

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(ORIGINAL JURISDICTION)

LAND CASE NO. 23 OF 2021

1. NURU SADICK BASHANGE 1ST PLAINTIFF

2. JOHARI RAJABU HUSSEIN 2ND PLAINTIFF

VERSUS

1. KIGOMA UJIJI MUNICIPAL COUNCIL..... 1ST DEFENDANT

2. ATTORNEY GENERAL 2ND DEFENDANT

Date of Last order: 02/12/2022

Date of Judgment: 16/12/2022

JUDGEMENT

MAGOIGA, J.

The plaintiffs, **NURU SADICK BASHANGE** and **JOHARI RAJABU HUSSEIN** by way of plaint instituted the instant suit against the above named defendants jointly and severally, praying for judgment and decree in the following orders, namely:-



1. The defendants be ordered to pay compensation to the plaintiff to the tune of 27,338,416/= (Twenty-Seven Million, Three Hundred Thirty Eighty Thousand, Four Hundred Sixteen Only);
2. The defendants be ordered to pay general damages to the tune of 10,000,000/= each to be dully assessed by the court as the result of acquiring land for long period without compensation;
3. Costs of this suit and any other reliefs deemed just and fit by the Honourable Court.

Briefly the facts of the suit as gathered from the plaint are that, the plaintiffs were rightful owners of the suit land under customary right of occupancy, of which in the year of 2001, their land was taken by the Kigoma-Ujiji Municipal Council for purpose of building Kitongoni primary and secondary schools on promise to be compensated for land and unexhaustive improvement over the said land.

Further facts were that, despite the fact that the plaintiffs have been at all material time making follow-ups demanding compensation and the 1st defendant promises to compensate them, but has been in vain, hence, this suit praying for orders as contained in the plaint.

Upon being served with the plaint, the defendants filed a joint written statement of defence disputing the plaintiffs' claims on rider that the suit

land was planned in 1998 for public use and the ownership recognized by the 1st defendant by the plaintiffs was due to misleading caused by the plaintiffs to the 1st defendant's employees as such invited the plaintiffs into strict proof of their claims thereof and eventually prayed that the suit be dismissed with costs.

At all material time, the plaintiffs were present and unrepresented whereas the defendants enjoyed the legal services of Mr. Arnold Simeo and Ms. Josephine Chilongozi learned State Attorneys from the office of the Solicitor General and Kigoma-Ujiji Municipal Council respectively.

Before hearing started, the following issues were framed, recorded and agreed between the parties for determination of this suit, namely: -

- 1. Whether the plaintiffs are lawful owners of the suit land.***
- 2. Whether the Defendants acquired the suit land in accordance with the legal procedure.***
- 3. Whether valuation of the suit land was made for purpose of compensation to the plaintiffs.***
- 4. What reliefs are the parties entitled to.***

To prove the Plaintiffs called a total number of five witnesses namely:-

NURU SADICK BASHANGE (PW1), JOHARI RAJAB HUSSEIN

(PW2), SELEMANI ISSA KIEMO (PW3), ABED MZEE KARUBI (PW4) AND AMRI MBARUKU NGAYE (PW5).

The first witness was **NURU SADICK BASHANGE** (to be referred in these proceedings as '**PW1**'). Under oath, PW1 testified that, in 2001 he attended the meeting convened by Kitongoni Village Executive Officer (VEO) which was also attended by Kitongoni Village Council Chairman one Selemani Issa and the Kigoma Town Council Executive Director (TCED) called Akwilini Ndungwi.

PW1 further testified that, Town Council Executive Director for Kigoma town (as he then was), was looking for a place to construct a Primary school for Kitongoni Ward so that it becomes self independent apart from using Azimio Primary School buildings. In that meeting, PW1 told the court that the council Director pointed the size of the land he wanted and promised to compensate the owners of the land affected by that project. PW1 insisted that he was among the owners whose land was to taken.

PW1 further testified that, in 2002, construction of the school started and on 30th April 2002 the Director convened a meeting which was attended by Kitongoni Primary School Construction Committee members for the assessment of the construction progress.

PW1 further testified that, he has been continuing claiming for compensation from the Director for Kigoma Ujiji Township until on 23/04/2015 when valuers were sent by the Director for evaluating the land in dispute. Eleven of them including himself had their lands evaluated and he was given a document which was a valuation report.

