

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL CASE NO. 11 OF 2019

ENGAROOJI VILLAGE COUNCIL PLAINTIFF

VERSUS

PAULO LAPAJARA NARDA 1ST DEFENDANT

LEKASHU NGENETI KESUMA 2ND DEFENDANT

SARIM ORKOSKOS SEREMOO 3RD DEFENDANT

JUDGMENT

18/10/2022 & 4/2/2022

ROBERT, J:-

The Plaintiff, Engarooji Village Council, filed an action against the Defendants herein jointly and severally claiming vacant possession of the parcels of land within the village itemized as 716 acres, 301 acres and 268 acres unlawfully invaded by the first, second and third Defendants respectively. The Plaintiff claims to be the lawful owner of the disputed land within the village based on the Certificate of Village Registration and the Village Land Certificate issued to the village by the relevant authorities.

The Plaintiff's case was to the effect that, immediately after the division of LEPURKO village which resulted into Lepurko, Engarooji and Nanja villages, the District Council of Monduli, Arusha region issued a certificate of Village Registration of Engarooji Village bearing reference number: AR/KIJ/671 dated 1st September, 2012. Thereafter, on 29th June, 2016 Engarooji Village Council was issued with Village Land Certificate bearing land office Number: 38534, reference No. AR/KIJ/671 with a map showing that Engarooji village occupies an area of 77.99 square Kilometers.

The Plaintiff alleged further that, for effective control and reservation of natural vegetation against overgrazing, she established a system to use and harvest the natural flow of water resulting from rainfall and maximize the use of natural reservoir for the purpose of human consumption and animal husbandry within the village and enjoyed lawful possession and ownership of the land until the Defendants at their own volition decided to invade the suit premises which includes the deferred grazing areas used by the villagers at Engarooji village and other neighboring villagers.

As a consequence, the Plaintiff filed this suit claiming against the Defendants jointly and severally as follows:

- (i) *An order for permanent injunction against the defendants, their agents, servants or any other person working on behalf of the defendants should be restrained from entering the plaintiff's land, cultivating, tilling or conducting any pastoralist and agricultural activities within the plaintiff's land located within engarooji village.*
- (ii) *An order for the eviction of all the defendants from the suit properties;*
- (iii) *An order for restoration of the plaintiff's land which were unlawfully invaded, grabbed, alienated measuring about 716 hectares, 301 hectares, and 268 hectares;*
- (iv) *An order declaring that, the certificate of customary right of occupancy held by Paulo Laparaja Narja, Sarim Orkoskos and Lekashu Ngeneti Kesuma are illegal and void ab initio.*
- (v) *General damages to be assessed by this Court;*
- (vi) *Any other relief this Court deem fit to grant*

On the other hand, the Defendants, in their joint Written Statement of Defence, disputed the Plaintiff's claims contending that the disputed parcels of land were partly inherited from their parents who acquired them way back since "*operesheni vijiji*" while the other piece was purchased from other villagers. The Defendants prayed for the plaintiff's case to be dismissed with costs.

When this matter came up for hearing, the Plaintiff enjoyed legal representation from Mr. Peter Jackson Msetti, Senior State Attorney and

Andrew Moses Maganga, learned advocate whereas the Defendants were represented by Mr. Shabibu Badi Mruma, learned counsel.

At the final pre-trial conference, the following issues were framed and agreed by the parties: **First**, whether the Defendants unlawfully occupy and possess the suit premises; **second**, Whether the Defendants invaded the Plaintiff's land; and **third**, what relief(s) are the parties entitled to.

Substantively, the first two issues are parallel and coinciding, I will therefore look at them jointly. To establish the two issues, the Plaintiff called four witnesses, Ngalama Mapena Madore (PW1), John Sandeti Mollel (PW2), Waziri Juma Hatibu (PW3) and Oitu Lekotene (PW4) and tendered the Village Registration Certificate and the Village Map (admitted collectively as exhibit P1 collectively), two letters written by village chairman dated 10/9/2018 and 8/10/2018 respectively addressed to Minister for Lands (admitted as exhibit P2 collectively).

PW1 informed the Court that he is the Chairman of Engarooji village which was created in 2009. On 1st September, 2012 the village received the Village Registration Certificate and on 29th June, 2016 the Village Land Certificate was issued.

