

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE SUB REGISTRY OF KIGOMA)

AT KIGOMA

LAND CASE NO. 4 OF 2022

**THE REGISTERED TRUSTEES OF CHAMA CHA DEMOKRASIA NA
MAENDELEO (CHADEMA)..... PLAINTIFF**

VERSUS

REGISTERED TRUSTEE OF CHAMA CHA

MAPINDUZI (CCM).....1ST DEFENDANT

KWAGA VILLAGE COUNCIL.....2ND DEFENDANT

KASULU DISTRICT COUNCIL.....3RD DEFENDANT

ATTORNEY GENERAL.....4TH DEFENDANT

Date of last Order 17/08/2023

Date of Judgement: 15/09/2023

JUDGEMENT

MAGOIGA, J.

The plaintiff, **THE REGISTERED TRUSTEES OF CHAMA CHA DEMOKRASIA NA MAENDELEO (CHADEMA)** instituted the instant suit against the herein above defendants claiming judgement and decree against the defendants jointly and/or severally in the following orders: -



- i. This Honorable court be pleased to declare that the disputed plots/area belong to the plaintiff and the 2nd defendant had better title to allocate to the plaintiff.
- ii. The Honorable court be pleased to declare that the 1st defendant is the trespasser to the plaintiff plot/area.
- iii. This Honorable Court be pleased to declare that the 2nd defendant lawfully owned the disputed plot under adverse possession and lawfully allocated to the plaintiff.
- iv. The Honorable court to order the 1st defendant pay the compensation for trespass and damage of the plaintiff building in the tune of Tshs.Twenty Million (20,000,000/=) as compensation.
- v. Any or other costs reasonable may deem and equitable to grant.

Upon being served with the plaint, the 1st defendant failed to filed written statement of defence and an order to proceed ex-parte against her was accordingly issued. The 2nd, 3rd and 4th defendants filed a joint written statement of defence praying for the court to declare that the suit premises does not belong to the plaintiff and the dismissal of the plaint in its entirety with costs.

The facts of the instant suit are not complicated. It is alleged that the plaintiff through a letter dated 10/1/2012 wrote an application to the



Village Council of Kwaga requesting for a piece of plot for plaintiff office and the 2nd defendant handed over the area to the plaintiff and paid Tshs. 40,000/=.

Further fact from the plaint is that, on 19th January 2014, the 2nd defendant convened a village assembly where it was resolved from the assembly that the plaintiff be given alternative plot because the former was allocated and reserved for construction of Police Post. The 2nd defendant on 8th January, 2014 wrote a letter to the plaintiff notifying him about the reallocation of the caption "KUOMBA KUBADILISHIWA KIWANJA CHA CHAMA"

On 14/2/2014 the 2nd defendant notified the public and the plaintiff that the allocated plot to the plaintiff on 1/2/2012 has been re allocated from the former area nearby land registry to new plot nearby Idara ya Maji (ofisi ya Maji) and that the changes took effect by the village meeting held on 13th February 2014.

It is further in the plaint that the plaintiff in 2014, started construction of the office without any disturbances until 2019 when the KAMATI YA UHAKIKI WA MALI ZA CCM FROM CCM HEAD QUARTER wrote to the plaintiff telling her that the building belongs to the 1st defendant and denied the plaintiff access to the building or continue with construction which made the plaintiff suffer loss.

Against the above backdrop, the plaintiff instituted this suit against the defendants, hence, this judgement after hearing both sides of the dispute.

Before hearing of this case commenced, the following issues were proposed by parties and adopted by this Court for the determination of this suit, namely:

1. Whether the plaintiff lawfully acquired the disputed plot,
2. To what reliefs are parties entitled to.

In this suit the plaintiff was represented by Mr. Eliutha Kiviyiro, learned advocate whilst the 2nd, 3rd and 4th defendants had the legal services of Mr. Nickson Tengesi and Selestine Ngailo whereas the 1st defendant did not participate in these proceedings for failure to file WSD in time.


In a bid to establish the claims, the plaintiff called three witnesses. The first witness was **YOTHAM FILIMON BUSEYE** (to be referred in these proceedings as '**PW1**'). PW1 under oath told the court that he is the secretary of the Kwaga branch since 2000 under the ticket of CHADEMA. As a secretary his duty is to organize and to keep of party's records. In 2012, PW1 states, they requested for land to construct party office by writing, in which the village government replied their letter and they were given a piece of land which evidenced by payment of Tshs.40,000/= whose receipt was admitted in evidence as **Exhibit P1**.



After paying for the plot, PW1 requested the government to show him the plot. According to PW1, the plot shown was 35x70 feet in the beginning and according to PW1, they immediately started construction of the party office by bringing in the site building materials.