Further testimony of PW1 was that, there was a second evaluation exercise on 17/01/2020 where Johari Rajab Hussein was involved with No.VAL/KTNM/16 and VAL/KTNM/17. There were also Hussein Mzee Chicha, Athuman Lela and of all persons PW1 mentioned, only one person was paid compensation who is Abed MzeeKarubi with No. VAL/KTNM/01 who was paid Tshs 11,834,603/= as compensation between 01/01/2020 and 31/12/2021.

According to PW1, he personally continued to make follow ups for compensation from the Executive Director of now Kigoma Ujiji Municipal Council who has always made empty promises in vain. PW1 went on telling the court that on 17/08/2017 the Executive Director wrote a letter with reference No.L.20/171/VOL.109 replying to his letter dated 06/08/2017 which he sent with names of those deserving compensation. PW1 insisted that on 6/12/2017 received a letter from Ward Executive Officer of Kitongoni Ward with reference No. KT/KG/MD/01/79 in which

the Ward Executive Officer informed the Executive Director the list of the persons claiming for compensation in his office.

PW1 went on testifying that he wrote several letters to the Executive Director reminding him about compensation as follows:-

"1. A letter dated 29/7/2019 headed "Madai ya Fidia katika shule ya msingi Kitongoni na shule ya Sekondari Kitongoni wahusika watalipwa fidia lini".

2. A letter to the Executive Director of Kigoma Ujiji Municipal Reference No. NSB/UJ/11/2020.

And which letter dated 25/10/2020 was admitted in evidence and marked as **exhibits P1.**

It was further testimony of PW1 that, on 9/1/2020 the 1st Defendant wrote him informing him that he deserves to be paid Tshs 10,449,000/=, Johari Rajab deserved to compensation in respect of her land measuring 4,460.09/= square meters for Tshs 11,932,908/= and the other of 1,852.09 square meters for Tshs 4,956,508/= which letter dated 9/1/2020 was admitted in evidence and marked as **"Exhibit P2."**

Letter dated 18/01/2021 with reference No.MLC/10/2021 as **exhibit P3** and letter with reference No.J.10/4/VR II/75 as **exhibit P4.**



PW1 told the court that on 14/6/2021 they jointly wrote demand notice of 90 days to the defendants demanding them to pay them Tshs. 27,338,416/= which was replied via letter with Reference No. J.10/4/VRII/75 inviting them for further negotiations and when they went to the 1st defendant, they were told that the accounts were closed by that time and promised to pay them in September, 2021.

PW1 concluded his testimony by urging this court to grant the prayer as contained in the plaint with costs.

Under cross examination by Mr. Simeo and Ms. Chilongozi, PW1 told the court that, he started claiming for compensation since 2001 though had no any document until valuation was conducted and got valuation reports through a letter from the Executive Director (1st Defendant). PW1 insisted Exhibit P2 shows the size of the land 3870 square meters. On Exhibit P4, PW1 said it was issued by the Executive Director and is genuine and was signed by Josephine Chilongozi who handed it to him. PW1 refuted the allegations of collusion with DW1 to sabotage the 1st defendant.

PW1 insisted that no free land was given to the school and that ne filed the case after valuation which was done by the 1st defendant.



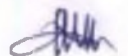
The second witness was **JOHARI RAJAB HUSSEIN** (to be referred in these proceedings as '**PW2**') Under oath, PW2 told the court that she claims the compensation of the shamba at Ujiji at Kitongoni Ward in Kigoma Municipality where Kitongoni Primary School was built. PW2 went on telling the court her father died in 2004 but before his death he owned the shamba which she inherited from her mother late Zuwena Binti Bilali who is PW2's grandma.

PW2 further testified that the shamba in issue are two, one shamba has 1 acre and another half an acre where now there is Kitongoni Primary School. PW1 insisted that, when the school was constructed in her shamba, it was agreed with the Kigoma Ujiji Municipal Director to pay her compensation.

PW2 pointed out that on 17/1/2020 her shambas were valued and she was called to attend at the valuation exercise via a letter dated 9/1/2020.

