

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND CASE NO.4 OF 2021

SUKU JUNGU MASALU.....PLAINTIFF

VERSUS

LINDI MUNICIPAL COUNCIL.....1<sup>ST</sup> DEFENDANT

BIBIE ATHUMAN.....2<sup>ND</sup> DEFENDANT

BALTAZER KOMBA.....3<sup>RD</sup> DEFENDANT

MARIAM CHITANDA.....4<sup>TH</sup> DEFENDANT

EVANSA DANIEL MKILIMA.....5<sup>TH</sup> DEFENDANT

ROBERT FRANCIS.....6<sup>TH</sup> DEFENDANT

OMARI MOHAMED FARAJI.....7<sup>TH</sup> DEFENDANT

SHARIFA KAISI.....8<sup>TH</sup> DEFENDANT

ISSA ABDALLAH MABANGI.....9<sup>TH</sup> DEFENDANT

ZAMAR HAMAD MBARUKU.....10<sup>TH</sup> DEFENDANT

WAWILI SALUM.....11<sup>TH</sup> DEFENDANT

SAIDI KISAGA.....12<sup>TH</sup> DEFENDANT

KHALFANI NGONYANI.....13<sup>TH</sup> DEFENDANT

THE ATTORNEY GENERAL.....14<sup>TH</sup> DEFENDANT

## RULING

19.9.2023

### LALTAIKA, J.:

The Plaintiff, **SUKU JUNGU MASALU**, a natural person and resident of Nzega, has instituted this suit, claiming severally and jointly against the first to fourteenth Defendants, respectively. In this suit, the Plaintiff has sued the first Defendant, a statutory body corporate established under **the Local Government (Urban Authorities) Act, 1982**. To meet legal requirements, the Plaintiff has also sued the fourteenth Defendant as a necessary party to this suit. Noteworthy, the remaining Defendants are natural persons and residents of Lindi Region, including the second to thirteenth Defendants, respectively.

The Plaintiff's claim against the Defendants, jointly and severally, is for the recovery of land situated in the following plots:

- (i) Plot No.64 Block SS, Title No.11796, measuring about 450 Square Meters, located and situated at Mtuleni (Rips) in Matopeni Ward, within Lindi Municipal Council, Lindi Region.
- (ii) Plot No.62 Block SS, measuring about 450 Square Meters, located and situated at Mtuleni (Rips) in Matopeni Ward, within Lindi Municipal Council, Lindi Region.
- (iii) Plot No.60 Block SS, measuring about 450 Square Meters, located and situated at Mtuleni (Rips) in Matopeni Ward, within Lindi Municipal Council, Lindi Region.
- (iv) Plot No.61 Block SS, measuring about 450 Square Meters, located and situated at Mtuleni (Rips) in Matopeni Ward, within Lindi Municipal Council, Lindi Region.
- (v) Plot No.63 Block SS, measuring about 450 Square Meters, located and situated at Mtuleni (Rips) in Matopeni Ward, within Lindi Municipal Council, Lindi Region.
- (vi) Plot No.66 Block SS, measuring about 450 Square Meters, located and situated at Mtuleni (Rips) in Matopeni Ward, within Lindi Municipal Council, Lindi Region.

- (vii) *Plot No.65 Block SS, measuring about 450 Square Meters, located and situated at Mtuleni (Rips) in Matopeni Ward, within Lindi Municipal Council, Lindi Region.*
- (viii) *Plot No.67 Block SS, measuring about 450 Square Meters, located and situated at Mtuleni (Rips) in Matopeni Ward, within Lindi Municipal Council, Lindi Region.*

The Plaintiff further claims unlawful measurement and demarcation of the aforementioned plots, trespass, and unlawful issuance of a Certificate of Title in the names of the 2nd to 13th Defendants, which, he asserts, is null and void ab initio. Moreover, the Plaintiff claims against the Defendants, jointly and severally, for unlawful sale agreements and allocation of plots, as well as the illegal grant of rights of occupancy in respect of Plot No.64 Block SS, Title No. 11796, measuring about 450 square meters, located at Mtuleni (Rips) in Matopeni Ward, within Lindi Municipal Council, Lindi Region. The property, allegedly, initially owned by BIBIE ATHUMANI was transferred to BALTAZER KOMBA.

