

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL CASE NO. 86 OF 2017

ALLY MOHAMED HUMUD.....1ST PLAINTIFF
ZIADA MOHAMED KAPENDA.....2ND PLAINTIFF

VERSUS

**HASSAN SELEMAN (ADMINISTRATOR OF THE ESTATE
OF THE LATE SELEMANI MZEE NGUNGUTI)1ST DEFENDANT**
**MATILDA M. SILLO AND JULIAN N. SILLO
(ADMINISTRATORS OF THE ESTATE OF THE
LATE SERENI SILLO)2ND DEFENDANT**

JUDGMENT

16/02/2022 & 12/04/2022

E.B. LUVANDA, J.

Ally Mohamed Humud and Ziada Mohamed Kapenda, plaintiffs to the main suit sued Hassan Seleman who is the administrator of the estate of the late Selemani Mzee Ngunguti (first defendant), Matilda M. Sillo and Julian N. Sillo who are administrators of the estate of the late Sereni Sillo (second defendant) to the main suit, over a property of ten acres alleged purchased from the late Selemani Mzee Ngunguti on November 2008, located at

Nyeburu, Chanika, Ilala Dar es Salaam, for a consideration of Tsh 15,000,000.

By way of counter claim, the plaintiff to the counter claim (second defendant to the main suit) claim against the defendants to the counter claim (who are plaintiff to the main suit and first defendant to the main suit) for general damages Tsh 50,000,000 for trespassing the suit property which he claims being legal owner since 1992.

According to the evidence presented in record of the proceedings suggest two theories regarding chronological order and hierarchical line of ownership by rival parties in respect of the suit property of twenty acres located at Nyeburu (Senzele), Chanika, Ilala Dar es Salaam. The plaintiffs and first defendant, their theory portray that the first owner was the late Ally Mgeni Sozigwa (blood father of the late Ramadhani Ally Mgeni Sozigwa and Janja Ally Mgeni Sozigwa). Thereafter a title passed to the late Ramadhani Ally Mgeni Sozigwa who then sold it to the late Selemani Mzee Ngunguti @ Gunguti @ Mluguru on 17/2/1992 for a consideration of Tsh 70,000. The later disposed it to the late Ally Ng'itu Bosha for a consideration of one million per each acre, payable in instalments within six months. Thereafter the late Selemani Mzee Ngunguti @ Gunguti @ Mluguru repossessed it (but a less

area of only 18 or 18.5 acres), after the late Ally Ng'itu Bosha had breached terms of the sale agreement for failure to pay purchase price as agreed. It was contemplated that the late Ally Ng'itu Bosha had already offered one and half or two acres (part of twenty acres) to the Nyeburu Primary School which was constructed between 2000 and 2003. It was alleged that, when the late Selemani Mzee Ngunguti @ Gunguti @ Mluguru repossessed the land (18 or 18.5 acres) he paid some compensation to the late Ally Ng'itu Bosha. After repossessing, the late Selemani Mzee Ngunguti @ Gunguti @ Mluguru sold ten acres to Ally Mohamed Humud and his wife Ziada Mohamed Kapenda (plaintiffs herein) for a consideration of Tsh 15,000,000, sale executed on 10/11/2008.

According to this team (plaintiffs and first defendant) witnesses, stated that Janja Ally Mgeni Sozigwa never owned the disputed farm, rather he was given by his father a farm located thirty paces away from the disputed farm, others said it was half kilometer away from the disputed farm, another witness said it was located at Nyeburu Juu. I will revamp later with a detailed and empirical data as to who said what regarding this fact.

The second theory by the second defendant is short that the late Sereni Sillo purchased the farm of twenty acres from Janja Ally Mgeni Sozigwa in July

1992 and Sereni Sillo was led there by the late Selemani Mzee Ngunguti @ Gunguti @ Mluguru, others saying the latter is the one who actually convinced late Sereni Sillo to purchase that farm land. According to the second defendant Matilda Sillo DW4, the late Sereni Sillo had entrusted Selemani Mzee Ngunguti @ Gunguti @ Mluguru to take care of the farm, as the later was living at Chanika. According to DW4, later Selemani Mzee Ngunguti @ Gunguti @ Mluguru approached Sereni Sillo tabled a request that villagers were in need of an area to construct a school, where Sereni Sillo out of trust, allowed Selemani Mzee Ngunguti @ Gunguti @ Mluguru to hand over an area of five acres to the school. But when DW4 who is the administrator of the estate of Sereni Sillo was tasked during cross examination as to whereabouts documentation to that effect, she said she don't have.