Further testimony by PW1 was that, however, the village government requested them to stop construction to allow construction of Police post. This was done in writing by giving an option to give the party an alternative plot around Kwaga center. The letter dated 14/2/2014 was admitted in evidence and marked as **exhibit P2**.

PW1 went on telling the court that after being shown the alternative plot, they started construction. PW1 stated that in the building they constructed a hall, offices and 2 stores for business. The construction, according to PW1, is at lintel and that they used burnt bricks. While under construction, CCM party members came and inscribed their names claiming it was their plot which they disagree. He prayed that this court grant their prayers as contained in the plaint with costs.



Under cross examination by Mr. Ntenges, learned State Attorney, PW1 told the court that, the disputed plot is 15x30 feet and the village godown is outside the disputed plot. About the value of the plot, PW1 conceded he had no more documentary to prove value of the plot as claimed in paragraph 5 of the plaint. PW1 also admitted that exhibit P1 do no state the size of the plot nor the plot paid for even in the plaint. PW1 also admitted that the village godown is bordered to disputed plot and formerly the disputed plot belonged to the village government. Pressed with questions PW1 agreed that exhibit P2 do no state the addressee but he pointed out that it was the fault of the writer.

Under re-examination by Mr. Kiviyiro, PW1 told the court that the new plot which was shown to them had 30x35 feet because it was between government buildings. About the receipt, it was for payment of the earlier plot shown. PW1 insisted that the documents he tendered proved ownership and the stated amount of (140 million) was because of the costs of the case and construction materials.



The next witness for the plaintiff was **BARAKA CHRISTOPHER MKUYU** (to be referred in these proceedings as "**PW2**"). PW2 under oath, PW2 told the court that he has been living at Kwaga since 1976 and that he has been village chairman from 2009-2014. As a chairman he handed over all public institutions in the village which included political parties, churches, Schools and dispensaries; the political parties in existence were CCM and CHADEMA.

PW2's main evidence was that CHADEMA applied and were allocated the land in dispute during his leadership using the process as explained by PW1.

When PW2 was shown **exhibit P1** he said that it was the receipt issued after paying the plot fees, whereafter he directed that CHADEMA be given a plot which was 35x70 meters within the land designed for public use.

According to PW2, later came a request for construction of Police post and CHADEMA were given another plot in 2014 measuring 15x70 meters which is between water and village godown. In this new and alternative plot, CHADEMA started construction. They constructed office, 2 shops and hall

for meetings. The building was at lintel when problem started in 2019. He insisted that the plot in issue belongs to the plaintiff.

Under cross examination by Mr. Tenges, PW2 told the court that the disputed plot is 15x35 feet and the village godown is outside the disputed plot where the building is 42x17 feet.

Pressed with questions on proof of ownership, PW2 answered that no village minutes were tendered to prove ownership or grant of the plot in dispute but quick to point out that, exhibit P1 is enough to prove ownership by CHADEMA.

PW2 shown exhibit P1 and asked if it shows the size of the plot, he answered in the positive that it does not state the size of the land/plot and no document was tendered to show its boundaries.

Answering the question by Mr. Ngailo, PW2 told the court that he was a chairman through Chadema party but that he never gave them the land as Chadema member but after following all procedure.




According to PW2, the receipt evidenced allocation and all procedures were complied with. He insisted that the village council agreed to such allocation though he didn't have any document to prove such allocation.

On re-examination by Mr. Kiviyiro, PW1 replied that after his tenure he left everything to office. Exhibit P1 do not state the size but is lawful.

Probed by the court for clarification, PW1 stated that CHADEMA's plot has no numbers to identify them as it is for other offices. The new offer was for 15x70 feet and not the former allocation of 35x70 feet.

The next witness is **CHRISTOPHER MKUYU** (to be referred in these proceedings as "**PW3**"). PW3 under oath told the court that he lives at Kwaga since 1973/74. He testified further that he was once in the village government as a member in 1985-1990, then 1991-1993 and 1994-1999. About the disputed plot, PW3 stated that it was owned by village government. PW3 told the court that, the dispute is between CCM and CHADEMA. To the understanding of PW3, CHADEMA was granted the disputed plot in the year 2003/2004.



Under cross examination by Mr. Ntenges, PW3 told the court that the disputes plot was the property of the village government. There was village council meeting which approved the grant though he couldn't show it herein court. About the size, PW3 admitted to know nothing concerning its size.

There was no re-examination on this witness.

The last witness is **SHAABAN RAPHAEL MADEDE** (to be referred in these proceedings as "**PW4**"). PW4 Under affirmation told the court he is a politician and a peasant. PW4 told the court that he is a member of CHADEMA and the Regional Secretary of CHADEMA in Kigoma Region. As a secretary his duty is to coordinate all party activities in the region, to direct and advise all party business in the region.

