

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB- REGISTRY OF MANYARA**

**AT BABATI**

**LAND CASE NO. 3 OF 2022**

**KIPARA MAINA.....1<sup>ST</sup> PLAINTIFF**

**SANE MAINA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**AMARIN SWAI.....1<sup>ST</sup> DEFENDANT**

**ELIBARIKI MEPOROO.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

29/9/2023 & 31/10/2023

**BARTHY, J:**

In this matter, Kipara Maina and Sane Maina (hereinafter referred to as the first and second plaintiff respectively) instituted the instant suit against Amarin Swai and Elibariki Meporoo (hereinafter referred as the first and second defendant respectively) for an assortment of reliefs namely; declaration that the plaintiffs are legal owner of a piece of land measuring about 400 acres in which each plaintiff claims ownership of 200 acres situated at Namalulu village of Naberera Ward in Simanjiro District. Declaration that the defendants are trespassers on the plaintiffs' land and the defendants be condemned to pay costs of the suit.

The defendants filed a joint written statement of defence, denying the plaintiffs' claims. The first defendant claimed ownership of a piece of land measuring about 100 acres, while the second defendant claimed ownership of a piece of land measuring about 50 acres. They, therefore, urged the court to dismiss the suit with costs.

Before the hearing of the matter had commenced, four issues were framed as follows;

- i) Whether or not the plaintiffs are the lawful owners of 400 acres of land in dispute.*
- ii) Whether or not the defendants are lawful owner of 150 acres of land in dispute.*
- iii) Whether or not the defendants have trespassed into the plaintiffs' land.*
- iv) What reliefs are the parties entitled to?*

In this matter, the plaintiffs were represented by Mr. Michael Lengtambi, a learned advocate, while the defendants were represented by Mr. Peres Parpai, assisted by Mr. Joshua Minja learned advocates. On the plaintiffs' side, they called a total of four witnesses and tendered several

exhibits to prove their claims. The defendants' side called a total of five witnesses and tendered a number of exhibits to rebut the plaintiffs' claims.

Kipara Maina testified as PW1. He stated that he owns a farm measuring about 200 acres, allocated to him by the Namalulu Village authority in 2004. His farm borders Langai village on the left, Sane Maina (second respondent and PW2) on the right, a road at the back, and Langai village on the other side.

He was issued a document for allocation of land by the village, which he tendered and it was admitted as exhibit P1. He used the land for pastoralism until the defendants trespassed on a suit land in 2009. Several meetings were held to require the defendants to vacate the land, but to no avail. He prayed for the court to order the defendants to vacate the land and pay the costs of the suit.

Sane Maina testified as PW2. He claimed ownership of a piece of land allocated to him in 2004, which borders Kipara Maina, Mirael Maina, a road, and Langai village. He tendered a letter of allocation as exhibit P2. He claimed the defendants trespassed and he informed the village authority and the police. He prayed for the court to order the defendants to vacate the land.

Meshack Tuleto testified as PW3, his testimony based on the boundaries of farmlands owned by PW1 and PW2, both allocated by Namalulu Village in 2004. In 2009, a dispute arose when people from Langai Village trespassed onto Namalulu land. He said a meeting was convened to remove the defendants from the plaintiffs' land, and they were asked to produce documents to verify the manner they acquired the suit land, but in vain. He also tendered the minutes of the meeting (exhibit P1 and P2).

Martin Mbishe testified as PW4. He recognized the minutes of the meetings (exhibit P1 and P2) and stated that PW1 and PW2 were allocated 200 acres each by the village land allocation committee. In 2009, village leaders peacefully evicted trespassers from Langai Village. However, a dispute arose between 2016-2017 after the defendants trespassed on the entire 400 acres owned by the plaintiffs. He also tendered the map of Namalulu Village which was admitted as exhibit P5.

Mathayo Oromboi, PW5, testified that the plaintiffs were allocated their respective pieces of land in 2004 by Namalulu Village and were issued letters of allocation (exhibit P1 and P2). In 2009, the defendants

trespassed on the plaintiffs' land. That concludes the evidence for the plaintiffs.

On the side of the defendants, Amarin John Laswai testified as DW1. He denied trespassing on the plaintiffs' land and claimed to have purchased the land from Saitoti Kimai (DW2) in 2012. DW1 provided details of the sale agreement and the improvements he made on the land. He urged the court to dismiss the case with costs.