However, the story from the plaintiffs and first defendant team reveal that Ally Ng'itu Bosha during his tenure, he handed over to the school about one and half or two acres which earlier formed part of twenty acres, which when Selemani Mzee Ngunguti @ Gunguti @ Mluguru repossessed an area was told to this effect and acceded. However, exhibit P2 which indicate that the alleged Ally Ng'itu Bosha handed over an area to the school at Nyeburu, is

on general terms that he is handing over five acres of land. The said document exhibit P2 is not elaborate as among the five acres, if one and half or two acres is from the area of twenty acres which purportedly Ally Ng'itu Bosha purchased to Selemani Mzee Ngunguti @ Gunguti @ Mluguru. It is to be noted that the alleged Ally Ng'itu Bosha had allegedly purchased an area of four acres from teacher Getruda John (PW1) on 23/11/1999 via exhibit P1. According to the theories of the plaintiffs' and first defendant's witnesses, those four acres are among the five acres which the alleged Ally Ng'itu Bosha handed over to Nyeburu village council, for construction of Nyeburu Primary School. This theory seems to be difficult to believe. Because it suggests this man Ally Ng'itu Bosha was a very kind man under the sun, to the extent of handing over five acres to the school (comprising the whole four acres purchased from teacher Getruda John, including one and half or two acres part of twenty acres purchased from Selemani Mzee Ngunguti @ Gunguti @ Mluguru). Thereafter Ally Ng'itu Bosha readily handed over back the remained 18 or 18.5 acres to Selemani Mzee Ngunguti @ Gunguti @ Mluguru, alleged for failure to pay some instalments. To believe this philosophical story or chemistry, you need to drink a glass of lemon juice first. Upon my thorough and close look on exhibit P1 purported to have been

executed the way back on 23/11/1999, almost twenty years plus, its texture does not suggest it being older as reflected in the dates of execution. To the contrary, that document (exhibit P1) reveal was crafted very recently. It is to be noted that exhibit P1 was introduced by way of list of documents filed by the plaintiffs' Counsel on 27/03/2020. If you compare exhibit P1 purportedly signed on 23/11/1999 and exhibit P3 sale agreement between the plaintiffs and Selemani Mzee Ngunguti @ Gunguti @ Mluguru executed on 10/11/2008, still a texture of a paper and contents and handwriting of exhibit P3 looks more older and a paper is even worn compared to exhibit P1 signed in 1999 which its paper is still intact to wit is complete and in its original state without any tear or damage. For another thing, it means Ally Ng'itu Bosha was a very generous man under the earth, to the extent that after purchasing twenty four acres of land, within few years ahead, he did not occupy even small piece of land measuring one square kilometer. And he was comfortable, no squabble. This is a miracle.

Assuming that, Selemani Mzee Ngunguti @ Gunguti @ Mluguru repossessed less acres of land from Ally Ng'itu Bosha, of about 18 or 18.5 acres only as alleged, why he was contemplating and vowing to sell a total of twenty acres to the plaintiffs? According to the first plaintiff Ally Mohamed Humud (PW8),

after purchasing ten acres, Selemani Mzee Ngunguti @ Gunguti @ Mluguru promised him for another ten acres, and strangely allowed PW8 to erect a hut at the rest ten acres of unpurchased land. There is no evidence in records to suggest that thereafter the late Selemani Mzee Ngunguti @ Gunguti @ Mluguru had purchased another piece of land to compensate one and half or two acres allegedly donated to Nyeburu Primary School by the purported Ally Ng'itu Bosha.