He informed the Court that, this case was filed by the plaintiff after the defendants had invaded an area reserved for grazing of cattle by the villagers. The first defendant invaded an area of 716 acres bordering the village of Lepurko, the second defendant invaded an area of 301 acres in the eastern side of the village bordering Arkaria village and the third defendant invaded an area of 268 acres in the northern part of the village.

He testified further that, before 2016 the first defendant was living with his father in their family premises which is closer to the area invaded by him. Their family area was about 398 acres, it was allocated to their father in 1977 in what was known as "*opesheni vijiji*".

With regards to the second Defendant, he testified that, he knew the second defendant since 2009/2010. He was living at the village of Arkaria which is bordering the village of Engarooji. He came to the village of Engarooji with other villagers for grazing during the sunny season but he remained in the area when other villagers left.

As for the third defendant, he testified that, he knew him from childhood because the second defendant was older than him. The area he

was living in before 2016 was about 100 acres, it is a family area given to his father around 1977 through *operation vijji*.

He maintained that the areas invaded by defendants were used by villagers for grazing while the first and third defendants claimed that they had certificates of customary right of occupancy over the suit premises but when they took the certificates to the District Land Office, they were told that the said certificates were not in their registry and they do not recognize them. Having recognized that the defendants had invaded the suit premises and forged the certificates, they complained to the District Commissioner, the Member of Parliament and wrote to the Minister for Lands. The Minister went to the village on 12/9/2018 and invalidated the certificates issued to the Defendants on grounds that they were issued without following the proper procedure. He then asked the defendants to follow the right procedure to be allocated the said land.

Thereafter, he asked to be issued with a document cancelling the certificates as per the Minister's orders but the District Land officer informed him that they didn't have a letter to that effect because the said certificates were not issued by their office. After that, he wrote two letters to the Minister for Lands dated 10/9/2018 and 10/9/2018 respectively (both letters were

admitted as exhibit P2 collectively). After the two letters, the Minister came back to the village and instructed the defendants to process the certificates afresh because their titles were already cancelled.

During cross-examination he testified that, the size of the village land is 77.99 KM². The village was given title to the village land in 2016. This dispute arose when they wanted to identify areas in the village which are used for grazing of animals and residential areas. The boundaries in the village were set by previous village administration. They used to know the boundaries of these areas but some villagers started to invade the village land. He didn't set any new boundaries during his administration. However, he was assisted by the District government to measure the size of areas which were invaded within the village. The District Executive Director assisted them by sending land officers who used GPS to measure the areas. That was in 2017 and 2018. After measurement they were given a map which indicated the size of each area.

He also informed the Court that, the Minister requested the first defendant to return 400 acres of land and remain with 316, the second defendant to return 200 acres and the third defendant to return 150 acres.

On his part, PW2 informed the court that, he was the deputy village executive officer of engarooji village between 2014 and 2017 and at the time of his testimony he was a member of the village government. He testified that, the land dispute started in 2016 when the defendants started to use the village land for their own benefit. Prior to this, land was used as a grazing area by all villagers. He stated further that, during his tenure as the village executive officer (2014 – 2017) he did not receive any request for land allocation from any defendants.

He informed the Court that, at the meeting with the Minister for Land and Human Settlement the Minister stated categorically that the land is for public use and cancelled the defendant's titles to the land. He stated that, he is not certain about the size of the disputed land but from a look of it, it seems to be massive. The first defendant is in area of about 600 acres, the second defendant about 300 acres while the third defendant has an area of about 200 acres.

In cross-examination, he stated that, he doesn't know the size of the grazing area allocated by the village because the area is not surveyed but the village knows the areas in terms of location and boundaries.

It is not true that the disputed areas were surveyed by officers from the DED's office. It may be true that the areas were surveyed but that was not during his leadership. It is true that the village land is under the District Executive Director thus, if there is a dispute he must know. The Defendants invaded the disputed land in 2016. I do not know that the defendants were living in the disputed areas from birth. The village map does not show the boundaries of individual land between neighbors.

PW3, Land officer at Monduli District Council, testified that the dispute over the suit land arose when the minister visited the Village of Engarooji. The villagers complained to the Minister regarding the Defendants ownership of the disputed land. As office, they were instructed by the Minister to settle the dispute by conducting land audit of the entire village which involved surveying every piece of land to compare the allocated land with the planned activities to find if the village had a proper land use plan. The Minister wanted the report to be prepared and sent to him. He promised to bring the report to the village assembly in order to resolve the dispute.

