

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

LAND CASE NO. 03 OF 2022

KALEKWA IBRAHIM KELETWA..... PLAINTIFF

(Administratrix of the estate of the late
Ibrahim Kiletwa @ Ibrahim Kileta)

VERSUS

CHAUSIKU SAMWEL..... 1st DEFENDANT

(Legal Representative of the Late
Samwel Nyabezi)

DISTRICT EXECUTIVE DIRECTOR,

UKEREWE DISTRICT COUNCIL..... 2nd DEFENDANT

ATTORNEY GENERAL..... 3rd DEFENDANT

DEFAULT JUDGMENT

18th May & 2nd June, 2023

ITEMBA, J.

This is a Default Judgment arising from a suit filed by the plaintiff praying for judgment and decree against the three defendants as follows:

- i. A declaratory order that, the suit property belonged to the Ibrahim Kiletwa (deceased).
- ii. A declaratory order that, Ukerewe District Council unlawfully allocated Plot No. 48" A" Block C-Nansio to the 1st Defendant.
- iii. A declaration order that, first Defendant trespassed into Plot No. 48" A" Block C-Nansio legally owned by Ibrahim Kiletwa (deceased).

- iv. An order of the Court to compel the first Defendant to vacate from the suit property and handled it over to the plaintiff.
- v. Permanent injunction order to restraining the first and second Defendants together with their agents from interfering plaintiff peaceful enjoyment of the dispute property.
- vi. Cost of the suit.
- vii. Any other relief as the honourable court may deem fit to grant.

Facts leading to this suit are that the plaintiff herein, Kalekwa Ibrahim Kiletwa, a resident of Mdoi Nansio Ukerewe is suing the respondents as an administrator of estate of her father the late Ibrahim Kiletwa @ Ibrahim Kileta. It is alleged that, on 18th August 1977, the Government, through the Ministry of Land Housing and Urban Development- Land Division allocated **Plot no. 48 'A' Block 'C' Nansio**, herein the suit plot, to Ibrahim Kileta. That, in pursuance of the said right of occupancy, Ibrahim Kiletwa has been paying land rent in respect of the suit plot.

That, after being granted with the right of occupancy, a land dispute between Ibrahim Kiletwa (deceased) and one Samwel Nyabezi arose regarding the suit plot in which the latter claimed to be a lawful owner. Facts reveal further that, in October, 2006, in the cause of solving the

dispute between Ibrahim Kiletwa (deceased) and Samwel Nyabezi, the Office of the District Executive Director, Ukerewe District Council formed the Land Committee which investigated the matter. That, a report was issued revealing that, Samwel Nyabezi is not the lawful owner of the suit plot as it was mistakenly allocated to him, thus he should remain living there without making any improvements while the Council was looking for an alternative Plot for him.

That, since October, 2006, Samwel Nyabezi has not been allocated with another Plot and thus he does not want to give vacant possession on the suit plot. That, Plaintiff has reported this matter to Ukerewe District Council several times but up to now nothing has been done to solve the problem and she reported the matter to the Office of the Regional Commissioner Mwanza which directed the Executive Director, Ukerewe District Council to resolve the dispute with an immediate effect, but the directives are yet to be implemented up to the moment this case was filed.

That, in May, 2018, Plaintiff approached Nansio Ward Tribunal for declaration that she is a lawful owner of the land in dispute and The Ward Tribunal ruled that, the land office at Ukerewe District Council had

mistakenly allocated the suit plot to the respondent and ordered that the respondent to be allocated a new plot.

That, in executing the decision of the Nansio Ward Land Tribunal, the Plaintiff filed Miscellaneous Application No. 50 of 2018 at District Land and Housing Tribunal for Ukerewe at Nansio whereas the Tribunal quashed and set aside the decision of the Ward Tribunal and ordered the claimant to file the case before the District Land and Housing Tribunal for determination of the matter on merit by joining the Ukerewe District Council.

And that, the presence of Mr. Samwel Nyabezi at the suit plot causes inconveniences to Plaintiff and the whole family of the late Ibrahim Kiletwa and therefore, the plaintiff instituted this suit praying that the 1st Defendant to give an immediate vacant possession.

In the course of hearing, the 2nd and 3rd defendants' counsels raised a preliminary objection that the suit is bad in law for being time barred. Hearing of the preliminary objection was done through written submissions and the objection was dismissed. On 18th of May 2023 the suit was scheduled for First Pre Trial-Conference and only the plaintiff and his counsel Mr. Masanja Ngofilo appeared. All the three defendants were

absent. Mr. Ngofilo told the court that the defendants are absent and that in this trend, the suit will never reach its end. He moved the court, for the interest of justice, to struck out the defence and enter default judgment in terms of order VIII rule 20 of the Civil Procedure Code (CPC).