Another oddity, in a copy of judgment before Majohe Land Ward tribunal exhibit D4, where the first defendant had initiated those proceedings, at the front page first paragraph, the first defendant was recorded to have lodged a complaint and indicated the size of land measuring fifteen acres. For appreciation I quote in verbatim the version of the said paragraph as hereunder,

*'Baada ya Baraza kupokea shauri hili lilielezwa na **mlalamikaji Hassan Gunguti kuwa yeye ni msimamizi wa mirathi ya marehemu baba yake ndugu Selemani Mzee Gunguti.** Na alipigiwa simu na mdogo wake kuwa kuna mtu ameng'owa maua katika shamba la marehemu baba yake lililopo katika **mtaa wa***

Nyeburu likiwa na ukubwa wa heka kumi na tano na alinunua mnamo mwaka 1992' bold added

This para suggest that the first defendant had made a U-turn to his theory regarding one and half or two acres chipped from the farm of twenty acres of Selemani Mzee Ngunguti @ Gunguti @ Mluguru and four acres from the farm of teacher Getruda John, which the alleged Ally Ng'itu bosha handed over to Nyeburu village council for construction of Nyeburu Primary School. The departure by the first defendant reflected in exhibit D4, it portrays he was slowly swaying to the story of the second defendant that her late father Sereni Sillo had acceded for a portion of five acres to be handed over to the villagers for construction of the school. Meaning thereafter remained fifteen acres as opposed to 18 or 18.5 acres suggested by Hassan Suleimani Ngunguti DW1. In other words, the tell-tale of alleged Ally Ng'itu Bosha purchasing twenty-four acres of land and then unceremoniously surrendering the whole area, is a concoct. This is because the explanation by DW1 does not make any logic. Because twenty acres plus four acres, minus (take away) five acres, it defies common sense to say it remained eighteen acres or eighteen and a half acres. There was no explanation from DW1 as to why when he sued in exhibit D4 he indicated a size of his father's

land, after selling ten acres to PW8, that he was claiming fifteen acres trespassed by DW4. The unexplained variance on the explanation of DW1, render his story unworthy of believe. What can be grasped from there, is that DW1 was in mind that the late Sereni Sillo had purchased twenty acres, then through DW1's father, handed over five acres to Nyeburu Primary School and remained with fifteen acres, which DW1 was claiming in exhibit D4 to have been trespassed by DW4. In that way, as depicted before, it supports a story of DW4.

Regarding a theory by the plaintiffs and first defendant witnesses, that one Janja Ally Mgeni Sozigwa never owned the disputed farm, rather he was given a different farm by his father. In this aspect the plaintiffs and first defendant witnesses were contradicting each other regarding the location of the said farm which Janja Ally Mgeni Sozigwa is allegedly to have been given by his father. Mwajabu Mwinyishehe PW4 who is the wife of Janja Ally Mgeni Sozigwa, stated that it was located afar from the area of a school a distance of thirty paces from the disputed farm. PW4 was supported by Hamis Janja Ally PW6 who is the son of Janja Ally Mgeni Sozigwa. Selemani Salehe PW7 said a farm of Janja Ally Mgeni Sozigwa was located a distance of half kilometer from the disputed farm. Maua Ramadhani Ally Sozigwa DW2 who

is the daughter of Ramadhani Ally Mgeni Sozigwa, said a farm of Janja Ally Mgeni Sozigwa is situated at Nyeburu Juu. A wide range of difference of thirty paces to five hundred meters (half kilometer) at any rate is too huge, or a location of Nyeburu Juu connote a complete different location.

PW4 and PW6 also dispeled Janja Ally Sozigwa to had sold that area to Sereni Sillo allegedly Janja Ally Sozigwa used to involve or inform them whenever he sold a piece of land, but PW4 and PW6 negated being involved in this sale. By implication these family members were attempting to stage their own grievances for none involvement in disposing that area. In other words, the duo had an interest to serve when trying to distance husband and father to had disposed that land.

Unfortunately, neither of the two to wit PW4 and PW6 disputed signatures of Janja Ally Mgeni Sozigwa reflected in the sales agreements dated 9/4/1992 and 23/7/1992 exhibits D1 and D2 respectively, including a confirmation of sale agreements dated 2/1/2009 exhibit D5. An argument by PW6 that his father was forced to sign those papers, is misplaced. As he did not say legal action which were taken after the alleged coercion. Indeed, all documents of deed of sale exhibit D1, D2 and D5 reveal that Janja Ally Mgeni Sozigwa had appended a handwritten signature though indicate was writing

with difficulties, and in exhibit D5 there is an additional thumb print. As such an argument that is not his deed cannot be entertained.

