

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

KIGOMA SUB-REGISTRY

AT KIGOMA

LAND CASE NO.09 OF 2022

KABIGA JANE MBESHI @ KAMBARANGA GERVAS.....PLAINTIFF

VERSUS

KIGADYE VILLAGE COUNCIL.....1st DEFENDANT

HON. ATTORNEY GENERAL OF TANZANIA.....2nd DEFENDANT

JUDGEMENT

26th October & 6th November 2023

Rwizile, J.

The plaintiff, a natural person is suing the defendants which are government institutions for a claim of a piece of land measuring 20 acres.

The suit land is situated at Kulukoni Kigadye village of Kasulu District. It was alleged that the suit land was purchased by the plaintiff from one Jonas Kaluhawe and developed a farm where he kept fish in five fish ponds, seasonal and permanent crops were grown to include avocados, orange trees, bananas, sugarcane, cone, and beans in 2010. Having enjoyed peaceful ownership of the land for over 10 years, it was in 2021 when his land was taken by the first defendant and sold to some villagers without notice and compensation. He, therefore, prays for a judgment and decree against the defendants as follows;

- i. A declaration that the plaintiff is the owner of the suit land
- ii. A declaration that the 1st defendant is a trespasser to the suit land
- iii. Compensation for the Suitland at the tune of TZS 150,000,000.00
- iv. General damages at the tune of TZS 30,000,000.00 subject to the assessment of the court
- v. Costs of the suit and
- vi. Any other relief that may be considered just to grant

The plaintiff is represented by Mr. Sylvester Damas Sogomba of Damas Associates while the defendants were represented by Mr. Nickson Tengesi learned stated Attorney from the office of the Solicitor General. The plaintiff called in three witnesses namely Kabiga Jane Mbeshi (Pw1), Jonas Kuruhawe (Pw2), and Mushobozi Lugenzo (Pw3). The defendant on the other side has tendered one witness Sabasi Boneface Habona (Dw1). Only two issues were agreed and framed as follows;

- a. Whether the plaintiff is the rightful owner of the Suitland and
- b. To what reliefs are the parties entitled?

Going by evidence, it has been stated by Pw1 that on the 20th of April 2010, he purchased a 20-acre Suitland from Pw2 at the sum of TZS

1,500,000.00. There is evidence of a purchase agreement admitted as P1. The same sale agreement was locally executed and keenly kept. His evidence was supported by Pw2 who said, he acquired land in 1980, it was an open land. He cleared it and used it long before the village of Kigadye came into existence in 1985. The use of the same land according to Pw2 was to grow maize, beans, and sugarcane before it was peacefully sold to the plaintiff. He said, that since the establishment of the same village, no dispute had risen until the coming of Dw1 who is the 6th village chairman, when the land disputes arose.

He said it is Dw1 who is to blame for said disputes. Pw3 who was a neighbor to that land and witnessed the execution of the sale agreement also testified in support of Pw1 and Pw2.

Before determining the issue in dispute, I have to venture into the defence. Dw1 who was the very village chairman at the time of the conflict and who was blamed for this unbecoming ordeal, told this court that the Suitland is a protected area. It cannot be owned by anybody because it is a water source. It has a big natural forest that feeds its waters into the river Malagalasi.

Having considered the evidence, I find it interesting to the defence made by the Dw1. It contradicts what was pleaded in the written statement of defence which, for the avoidance of doubt, it was stated from para 2 to

10

- 2. That, the content of paragraph 4 of the plaint is disputed. It is averred that there is no proof of the ownership of the land in dispute. The plaintiff is put to strict proof.*
- 3. That, the content of paragraph 5 of the plaint is noted to the extent that the sale agreement attached was not between the plaintiff herein and instead it was between one Kambarage Gervas and Jonasi Kaluhawe. Hence the plaintiff herein Kabiga Jane Mbeshi @ Kambarage Gervas lacks locus in this matter. Other facts concerning the contract on the sale of the Suitland between Jonasi Kaluhawe and Kambarage Gervais. The said contract is disputed for want of authorization from the proper authority before any transfer of Village land.*
- 4. That, the content of the paragraph of the plaint is disputed. The copy of the license dealing in fish and fishery is not proof of ownership over the disputed piece of land. Therefore, the plaintiff is put to strict proof thereof.*
- 5. That, the content of paragraph 7 of the plaint is disputed. The stated land is a village land that was planned for settlement and the plaintiff obtained the land in dispute illegally. The plaintiff is put to a strict proof thereof.*
- 6. That, the content of paragraph 8 of the plaint is vigorously disputed. The defendants further state that the village council*

discovered the trespass by the plaintiff when it started to allocate the land in dispute to the villagers who applied for the same.

- 7. That, the content of paragraph 9 of the plaint is strongly disputed. It is averred that the 1st defendant realized that the plaintiff invaded the land in dispute when it started to allocate to the villagers. There was no destruction of crops done on the suit land as was stated by the plaintiff. The plaintiff is put to a strict proof thereof.*
- 8. That, the content of paragraph 10 of the plaint is denied. The plaintiff is put to a strict proof thereof.*
- 9. That, the content of paragraph 11 of the plaint is strongly disputed. The 1st defendant allocated the land in dispute to the villagers who legally applied for the same. The plaintiff did not suffer irreparable loss as suggested. The plaintiff is put to strict proof.*
- 10. That, the content of paragraph 13 of the plaint is highly disputed for want of a valuation report to prove the same. The plaintiff is put to strict proof.*

From the evidence from both sides, it is clear to me that truth and lies have been separated. Dw1 who testified under oath before me that the Suitland is not designed for settlement because it is a reserve land, is the same person whose written statement of defence claimed the said land was allocated to the villagers upon application and that the plaintiff is a trespasser. It is clear to me that no defence has shown the plaintiff is a trespasser. He proved he bought land and was shown both with oral and

documentary evidence. The evidence adduced clearly proves the first issue. It can be therefore with no grain of doubt that the plaintiff is a lawful owner of the Suitland.

The second issue is on reliefs; the judgement is entered for the plaintiff for the following reliefs

- i. That the plaintiff is the rightful owner of the Suitland
- ii. That the 1st defendant is the trespasser to his Suitland
- iii. Compensation is set as general damages at the tune of TZS 30,000,000.00 for loss of earnings in the Suitland
- iv. Costs to follow the event.



A handwritten signature in black ink, appearing to read 'Ack. Rwizile', is written over a horizontal line.

ACK. RWIZILE

JUDGE

06.11.2023