In 2012, PW4 testified that Kwaga village party branch applied for grant of the land with view of construction of party office by sending a letter to VEO where the party was given the plot by village administration. Later on, the village administration moved them from the original plot given, to the new plot within the area.

On 14/2/2014, PW4 went on telling the court that, they were shown a new plot in writing directing them to move to another area. The place

they were given measured 15x35 feet and was bordered by water office and village store.

According to PW4, they started construction for office of the party which now is at lintel and in there, there is a hall for meeting, one office and two shops.

In 2019, PW4 testified that they were stopped on reason that the plot is owned by CCM. Since then, they started following of their rights and insisted that the disputed plot is the property of CHADEMA.

Under cross examination by Mr. Ntenges, PW4 told the court that it was true the disputed plot is 15x35 feet and the godown is outside the disputed plot.

About the records of grant, PW4 replied that he doesn't have records of grant by village council but refuted to have not followed the procedure though agreed that the chairman by then was from CHADEMA and denied that, it was not the chairman who gave the plot.

Pressed with questions under cross examination, PW4 admitted that no minutes of the village was tendered to prove grant of this disputed plot



and denied that they were illegally granted the plot. Documents have been tendered showing and proving what happened.

Under re-examination by Mr. Kiviyiro, PW4 told this court that he participated all party meetings for grant of the disputed plot.

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

On the part of defence, there were two witnesses. The first witness was **SIMON BORUSHI KIGWIZA** (to be referred in these proceedings as "**DW1**"). Under oath DW1 told the court that he lives at Kwaga village since 1973 as a peasant as well as chairman of the village and the supervisor of all village activities. According to DW1, he chairs all village meetings, keep peace and all development in the village.

About the disputed plot, DW1 testified that is known to him because in 1980 it was owned by CCM. During Magufuli era, the Presidential Committee in 2015 came to their village and there was a conflict over the ownership of the disputed plot and it resolved that the disputed plot is the property of CCM.

DW1 pointed out that the size of the plot is 15x30 feet. On the plot, there is unfinished building of CHADEMA and near it there is village godown which was constructed in 1975 by the government. DW1 told the court when he took power in 2019 the whole place was owned by CCM including

the disputed plot. As a chairman with his committee, they sat and decided to take all institution to their respective plots including the village government is moving to the new area. The conflict between CCM and CHADEMA, is CHADEMA constructing in the plot belonging to CCM.

It was further testimony by DW1 that, the conflict started when past chairperson was from CHADEMA and wrongly use his powers to give the plot to CHADEMA without following the procedure.

DW1 thus prayed that this court orders CHADEMA to vacate the disputed plot with no order as to costs.

Under cross examination by Mr. Kiviyiro, DW1 replied that he didn't have any minutes for CCM being granted the disputed pot nor in their reply to WSD nowhere they stated that the land belonged to CCM.

He also substantiated that VEO is not a CHADEMA partisan.

When shown exhibit P2 and asked who signed exhibit P2, DW1 said that it was written by VEO Kwaga. Committees which concerned with land allocation did approve the allocation.

He added further that exhibit P2 was written in 2014 and he was in the meeting when same was presented and that he has never moved away from Kwaga. The godown was constructed for village government to use. No one can inherit a property by birth. DW1 pointed out that he has

minutes for what was happening though admitted that no plan was tendered in court of village land use.

Under re-examination by Mr. Tenges, DW1 replied that CCM had 2 acres of land. About exhibit P2, DW1 said that it does not show whom it was written to.

When probed by the court for clarification, DW1 replied that there was a building by CHADEMA in the disputed plot which is at lintel level. Go-down is the property of the government. The plot is surveyed in 2012. CCM stopped CHADEMA from construction.

The next witness was **BRYSON ELIKIM MILINGA** to be referred in these proceedings as "**DW2.**" DW2 under oath told the court that he lives at Kwaga since his birth in 1982. He is a peasant and the Ward counselor. He was a member of the village council from 2009-2014.

According to DW2, the disputed plot is within the plots which are owned by CCM since 1980 because around that disputed plot there is a CCM building which was the 1st one to be constructed thereon. As testified by DW1, DW2 also repeated the story of 2019 by the then President Magufuli.

His story went on that when he was a member of the village government, he heard that CHADEMA leaders who were in power were giving the disputed plots to their party. But upon hearing the complaint, it was



resolved that the plot belongs to CCM. DW1 stated that he remembers that there was minute of the village giving the disputed plot to CHADEMA. CHADEMA came later to claim that it was their plot but that is not true. CHADEMA started construction without any color of right.

Under cross examination by Mr. Kiviyiro, DW1 replied that he did not say lies because he is under oath. According to him CHADEMA are within the CCM plot as well as the water office is the property of CCM. All building thereon were constructed by government money.

DW2 stated that he did not read WSD of the defendant. He was a member of the village government from 2009-2014.