On similar vein, the first defendant (DW1) said nothing regarding a signature of Selemani Mzee Ngunguti @ Gunguti @ Mluguru appearing in exhibit D1, where it indicate that he witnessed the transaction of sale therein. In his written statement of defence to the amended plaint, in particular paragraph ten of the written statement of defence to the counter claim, the first defendant had pleaded that a signature of Selemani Mzee Ngunguti @ Gunguti @ Mluguru appearing in exhibit D1 was forged. But he did not give or explain the particulars of the alleged forgery. When Hassan Suleiman Ngunguti DW1 was adducing his evidence, he did not prosecute this sort of defence. As such it is as good as having been abandoned. In that regard, it is taken that a signature reflected in exhibit D1 appertain to Selemani Mzee Ngunguti @ Gunguti @ Mluguru.

Now, so far the said Selemani Mzee Ngunguti @ Gunguti @ Mluguru had witnessed a transaction of sale of a disputed farm between Janja Ally Mgeni Sozigwa and Sereni Sillo, the alleged transaction of sale between Selemani Mzee Ngunguti @ Gunguti @ Mluguru and Ally Ng'itu Bosha if at all any; or Selemani Mzee Ngunguti @ Gunguti @ Mluguru and the plaintiffs are void

ab initio. This is because the alleged Selemani Mzee Ngunguti @ Gunguti @ Mluguru had no any title to pass to them afterward.

An argument that exhibit D1 was executed at Changanyikeni while the farm is situated at Nyeburu Chanika, or else that local leaders at Nyeburu Chanika are not aware of that disposition, that alone cannot invalidate or vitiate the sale of the disputed farm. There is no dispute that Selemani Mzee Ngunguti @ Gunguti @ Mluguru and Sereni Sillo were both living at Changanyikeni, where Selemani Mzee Ngunguti @ Gunguti @ Mluguru was occupying some position in the village council, at one point he was a secretary at Changanyikeni and later become chairman, as stated by Mengiason Kisombe Massawe DW6. As such it was fair and equitable for them to execute the sale agreement there. To me there is no any harm, given that exhibit D1 depict the location and actual destination of a land subject to sell. There was no argument to the effects that a farm mentioned in exhibit D1 is not the actual farm or does not exist. Indeed, the transaction of sale in exhibit D1 and D2 were re-confirmed via exhibit D5 on 2/1/2009 before cell member Shina No. 9 at Nyeburu West Branch at Chanika Ward. To my view, the confirmation of sale had the effects of validating all transactions done before.

An argument that Janja Ally Mgeni Sozigwa had later on disowned selling a farm to Sereni Sillo as reflected in a copy of judgment of Majohe Land Ward Tribunal exhibit D4, is an afterthought. As I have already ruled that his signature appearing in exhibit D1, D2, D5 are his deed. More importantly, it was stated by his wife PW4 that Janja Ally Mgeni Sozigwa is now confused. Also his son PW6 said his father fall sick in 2017. In the premises, it cannot be said that Janja Ally Mgeni Sozigwa can give rational opinion under the circumstances. Even if he was compromised in between, it cannot be taken as a valid argument to rebut sell of twenty acres effected in 1992 as per exhibit D1 and D2 and later re-confirmed in 2009 via exhibit D5, which signifies his desire and volition to sell the farm of twenty acres. Those three documentary exhibits bind him.

When I am approaching to an end regarding the issue of ownership, it is to be noted that the first defendant (DW1) was unrepresented throughout the trial. When adducing his defence, I asked some questions, where he said he attached a document for breach of agreement between Selemani Mzee Ngunguti @ Gunguti @ Mluguru and Ally Ng'itu Bosha and a police loss report, in a list of documents dated 2/12/2020 which was filed belatedly after seven plaintiffs' witnesses had testified. However, those documents could