The Plaintiff prays for the following reliefs:

- (i) *Declaration that the Plaintiff is the lawful owner of the specified plots.*
- (ii) *Declaration that the purported sale and allocation by the 1st Defendant to the 2nd to 13th Defendants is unlawful, illegal, and null and void.*
- (iii) *Declaration that the Respondents are trespassers, with an eviction order against the Defendants.*
- (iv) *Permanent injunction restraining the Defendants from interfering with the Plaintiff's lawful ownership and development ambitions.*
- (v) *Order for the cancellation of the illegal process of granting Certificates of Title to the 3rd to 13th Defendants.*
- (vi) *Order for the cancellation of Certificate of Title No. 11796, Plot No. 64 Block SS, to BIBIE ATHUMAN, who transferred it to BALTAZER KOMBA.*
- (vii) *Order for the payment of Tanzania Shillings One Hundred Million (TZS 100,000,000/=) as general damages.*
- (viii) *Costs of this suit.*
- (ix) *Any other relief(s) the Honourable Court may deem fit and just to grant.*

It is noteworthy that only the first and fourteenth Defendants have filed the joint Written Statement of Defence. When this matter came up for necessary orders, the Plaintiff was represented by Ms. Radhia Abdallah Luhuna, learned Advocate holding brief for Mr. Dotto Bija, a learned Advocate. The first and fourteenth Defendants were represented by Ms. Getruda Songoi, a learned State Attorney.

Ms. Songoi submitted that, following the court's instruction, the Plaintiff was advised to withdraw the matter with leave to refile after attempting mediation, which proved unsuccessful due to missing parties. Ms. Luhuna confirmed this position but argued that they have evidence that the summons was issued on 30/7/2023 and received by the 2nd to 13th Defendants on 13/8/2023, and they have not filed anything so far. Ms. Luhuna requested to proceed ex parte against the 2nd to 13th Defendants, indicating that if acceptable, they would proceed with the necessary orders.

In rejoinder, Ms. Songoi disagreed with the Plaintiff's counsel, insisting that the learned counsel is unclear about their intentions. The learned State Attorney explained that Mr. Bija had stated that he did not find the Defendants in person, leading to the advice to withdraw the matter. Ms. Songoi proposed striking out the matter, and she did not object to refiling.

Having considered the submissions from both learned counsel, It is obvious that the learned counsel for the Plaintiff is not only unclear with information coming from him through many advocates who have been holding brief for him for the most of the past two years. It is further noted that the learned counsel for the Plaintiff lacks commitment to prosecute his case. This is evidenced from his many nonappearances or rather getting

fellow counsel to hold brief for him with little if any mandate to proceed and absolutely no knowledge about the nitty gritty of the controversy.

As officers of this Court, learned counsel bear the duty to assist this court to administer justice to the parties without undue delays. In this regard, the Court of Appeal of Tanzania in **Mohamed Iqbal v. Esrom M. Maryogo**, Civil Application No. 141/01 of 2017 (unreported), had the following to say:

*"We must emphasize that an advocate, in addition to being a professional, is also an officer of the court and plays a vital role in the administration of justice. An advocate is therefore expected to assist the Court in an appropriate manner in the administration of justice. Indeed, one of the **important characteristics of an advocate is openness in different ways to share to the court the relevant information or message which comes to his attention** whether from his client or his colleagues concerning the handling of the case regardless of whether he has been requested by the court to do so or not."*

There is every reason to believe that the learned counsel for the Plaintiff is not being open enough to this court on why his litigation journey has taken a snail's pace leading to the matter backlogging this court unnecessarily. There are also indications that the learned counsel lacks clarity on the current status of the defendants leading to obvious lack of commitment.

As a counsel based in Mwanza, while the matter is in Mtwara many kilometers away, the learned Counsel may also be advised to rethink his strategies and ensure that the court and other stakeholders are not made to suffer for his convenience.

In the upshot, I do hereby strike out **LAND CASE NO.4 OF 2021** for lack of clarity and commitment to prosecute the same. I make no orders as to costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**E.I. LALTAIKA**  
**JUDGE**  
**19.9.2023**

**COURT:**

This Ruling is delivered under my hand and the seal of this Court on this 19th day of September 2023 in the presence of Ms. Getruda Songoi, learned State Attorney and Ms. Radhia Abdallah Luhuna, learned Advocate holding brief for Mr. Dotto Bija, learned Advocate, for the Plaintiff.



A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**E.I. LALTAIKA**  
**JUDGE**  
**19.9.2023**