He informed the Court that, the District Land Registry has records of customary certificate of right of occupancy for Mr. Paulo Ndari but the rest of the defendants are not in the records of the registry. He stated further

that, the certificate of Mr. Paulo Ndari has not met the requirements of the law because, first, the size of the land is almost 600 acres which is supposed to be issued by the Land Commissioner, secondly, it shows that it was issued by Lepurko village Council while the land in question is located at Engarooji village. Thus, the certificate issued to Mr. Paulo was issued unlawfully.

He testified that, he participated physically in the demarcation of the disputed areas. After the measurements they found that the first defendant had more than 900 acres. About 80% of that land was out of the village land. This is true for the second defendant and third defendant.

PW4, testified that, there are areas which the defendants inherited from their parents and areas which they invaded. He informed the Court that the other name of the first Defendant is Paulo Ndari. He didn't know the size of land inherited by Paulo from his father but he maintained that he invaded about 600 acres. Lekashu invaded more 300 acres and Sarim invaded about 200 acres.

On the other hand, the Defendants brought 8 witnesses, Paulo Lapajara Narida (DW1), Tingide Shambuli (DW2), Filbert Aloyce Kamasho (DW3), William Rweine (DW4), Sarim Orkoskos Seremoo (DW5), Sembeta Moikan

(DW6), Paulo Kiteleki (DW7) and Lekashu Kennedy (DW8). They also tendered certificate of appointment of administrator of estate (exh D1), Mpango wa Matumizi Bora ya Ardhi (exh D2) and sale agreement (exhibit D3).

DW1, testified that, in 2015 he was appointed to be the chairman of village committee on land and environment. He stayed with that title for two years. In 2017 he was in disagreement with the village chairman who wanted to use his title to sell the village land to white people who were hunters of Roben Hunt. Due to that, he decided together with other members of the Committee to stop the sale of that land. After that, the chairman started to accuse him and other two defendants that they have big land.

He testified further that, accusations of invading village land are not true. His father owned the disputed land, which is about 685.2 acres, before operation vijiji in 1974. When his father died in 2010 the family appointed him as administrator of estate. Certificate of administration of estate is admitted as exhibit D1). Having been so appointed, he worked with the District Experts to take demarcations of the suit land and realized it was 685.2 acres. He stated that the family of his late father has more than 300 people and they decided that they should not distribute the family land

because the family members who are not faithful may sell the land or mortgage it. The family lives in the disputed land where they have built both permanent and temporary houses. The land was owned by his father before independence.

DW2 testified that, He was the chairman of the village of Lepurko in 2005 until 2010 before the division of the village into three different villages. He knew all the residents of the village and their land ownership. He knew the defendants as the residents of Lepurko village who are now the villagers of Engarooji village. The areas where the defendants are living now where the same areas they used to live in when the village was known as Lepurko village.

DW3, informed the Court that he was the District Surveyor at Monduli District Council, he testified that the complaint regarding the individuals who invaded the village land was forwarded by Engarooji village office. The District Executive Director probed into the complaint through his Land Office, they met the village government and defendants in a public meeting and realized that there were people who were supporting the defendants by saying the dispute was fabricated after their questions on the use of village funds. Before the District Executive Director had settled the dispute, the

Minister for Lands visited the village and instructed them to conduct land audit of the entire village. They conducted the land audit and compared it with the "Rasimu ya Mpango Bora wa Matumizi ya Ardhi ya Kijiji cha Engarooji" and discovered that the individuals who were accused of invading public land were in the areas reserved for settlement (makazi mtawanyiko). Since the areas were reserved for settlement, the office concluded that the areas were not invaded.

After the land audit, he prepared the map as the District land surveyor which shows that the first defendant owns about 900 acres while the second and third defendants own about 300 acres each. He stated that most pastoralists in the area own bigger parcels of land which they inherited from their parents and they are using them for pasture.

DW4 informed the Court that, he was the secretary of the village of Lepruk from 1985 to 2004. He knows the defendants as his neighbors. Paulo, the first defendant is residing in a place given to him by his father who was given the place during operation vijiji. He testified that, he witnessed when Paulo's father was being given the disputed land as he was residing in the village at that time. Thus, when he became a leader at the village he knew how the first defendant's father got the said land.