When shown exhibit P2, DW2 said that it was the letter from Village Executive Officer but it had no address. He admitted that it was the VEO who stopped them from further construction of the disputed plot.

Under re-examination by Mr. Ntenges, DW2 answered that the disputed plot and all buildings and properties belong to CCM.

When DW2 was shown exhibit P2 and asked if the said offer stated the size of the land and where it is, he answered that it did not state the size of the land and all around the disputed plot belongs to CCM.

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



Having summarized the evidence of both parties, the noble task of this court now is to determine the merits or otherwise of the suit. However, before going into that legal task, I find it pertinent to state the principle governing proof of cases in civil suits. The general rule is that the burden of prove lies on the one who institute the suit and so goes the saying that, he who alleges must prove. This is as per the section 110 and 111 of the Law of Evidence Act, [Cap 6 R.E 2019. For easy of reference the said sections provide as follows:

“110. Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists.

111. The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side.”


The onus, however, it should be emphasized, is on balance of probabilities, in civil cases. With the above in mind, now is high time I consider the first issue. The first issue was couched that **“whether the plaintiff lawfully acquired the disputed plot.”** On the part of the plaintiff and her witnesses testified that through a letter dated 10/1/2012 (but which letter was not admitted in evidence) wrote an application to the Village Council of Kwaga requesting for a piece of plot for plaintiff's

office and the 2nd defendant granted the application by giving a land measuring 35*70 feet to the plaintiff upon payment of Tshs.40,000/= exhibit P1. Additionally, the plaintiff claims that, on 14/2/2014, the 2nd defendant notified the public and the plaintiff that the previous allocated plot to the plaintiff on 1/2/2012 has been re allocated from the former area to a nearby land Idara ya Maji (ofisi ya Maji) and that the changes took effect by the village meeting held on 13th February 2014. Therefore, according to the plaintiff's evidence, the plot in dispute was lawful acquired so, she faults the 1st defendant to interfere her from enjoying her rights over the land.

On the part of the 2nd, 3rd and 4th defendants, strongly opposed the procedures used to acquire the said plot by the plaintiff arguing that the procedures used by CHADEMA wasn't correct but it was because the village was chaired by a CHADEMA person.

Having carefully considered both sides pleadings, testimonies of the plaintiffs' witnesses and defendants' witnesses and having gone through the contents of both **exhibits P1 and P2**, this issue is to be answered in the negative that the plaintiff did not lawfully acquired the plot in dispute. I will explain. **One**, the plaintiff and her witnesses claimed and testified that she was allocated the earlier plot measuring 35* 70 metres but none of the exhibit contained such measurements at least to support that the

plaintiff was allocated a land measuring such measurements. Unfortunately to the plaintiff, exhibits P1 and P2 none talks of such measurements. The plaintiff was to prove that actually she was allocated such a piece of land by documents and approved by villages minutes or at least approval by village land committee. This piece of evidence is wanting in this case to conclusively say positively that the plaintiff lawfully acquired any plot. **Two**, under cross examination by Mr. Tenges, PW1 told the court that the land in dispute is 15*30 feet contrary to what was pleaded at paragraph 6 of the plaint. In fact, the testimony of the plaintiff's witnesses were full contradictions as to size of the land in dispute that this court failed to know exactly the size of the land that was granted by the 1st defendant. On the same token, PW2's story was that the land was 30*35 feet but under cross examination changed the story is 15*35 feet. All these contradictions go to the root of the matter as to which land exactly was allocated to the plaintiff. **Three**, even if I were to agree with the plaintiff that she was allocated the land in dispute in which she paid for Tshs.40,000.00 but still this cannot give executable decree for want of prove of the size of the land in dispute. This is because both documentary evidence tendered in these proceedings none stated the size of land in dispute. In my considered opinion, failure to prove the size of the land is fatal to any land dispute of this nature.



With the above reasons, I am of the considered opinion, that the plaintiff utterly failed to prove on balance of probabilities that she was actually lawfully allocated, yet unproved disputed plot. At most, the plaintiff was expected to produce in evidence minutes of the village administration or village land allocating committee or village meeting to approval, if any, such allocation. In the absence of such vital evidence, it was not enough to rely on mere payment and a letter of the Village Executive Officer alone who did not in his letter state even the size of the land alleged re-allocated to. This disposes the first issue that the plaintiff was not lawfully allocated the dispute land as alleged.

Next, I move to the 2nd issue that what reliefs are parties entitled to. Much as the first issue has failed and it was upon which other reliefs by the plaintiff were to be granted, then, the plaintiff's other claims automatically crumble down in this suit.

That said and done, this court has no other option but to dismiss this suit with costs to the 2nd, 3rd and 4th defendants.

It is so ordered.

Dated at Kigoma this 15th day of September, 2023



S.M. MAGOIGA
JUDGE

15/09/2023