Saitoti Kimai, DW2, testified that he owns several farms, some he inherited from his father. He explained how he acquired the land and sold 150 acres to Amarin Laswai (DW1), Elibariki Meporoo, and Kavishe. He denied to have made any request for allocation of land from Namalulu village.

Michael Philipo Alaigoto, DW3, is the chairperson of Langai Village. He testified about the defendants' acquisition of land to their village and denied any land dispute between Namalulu and Langai villages.

Jacob Andrea Kiteroo, DW4, was the hamlet leader at Langai for ten years and confirmed the defendants' purchase of land from DW2. He denied trespass on the plaintiffs' land.



The second defendant, Elibariki Meporoo Laizer, testified under oath as DW5. He informed the court that he began residing in Langai in the year 2011. He strongly denied to have trespassed onto the plaintiffs' land and claimed that he had acquired his parcel of land in 2012 from DW2, together with two other individuals, amounting to a total of 150 acres.

He mentioned other individuals as DW1, Joachim Kavishe, and himself (DW5), with each acquiring 50 acres of land. He detailed the boundaries of his land, which included Jembe Road to the north, Japhet Laizer to the south, Amarin Laswai to the east, and Siwa to the west.

DW5 further explained that after purchasing the land, he applied for a customary title and followed all the required procedures. He tendered his customary title as exhibit D4 and urged the court to dismiss the suit with costs.

The last defence witness, Joachim Sebastian Kavishe, testified under oath as DW6. He disclosed that he was a relative of DW1. In the year 2012, DW5 along with DW1 and DW5, purchased a piece of land from DW2, amounting to 150 acres in total, at a price of Tsh. 10 million. Later, due to his work commitments, he decided to exchange his farm land with 3 acres of DW1 farm in Arusha.

Afterward, when DW1 sought to obtain a customary title, DW6 was called to the village to verify their agreement. This concluded the evidence for the defence side.

With both sides having presented their evidence, the court conducted a visit to the suit land (*locus in quo*) where both parties had the opportunity to indicate their respective pieces of land and their boundaries, providing evidence to support their claims.

Following the closure of the proceedings, both parties submitted their final arguments. I am appreciative of their submissions and the legal authorities referenced. In my determination of this matter, I will consider the arguments put forth.

I will commence my analysis with the first issue, which pertains to whether the plaintiffs are the rightful owners of the 400 acres of suit land. Reviewing the complaint and the evidence provided by PW1 and PW2, who asserted ownership of a total of 400 acres, with each claiming 200 acres, it is apparent that they relied on exhibits P1 and P2 to substantiate their claims.

According to Section 110(1) of the Evidence Act [CAP 6 RE 2019], a party seeking judgment of the court based on the existence of specific

facts must prove the existence of those facts. In the present case, the plaintiffs, in asserting their claim against the defendants, were obliged to present evidence that they genuinely owned the 200 acres of land. To address this matter, the court will examine the documentary evidence and testimonies tendered as proof.

Upon careful examination of exhibits P1 and P2, on which PW1 and PW2 based their claims of land ownership, it is clear that both documents indicate that the land was shared among multiple family members. For instance, exhibit P1 states that the parcel of land was allocated to PW1 and divided among four family members, with each receiving 50 acres. Similarly, exhibit P2 shows that the 200 acres were shared among four family members of PW2 with each owning 50 acres.

During cross-examination, both PW1 and PW2 admitted that they each owned only 50 acres of land. Notably, the other family members mentioned in exhibits P1 and P2 were not parties to the present lawsuit, and no evidence was presented to indicate that PW1 and PW2 were acting on their behalf.



Consequently, it is evident that the plaintiffs do not have a legal standing to assert ownership of the full 200 acres, as the remaining 150 acres belong to other family members who are not parties to this case.

Furthermore, the plaintiffs failed to provide any evidence that they were representing other family members as a representative suit. As a result, their legal standing to sue on behalf of these family members is questionable. This is in accordance with the legal principle of locus standi, which requires a person bringing a case to demonstrate a legitimate interest in the subject matter.