He testified further that, the other defendant, Sarim was given land by the village government in 1988 when he was a leader and Mr Lekashu Ngeneti was given the disputed land in 1990. He clarified that, the procedure used to allocate land in 1988 and 1990 was that, once a person had applied for land he was allocated a piece of land and the boundaries were marked using natural features in the allocated land.

He testified further that, during his leadership application for allocation of land was done orally by the applicants. The second and third defendants were given ownership of the land where they are currently living. There was nothing given to the persons allocated land as evidence of ownership. They were just writing letters to indicate that a person is allocated land and the said letters remained in the office.

DW5, the third defendant, denied to be owning land unlawfully. He testified that, the land was allocated to them by the village in 1988. He applied for land allocation of the land together with his brothers and aunty. He did not know the size of land allocated to him until the District Land Office had conducted the land audit when he realized that the size of land is 267.1 acres. The land allocated to them is used by almost 50 people. It is not true that they own 301 acres as alleged.

DW6 testified that, prior to the distribution of Lepruko Village he was the Village Executive officer of Lepurko village which was later divided into the villages of Lepurko, Engarooji and Nanja. He continued to be the chairman of Lepruko Village until 2014. He was also the Village Executive Officer of Engarooji village since 2012 to 2013 when the village of Engarooji was given its own VEO.

When he became the chairman of Lepruko village in 2005 to 2014 before its division, he found the defendants living in the disputed areas of now Engarooji village and there was no any dispute with the village. There were no any allegations of invasion of the disputed area.

DW7, informed the Court that, he was the Division officer (Afisa Tarafa) of Kisongo Division. He knows the defendants because they are residents in his area of leadership. He stated that the allegations of invasion of the disputed land were first brought to him by the Chairman of the village of engarooji that the defendants invaded the village land. They worked on the allegations and discovered that these allegations were not true. They visited the disputed areas more than four times with the OCD, District Commissioner, Regional Commissioner and lastly with the Minister for Lands. The government directives on the disputed area were first to conduct land

demarcation of the entire village land and secondly, to cancel all customary land certificates which did not follow the procedure as the Village government was not allowed to issue the customary certificate of right of occupancy for a land which is more than 50 acres. Villagers were required to process their title deeds through the right procedure to obtain large parcels of land. He stated that, when the Minister cancelled customary certificates he said the Government did not come to take away land from the people what is required is for the people to follow the procedure.

DW8, the second defendant, testified that, he got the disputed land in 1990 by applying through the village council of Lepurko village. Application was done orally. He was given 275 acres of land and bought 35 acres from his neighbor through an agreement approved by the village office. The sale agreement was admitted as exhibit D3.

From the evidence adduced, the Plaintiff's claim of ownership of the suit premises is based on the Village Registration Certificate (Hati ya Uandikishwaji wa Kijiji) and the Village Land Certificate (Cheti cha Ardhi ya Kijiji (admitted collectively as exhibit P1). Having looked at the two documents, I have noted that the Village Registration Certificate establishes the Village of En'garooji within the Ward of Lepurko in Monduli District and

the Village Land Certificate confers upon the village council of Engarooji the functions of management of the village land. Therefore, since it is not disputed that the suit premises is within the boundaries of Engarooji village, this court finds that the suit premises is part of the village land under section 7 of the Village Land Act, Cap. 114 (R.E. 2019). Under section 8(2) of the Act, the Village council is required to exercise the functions of management of village land in accordance with principles applicable to a trustee managing property on behalf of a beneficiary, as if the council were a trustee of, and the villagers and other persons resident in the village were beneficiaries under a trust of the village land.

Since the Defendants are said to be in possession of the suit premises, the burden of proving that they are not lawful owners of the suit premises or that they have invaded the Plaintiff's land which is set aside for public use is on the plaintiff who claims that they are not lawful owners under section 119 of the Evidence Act, Cap. 6 (R.E.2019). To discharge that burden, it is essential to establish exactly what the suit premises is in terms of size, if and when the suit property was set aside for community or public use and when the Defendants allegedly invaded the suit property.