PW2 substantiating her claims tendered a letter from Johari Rajabu Hussein to Muheshimiwa Mkurugenzi Kigoma Municipal headed;

"Yah: kufahamishwa vipande vyangu viwili vya ardhi vina ukubwa gani na kipande cha ardhi nitalipwa fidia ya shilingi ngapi:- kitongoji shule ya Msingi" as "**Exhibit P5**".



PW2 also tendered a letter on the valuation report with Reference No VAL/KGM/16-17 dated 16/6/2020 as **"Exhibit P6"**

PW2 further tendered a letter from Municipal Executive Director titled 'Ofisi ya Mkurugenzi wa Manispaa Kigoma to Johari Rajab Hussein with Reference No. L. 20/87/87 dated 05/10/2020 as **"Exhibit P7"**

With the above evidence, PW2 prayed that her claims be allowed as prayed with costs.

Under cross examination by Mr. Simeo, PW2 told the court that they met with MED in 2001, but she couldn't recall his name but they trusted the Director of the Municipal. PW2 told the court that she inherited the Shamba after the death of her father as the only surviving child of her late father.

PW2 went on replying that, when the Director came, he met her father and not her but she claims because she is the heir of the suit land.

PW2 told the court that she delayed to claim because the suit lands were not valuated until 17/01/2020 and that she trusted promises by the MED at all that time to be paid compensation though she had no documentation but MED gave oral promises.



The third witness was **SELEMANI ISSA KIEMO**(to be referred in these proceedings as '**PW3**'). Under affirmation, PW3 testified that, he lived at Mnazi Mmoja Hamlet, Kitongoni Ward, Ujiji in 1999 to 2010 and was a chairman of Mnazi Mmoja Hamlet. PW3 told the court that he knows Kitongoni Primary School which started in 2001 and was involved as Hamlet chairman. PW3 told the court that he was among the people who mobilized all persons whose lands were affected. A meeting was convened by the Municipal Executive Director (MED) together with Hamlet chairman and owners of the land earmarked for construction of the Primary School and MED promised to compensate them and he was appointed a chairman of the school construction Committee in 2001 where construction started in 2001.

PW3 also testified that, what he knew in this suit is that, MED, one, Alkwin Ndungwi came to WEO and they did valuation of the land taken from the villagers on 23/4/2015. PW3 insisted that when valuation was done all the people were there and MED promised to pay compensation. It was further testimony of PW3 that, in this suit none of the claimants was paid to date and their claims are genuine and deserved to be paid.

Under cross examination by Mr. Shija PW3 told the court that in 2015 valuation was done to everyone affected by school construction and the



plaintiffs at all material time followed their claims but received empty promises by the Municipal Executive Director who prolonged the claims to individuals who gave their land for construction of the school.

In re-examination, PW3 insisted that, though valuation was done, no payment has been paid to them and the empty promises are always there from the office of the MED.

The next witness was **ABED MZEE KARUBI** (to be referred in these proceedings as '**PW4**'). Under affirmation PW4 testified that, he was one of the people who gave their land to Municipal for construction of the school. PW4 went on telling the court that through that exercise he, himself was paid Tshs. 16,500,000/= and he is still claiming Tshs 11,300,000/= which is being promised to be paid but in vain. PW4 insisted that he is aware that the claimants are yet to be paid even a single sent.

Under cross examination by Shija, PW4 told the court that it was him who told the plaintiffs that he was paid.

The last witness was **AMRI MBARUKU NGAYE** (to be referred in these proceedings as '**PW5**'). Under affirmation PW5 testified that, he knows the disputed land that it was acquired in 2001 and since then it has been used by the school but the plaintiffs have not yet been paid

compensation. PW5 insisted that despite 21 years have elapsed but they are still waiting for compensation.

Under cross examination by Mr. Shija, PW5 told the court was the supervisor of the suit land and was used for small agribusiness. According to PW5, they used to get Tshs.2,200,000/ and Tshs. 2,800,000/= and that MED promised to compensate all people affected.

This marked the end of the plaintiffs' case and same was marked closed.

The 1st and 2nd defendants were fended by two witness, namely; **Moshi Rashid Magorwa (DWI) and Steven Ambrose Kundi (DW2).**

The first defence witness was **MR.MOSHI RASHID MAGORWA** (to be referred in these proceedings as '**DW1**'). Under affirmation, DW1 testified and told the court that, he is a businessman at the moment but before he was a teacher in primary schools where he taught in several schools. DW1 told the court that Kitongoni Primary school was his last school he taught 1994-1998 where they were operating under Azimio Primary School.