Locus standi is the right or legal capacity to bring an action or to appear in a court. The term was well expounded in the case of **Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203, where Samatta, J (as he then was) had the following to say;

*"Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with. ..."*

Also, in the case of **Peter Mpalanzi v. Christina Mbaruka**, Civil Appeal No. 153 of 2019, Court of Appeal of Tanzania at Iringa (unreported) it held that;

*"Locus standi is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject matter. **Unless a person stands in a sufficient close relation to the subject matter so as to give a right which requires protection or infringement of which he brings the action, he cannot sue on it**".*

[Emphasis is supplied].

See also the case of **Godbless Lema v. Mussa Hamis Mkanga and 2 Others**, Civil Appeal No. 47 of 2012 (unreported) where the right to audience was emphasized for the person to have the recourse to institute a cause of action in court.

For the plaintiffs to have locus standi to sue on behalf of other family member they were required to act on representative suit. However, none of the plaintiffs had prior obtained the leave of this court to sue on behalf of other family members. A similar stance was determined by this court in the case of **Hashim Jongo and 41 others v. Attorney General and**

**another** (Misc. Civil Appeal 41 of 2004) [2006] TZHC 58 where among other things the court held that;

*It is immaterial that the applicants are known to the respondent. The question is whether the permission to institute the proceedings on behalf of the others was obtained. Since permission to represent the other applicants in these proceedings was not sought and obtained, this application brought on behalf of 42 applicants is incompetent and liable to be struck out..."*

The plaintiffs did not tender any proof showing they were acting on a representative suit. It is therefore clear that they lacked locus standi to institute the case on behalf of other family members. As exhibits P1 and P2 shows the suit land was not owned by themselves alone.

Equally of importance, apart from PW1 and PW2, other co-owners of the suit land mentioned in exhibits P1 and P2 were not even called to testify in court to substantiate the claims. Also, no explanation was given on their whereabouts.

The court is therefore entitled to draw an inference adverse to the plaintiffs. The importance of calling material witnesses in the case was

stated in the case of **Hemed Saidi v. Mohamed Mbilu** [1984] TLR 113, where the court had this to say;

*"Where, for undisclosed reasons, a party fails to call material witness on his side, the court is entitled to draw an inference that if the witnesses were called they would have given evidence contrary to the party's interests."*

In the absence of evidence that the plaintiffs were authorized to represent the other family members, it is apparent that they lacked the legal standing to file this lawsuit on their behalf. This issue cannot be resolved in favor of the plaintiffs.

Regarding the second issue, which pertains to whether the defendants own 150 acres of land, the evidence presented in court clearly supports the defendants' claim. The defendants asserted that they lawfully own their respective pieces of land situated in Langai village.

The defendants also provided exhibits D1 and D4, which are customary titles they obtained after purchasing the land. These documents were admitted as evidence in the case. The plaintiffs raised concerns about the validity of these titles, alleging fraud, but failed to provide specific evidence to validate their claims of fraud.

It is now an established principle that, when fraud is pleaded, its particulars must be given and proved. However, the standard of proof of fraud in civil cases is higher than a mere balance of probabilities due to its nature. This was heard in the case of **International Commercial Bank Limited v. Jadecam Estate Limited** (Civil Appeal 446 of 2020) [2021] TZCA 673.

The possession of land titles is generally considered sufficient proof of land ownership unless fraud can be proven. In this case, no evidence of fraud was presented, and the titles remain valid.

Consequently, the defendants have established their rightful ownership of 150 acres of land located in Langai village. The second issue is therefore answered in the affirmative.

Moving on to the third issue, which addresses whether the defendants trespassed onto the plaintiffs' land, the analysis in response to the first issue establishes that the plaintiffs did not prove their ownership of the suit land. Therefore, it follows that the defendants could not have trespassed onto land owned by the plaintiffs. This issue is also resolved in favor of the defendants.



As for the final issue, which pertains to the reliefs to which the parties are entitled, the court finds that the plaintiffs have failed to substantiate their case. Consequently, the appropriate remedy is to dismiss their claim with costs, as their case lacks merit. This concludes the court's determination of the matter.

It is so ordered.

**Dated at Dar es salaam** this 31<sup>st</sup> day of October 2023.



**G. N. BARTHY,**

**JUDGE**

Judgement of the court read over in the court delivered to the parties chambers. All parties were present in person and dully represented by their respective advocates as mentioned above.

**Sgd: V. J. KIMARIO**

**AG. DEPUTY REGISTRAR**

**31/10/2023**