds at the same time PW4 Kilamani Lendoya Letayo told the court that he had been the one who was receiving the proceeds, and that he used to take Tshs. 7000- to 10,000 from Israel. This contradiction raises doubts; blemishes the evidence and taints the witness's credibility. See **Ernest Sebastian Mbele vs Sebastian Sebastian Mbele and 2 Others**, Civil Appeal No. 66 of 2019.

Further to that, the statement by the plaintiff that there was an agreement between Loriku and Israel after Mbaayo felling a tree also lacks proof. Similarly, there is no proof that the late Mbaayo was fined after felling a tree. Moreover, the ten-cell leader told the court that there had never been such a dispute at his area of jurisdiction. Looking



at exhibit P4 which is an agreement between Loriku and Israel it is questionable and does not establish ownership. Mbaayo Minjili who had been using the land all that time was not involved while he was alive by then. Coming to Exhibit P2 which is a handing over of the disputed area from Israel to the plaintiff, Mbaayo's family was never involved. Thus, I am inclined to believe that the plaintiff has failed to prove his case to the required standard.

Having aforesaid, I find that the plaintiff has failed to prove his case to the required standard and therefore the suit is dismissed with costs.

It is so ordered.



**DATED** at **ARUSHA** this 31st day of October, 2022.

A handwritten signature in blue ink, appearing to read "N.R. Mwaseba".

**N.R. MWASEBA**

**JUDGE**

**31/10/2022**