According to DW1, the place was surveyed and by then they thought the place belongs to mission which is about 7 acres and that when construction started in 2000's some people went to claim compensation.

When cross examined by Bashange, DW1 replied that, Kitongoni primary started in 1994 in the area of Azimio but it was constructed in 1998.

The second defence witness was **MR. STEVEN AMBROSE KUNDI** under oath told the court that, he works with Kigoma Ujiji Municipality as a valuer since 2010 hence conversant with the dispute between the plaintiffs and the Municipal where Kitongoni Primary school.

DW2 further told the court that, the area was acquired in 1998 for education purpose by land authorities and it was surveyed in 2004 and later on surveyed in 2014/2015 because there were boundaries problem. DW2 told the court that since the area is bordered by settlements so it was to identify it and put beacon to avoid invasion from villagers.

It was further testimony of DW2 that, the plaintiffs' claims are true because they came to the office and that they were returned to Ward to enable them to know how the disputed plot was given to the school.

DW2 went on testifying that, they tried to communicate with the school, where it revealed that, the suit plot was surveyed in 1998 and that they involved the legal department and later the case was instituted.



DW2 when shown exhibits P2, P4 and P7, DW2 stated that, it was him who wrote the letter exhibit 7 on behalf of the Municipal Director acknowledging that those two people deserve compensation.

He also stated that they did valuation and upon completion, they discovered that, what was given earlier was not correct so they had to re-evaluate the land. DW2 insisted that, the suit land was acquired in 1998 and not in 2001 and since it was 1998 the law applicable at that moment does not recognize compensation for bare land.

DW2 upon shown P2 he explained that, he was involved in valuation of the 1st plaintiffs land and is correct and admitted that, the first letter was written by Municipal Director on payment of compensation to Nuru Sadick Bashange.

When asked about any report of people being paid compensation, DW2 answered that he has no any report.

Under cross examination by Bashange, DW2 replied that, when the letter is written with errors, another letter has to be written to correct the errors but of all the exhibits, no letter was written to cancel them.



Under re-examination by Mr. Shija, DW2 told the court that, it is true they were supposed to recount their letters but because of the case they waited their results.

When asked questions for clarification to the court, DW2 replied that, the survey they were talking in minutes of the village which is not an exhibit in this case but the figure in exhibit P7 is correct because he did calculate himself.

This marked the end of hearing of defence case and the same was marked closed.

The noble task of this court now is to determine the merits or otherwise of this suit. However, it is a cardinal principle of law that he who alleges must prove. And in Civil Cases the standard of proof is that of balance of probabilities. This principle is enshrined under provisions of section 110 and 111 of the Evidence Act, [Cap.6 R.E. 2019].

Section 110 reads as follows;

"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 exists".




(2) when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person'

Section 111 of the same law reads;

"The burden of proof in a suit proceeding lies on the person who would fail if no evidence at all were given on either side"

The burden of proving facts rests on the party who substantially asserts the affirmation of the issue and not upon the party who desire it, for a negative is usually incapable of proof.

Now back to the instant suit and starting with the first issue which was couched that **"whether the plaintiffs are the lawful owners of the suit land?"** Having carefully considered the pleading, the evidence and exhibits tendered by the plaintiffs, in particular, exhibits P2, P4, and P7 which are all from the 1st defendant office, an issue of ownership of the suit land by the plaintiffs' is clear as day light. Nothing was offered by the defendants to negate the facts as proved by the plaintiffs that the suit land used for construction of Kitongoni Primary School was customarily owned by the plaintiffs.



On that note and for the above reasons, I find this issue in the affirmative that the plaintiffs were lawful owners of the suit land, which was on promises of compensation by the 1st defendant offered for construction of the school.