not assist him, because a breach of contract reveal Ally Ng'itu Bosha purchased a farm on 8/6/2003, while exhibit P2 shows that Ally Ng'itu Bosha handed over an area of five acres on 7/2/2000, and according to oral evidence of plaintiffs' and defendants witnesses, Nyeburu Primary School was constructed between 2000 and 2003. Again a police loss report is dated 3/12/2009, while PW8 said when he was searching in view of eliminating doubt of ownership for Selemani Mzee Ngunguti @ Gunguti @ Mluguru prior sell were executed in 2008, the later had exhibited to him and before village council a police loss report indicating that his title were destroyed by fire. Therefore, everything and the entire chain of purported ownership by the late Selemani Mzee Ngunguti @ Gunguti @ Mluguru was a concoct. Indeed, in his written statement of defence the first defendant did not plead a fact that Selemani Mzee Ngunguti @ Gunguti @ Mluguru had purchased the disputed land from Ramadhani Ally Mgeni Sozigwa in 1992, later sold to Ally Ng'itu Bosha then repossessed. All these were new facts introduced during trial.

Again the learned Counsel for plaintiffs dwelled much cross examining DW4, on the contents of exhibit D5 at a version which was supplemented by the cell member. But literally speaking there is no any mischief to the wording

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therein. The catchword is that the cell member recorded that Sereni Sillo had introduced himself as the lawful owner of a farm of 20 acres situated near Nyeburu Primary School, which at first was known to be a property of Ally Ntalia Bosho and sold to another person. Nowhere is recorded that one Ally Ntalia Bosho was at any time a lawful owner rather he was deemed to be the owner. To be precise, the cell member was complementing or supplementing by amplifying as to why the vendor and purchaser submitted before her for confirmation of sell.

To put it in a nutshell, a framed issue as to who is the lawful owner of a suit property, is resolved in favour of the second defendant. The second defendant has a good title, on a preponderance of probability. Therefore, the second defendant is declared to be the lawful owner of a disputed farm located at Nyeburu (Senzele), Chanika Ward, Ilala Dar es Salaam.

As to what reliefs are the parties entitled. PW8 claimed for payment of 500,000 per month from the date when the dispute arose to a date of filing the suit; Tsh 12,000,000 per annum from the date of filing the suit to the finalization; interest 15% and general compensation. On examination in chief PW8 did not explain as to how and why is claiming or entitled to those reliefs by way of monetary cash. On cross examination by the learned Counsel for

second defendant, PW8 said he claim Tsh 500,000 because he planned to construct a school on that area. When he was further tasked on cross examination, PW8 said he just guessed that amount. Still PW8 did not explain a claim for Tsh 12,000,000 and interest of 15%. However, given the hustle and bustle including inconvenience incurred by the plaintiffs from when they purchased the farm from the first defendant on 10/11/2008 for consideration of Tsh 15,000,000/=, to my opinion the plaintiffs deserve award of damages. As such I assess a sum of Tsh 30,000,000 general damages plus refund of a purchase price by the first defendant a sum of Tsh 15,000,000, making a total of Tsh 45,000,000. The second defendant is liable to pay the plaintiffs Tsh 45,000,000, which will attract interest at the court rate of 12% per annum from the date of judgment till is fully satisfied.

The second defendant had asserted a claim for compensation a sum of Tsh 50,000,0000 against the first defendant and costs of the suit. DW4 did not explain the basis of the alleged compensation. The first defendant did not cross examine regarding this claim. However, so far the second defendant have been in actual occupation of the farm, and even developed and utilized it by surveying and selling plots in between 2016 and 2017. Strictly speaking

it cannot be said that the second defendant is entitled to any compensation.

Therefore, a claim for compensation is refused.

The plaintiff-counter claim (second defendant main suit) is declared to be the lawful owner of the suit farm fifteen acres located at Nyeburu (Senzele), Chanika Ward, Ilala Dar es Salaam. The plaintiffs to the main suit are entitled a refund of Tsh 15,000,000 being purchase price, general damages Tsh 30,000,000 from the first defendant to the main suit and interest at the court rate of 12%. The first defendant to the main suit will defray costs of this suit (main suit and counter claim).

Appreciation to Mr. Abdulfattah A.A. Al-Bakry, learned Counsel for the plaintiff, Mr. Erenius P. Swai learned Advocate for the second defendant who have been there throughout the trial, including presenting their final submissions and Mr Ismael Amin Mmari learned Counsel for first defendant who joined at the verge of closure of second defendant defence.

The main suit and a counter claim succeeds to the extent depicted above with costs.



E.B. Luvanda
Judge
12.04.2022