The said Order VIII rule 20 of the Civil Procedure Code states that;

"20.-(1) Where at the time appointed for the pre-trial conference, one or more of the parties fails to attend, the court may

(a) dismiss the suit or proceedings if a defaulting party is the plaintiff;

(b) strikeout the defence or counter-claim if a defaulting party is a defendant;

(c) enter judgment; or

(d) make such other order as it considers fit."

Although this court is empowered to strike out the defence and enter a default judgment under Order VIII rule 20(b) and (c) of the CPC, nevertheless, the plaintiff has a duty to prove his case as provided under sections 110, 111 and 112 of the Tanzania Evidence Act, Cap 6 R.E 2002 (the Evidence Act). In the present case, the plaintiff is claiming ownership

of the suit plot and has explained with evidence why she alleges that she has rights to the ownership.

I have gone through the following documents which are attached to the affidavit. The copy of right of occupancy issued on 18th August 1977, by the Ministry of Lands Housing and Urban Developments to Ibrahim Kiletu, the plaintiff's father, (**Annexure K2**) it is also signed by both the director for Land Development and Ibrahim Kiletu. I have looked at copies of Exchequer receipts where Ibrahim Kiletwa was paying for land rent for the suit plot in various years from 1977 to 2013 (**Annexure K3**), Two letters from the Office of Regional Commissioner, Mwanza to Esther Chaula, Executive Director Ukerewe District, dated 23rd November 2017 and 27th August 2018 asking the Executive Director to solve the dispute between the parties with immediate effect. (**Annexure K3 and K5**). A letter dated 31/10/2006 from the office of executive director Nansio Ukerewe to Samwel Nyebezi who is represented by the 1st respondent, explaining that the defendant (Samweli Nyebezi) should stay in the suit plot temporarily while the Council is looking for alternative plot for him and that he should not develop it. (**Annexure K4**). The copy of decision from Ward Tribunal dated 10/5/2018 that there was a double issuance of an offer in respect of

the suit plot therefore, the defendant (Samwel Nyebezi) should be allocated a different plot as the mistake was done by Land office. (**Annexure K6**). A copy of ruling issued by the District Land and Housing Tribunal in execution of the Ward tribunal stating that the decision by Ward Tribunal was just a temporary solution and hence non executable. The District Tribunal quashed and set aside the decision of the Ward Tribunal. The plaintiff herein was ordered to file a dispute before the District Tribunal by joining the Municipal Council. (**Annexure K7**). These were all the annexed documents by the plaintiff.

The issue which I am suppose to determine in this case is *whether the Plaintiff is entitled to the prayers and reliefs sought in the plaint.*

In the instant case, the Plaintiff is alleging that the suit plot belongs to her father who is the deceased and she is the administrator of estate. That, there has been efforts going on to solve their disputes administratively and through litigations before the Ward Tribunal, and in the end, it was resolved that the suit plot belongs to the plaintiff. That the plaintiff applied for execution of the Ward Tribunal's decision and the District Land and Housing Tribunal for Ukerewe directed the plaintiff to join

Ukerewe District Council as party and file the dispute before it, for determination of the matter on merit.

As stated earlier, the defendants did not enter appearance when the suit was scheduled for pre- trial conference, hence their defence is hereby struck out.

I have considered the facts and evidence laid before this court and I am satisfied that, as per the evidence, the suit plot belongs to the plaintiff Ibrahim Kiletwa (deceased). That, the defendant unlawfully took possession of the suit plot belonging to the plaintiff. That, the presence of Samwel Nyabezi in the said Plot causes inconveniences to the plaintiff and his family. Therefore, the plaintiff is entitled to the prayers which she made in the plaint. On that reasoning, the issue raised herein is answered in the affirmative.

Following that affirmation and in terms of Order VIII rule 20 of the Civil Procedure Code, this court do hereby enter a Default Judgment in favour of the plaintiff and settles for the following orders:

- i. That, Plot No. 48" A" Block C-Nansio, Ukerewe belongs to the plaintiff Ibrahim Kiletwa (deceased).

- ii. That, Ukerewe District Council unlawfully allocated Plot No. 48" A" Block C-Nansio Ukerewe to the 1st Defendant.
- iii. That, the first Defendant trespassed into Plot No. 48" A" Block C- Nansio Ukerewe legally owned by Ibrahim Kiletwa (deceased).
- iv. That, the first Defendant should vacate from the suit property and handle it over to plaintiff.
- v. A Permanent injunction order is issued to restrain the first and second Defendants together with their agents from interfering the plaintiff peaceful enjoyment of the suit property.
- vi. The defendants to pay costs of the suit.

It is so ordered.

Right of appeal duly explained.

DATED at **MWANZA** this 2nd Day of June, 2023.



L.J. ITEMBA
JUDGE

Judgment delivered under my hand and seal of the court in the presence of the plaintiff, Mr. Msafiri Henga. Advocate, holding brief for Mr. Masanja Ngofilo advocate for the plaintiff, the 1st defendant and Ms. Glad Mnjari, RMA and in the absence of the 2nd and 3rd defendants.



L.J. ITEMBA
JUDGE
2.6. 2023