Identification of the suit premises, which is the subject matter of this suit, in terms of location and size is very basic in proving this case. However, evidence adduced on what is the size of the suit premises and how it was obtained is erratic and unclear. While paragraph 5 of the Plaint, as altered, reveals that the first Defendant invaded an area of 716 acres, the second defendant invaded 301 acres while the third defendant invaded 268 acres evidence adduced is not consistent on this size. PW1's evidence mentioned the same size stated in paragraph 5 of the plaint but qualifies that the first Defendant's family was given 398 acres during operesheni vijiji and the third defendant's family was given 100 acres during operesheni vijiji while the land said to be invaded by the second defendant is entirely the village land. PW2 indicated that he was not certain about the size of the suit premises but he mentioned that, the first defendant invaded an area of about 600 acres, the second defendant about 300 acres while the third defendant is about 200 acres. PW3 mentioned during cross-examination that the area invaded by the first Defendant is 900 acres but he didn't remember the size of land for other defendants. PW4 also mentioned during cross-examination that the first Defendant invaded about 600 acres, which he said he had not

measured, while the second Defendant invaded an area of more than 300 acres and the third Defendant invaded an area of 200 acres.

PW1 informed the Court that, in measuring the suit premises they were assisted by Land officers who were sent by the District Executive Director (DED). However, evidence adduced by DW3, Filbert Aloyce the District Surveyor who was one of the members of the team sent by the DED to probe into the land dispute and conduct the land audit at Engarooji village indicated that the first Defendant owns 900 acres and the other defendants owns 300 acres each. He clarified that ownership of land by the three defendants was lawful and based on inheritance. Evidence adduced by the Defendants on the size of land owned by each of them is equally different. The first defendant (DW1) testified that he owns 685.2 acres, the second defendant (DW8) claimed that he owns 310 acres and the third defendant (DW5) claimed that he owns 267.1 acres.

Further to that, evidence adduced is not clear on when the Defendants invaded the suit premises. The Plaintiff alleged at paragraph 5 of the Plaint that the Defendants unlawfully possessed the suit premises in 2009 while at paragraph 6, 7, and 8, the Plaintiff proceeded to state that, Engarooji village council was issued with a certificate of registration on 29th June, 2016 which

is dated 1st September, 2012 and certificate of right of occupancy was issued on 29th June, 2016 which implies that the alleged invasion took place before the establishment of Engarooji village. Similarly, PW1 testified that, the alleged invasion took place in 2009 while PW2 informed the Court that the dispute started in 2016 when the Defendants started to use the village land for their own benefit.

However, evidence adduced by leaders of the area prior to establishment of Engarooji village such as: DW2, Tingide Shambuli, who was the Chairman of Lepurk village since 2010; DW4, William Rweine who was the Secretary of the Village of Lepurk from 1985 to 2004; and DW6, Sambeta Moikan who was the village executive officer of Lepurk village from 2005 to 2014 and the interim chairman of Engarooji village after its formation from 2012 to 2013 all indicates that the Defendants were in occupation of the disputed area prior to the formation of Engarooji village. They found the Defendants living in the suit premises which implies that the Defendants held the suit premises under customary right of occupancy as per section 14 of the Village Land Act.

Even if, for the sake argument, the alleged invasion took place after the establishment of Engarooji village council, to establish that the Defendants

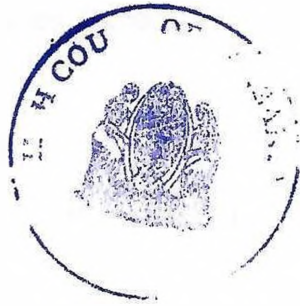
invaded parcels of land used for grazing by the villagers as alleged, the Plaintiff was required to prove that the suit premises was indeed set aside for community or public occupation and use (communal village land) as stipulated under section 12 and 13 of the Village Land Act, Cap. 114 (R.E.2019). However, the Plaintiff did not bring any evidence to establish that fact.

On the basis of the foregoing, this court finds that, the Plaintiff failed to establish that the Defendants occupy and possess the suit premises unlawfully or that the Defendants invaded the Plaintiff's land.

This Court is of the firm view that this was a fit dispute to be dealt with under section 13(8) of the Village Land Act, Cap. 114 (R.E.2019). However, as noted from the records, the Minister's intervention was not sustained to the end.

On the last issue, what reliefs the parties are entitled to, the determination of this issue is predicated on the response to the previous issues. Since the Plaintiff failed to establish the basis for her claim against the Defendants, this court finds the Plaintiff's case to be lacking in merit and the same is hereby dismissed with costs.

It is so ordered.



A handwritten signature in cursive script, appearing to read "K.N. Robert".

K.N. ROBERT
JUDGE
4/2/2022