Next and second issue was couched that **“whether the defendants acquired the suit land in accordance with legal procedures?”**

In our country, land acquisition is governed by the Land Acquisition Act, [Cap 118 Revised Edition 2019]. According to the provisions of the above Act, any land may be acquired by the President where such land is required for any public purpose. The phrase ***‘public purpose’*** is defined under section 4 (1) to mean follows:-

Section 4(1) Land shall be deemed to be required for a public purpose where it is—

(a) for exclusive Government use, for general public use, for any Government scheme, for the development of agricultural land or for the provision of sites for industrial, agricultural or commercial development, social services or housing;

(b) for or in connection with sanitary improvement of any kind, including reclamations;

(c) for or in connection with the laying out of any new city, municipality, township or minor settlement or the extension or improvement of any existing city, municipality, township or minor settlement;

(d) for or in connection with the development of any airfield, port or harbour;

(e) for or in connection with mining for minerals or oil;

(f) for use by any person or group of persons who, in the opinion of the President, should be granted such land for agricultural development.

(2) Where the President is satisfied that a corporation requires any land for the purposes of construction of any work which in his opinion would be of public utility or in the public interest or in the interest of the national economy, he may, with the approval, to be signified by resolution, of the National Assembly and by order published in the Gazette, declare the purpose for which such land is required to be a public purpose and upon such order being made such purpose shall be deemed to be a public purpose for the purposes of this Act.

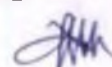


Nevertheless, the Act provides for the procedure for land acquisition for public purpose. Sections 6 and 7 of the Act provides for the requirement of issuing notice of intention to acquire the land to the owner or the persons with interest on such land. Section 8 of the Act gives requirement of the notice issued to be served by various ways to the person interested in that land and the notice shall be published in the Gazette soon after service. Section 11 of the Act requires the Government to pay compensation.

In the matter at hand, there is no evidence from the 1st defendant that they complied with the above requirements during the acquisition of the suit land. The plaintiffs contended that no compensation was ever paid to them despite giving their land for use of public purposes as stated in their testimonies.

In the instant matter, it is clear that the land in dispute was acquired for public purpose and designated by the 1st defendant for social services which is primary and secondary schools.

However, having carefully considered the pleadings and the evidence on record, it is without doubt that the procedures for acquiring the suit land were not followed and what I gathered is that the Municipal Executive Director went to the customary land owners and asked them to give



their land for school construction on promise to compensate them but which promises were in vain. The averments by the 1st defendant that the suit land was planned for building a primary school since 1998 were not supported by any approved survey as such in this suit remains empty evidence to negate the strong evidence of the plaintiffs and subsequent commitment by the 1st defendant to value the suit land and empty promises to pay.

On the foregoing, the second issue must be and is hereby answered in the negative that no known legal acquisition was done before the taking the suit land from the plaintiffs who are willing on payment of compensation to give their land to allow construction of the school.

This takes me to the third issue which was couched that **“wnetner the valuation of the suit land was made for purpose of compensation to the plaintiff?”** Having considered the pleadings and evidence on record, in particular, exhibits P2, P4 and P7 and oral testimony of DW2 all altogether no doubt that the plaintiffs have proved on balance of probability that the valuation done on the suit land was for purpose of compensation to the plaintiffs. Not only that but of the two witnesses for the defendant, none rebutted the contents of the above named exhibits which were not refuted by the defendants. The



arguments that the above exhibits were not written by the authors are without any back up and are rejected for the interest of justice

That said and done, the third issue must be and is hereby answered in the affirmative that the valuation of the suit land was made for purpose of compensation to the plaintiffs.

This trickles this suit to the last and usual issues couched that **“what reliefs are parties entitled to?”** The defendants disputed all claims by the plaintiffs on reasons which this court finds wanting of merits. Plaintiffs claimed several reliefs as contained in the plaint jointly and severally against the defendants. Based on what have found and held above on all issues, without much ado, I find this suit proved to the standard required in civil cases and as such allow this suit in favour the plaintiffs in the following orders, namely: -

1. The 1st defendant is ordered to pay compensation to the plaintiffs to the tune of 27,338,416/= (Tshs. Twenty-Seven Million, Three Hundred Thirty Eighty Thousand Four Hundred and Sixteen)
2. The 1st Defendant is hereby ordered to pay general damages to the tune of 2,500,000/= to each plaintiff as the result of acquiring the land for long time without compensation causing inconveniences to the plaintiffs.



3. The 1st defendant is condemned to pay the plaintiffs costs of this suit.

It is so ordered.

Dated at Kigoma this 16th day of December, 2022



A handwritten signature in blue ink, consisting of a series of vertical, wavy lines, followed by a horizontal line extending to the right.

S. M. MAGOIGA

JUDGE

16/12/2022