

**IN THE HIGH COURT OF TANZANIA**

**DODOMA SUB-REGISTRY**

**AT DODOMA**

**LAND CASE NO. 16 OF 2020**

**INDOMANDA INTERPRISES CO. LTD .....PLAINTIFF**

**VERSUS**

**ALEN CHIBALUA & 41 OTHERS .....DEFENDANTS**

**JUDGMENT**

*8<sup>th</sup> April, 2024.*

**HASSAN, J.:**

The plaintiff herein is a body corporate with its registered office at the address stated in the plaint. The plaintiff stood trial seeking for the judgment and decree against the disputed land plot No. 170/9 Western Industrial Area which was allocated to her on 23<sup>rd</sup> July, 2009 and Plot No. 170/8 Western Industrial Area, Dodoma Municipality that:

- a) An order that the plaintiff is the lawful owner of the plots in dispute.*
- b) An order that the defendants are trespassers to the suit property.*

*c) An order of demolition to all the buildings and any other structures that the defendants have erected herein.*

*d) An order that all defendants to pay costs of the suit.*

*e) Any other order this Honourable court may deem just and fit to grant.*

The matter was heard *ex parte* against the defendants who were served by way of publication in the Mwananchi Newspaper issued on the 2<sup>nd</sup> day of August, 2022. On her part, the plaintiff was represented by Mr. Adrian Ndunguru, learned counsel.

PW1, Thomas Mpangule was sworn and testified that he is one of the plaintiff's Directors and Managing Director. He stated that the case is against the defendants who have trespassed on the land that belongs to the plaintiff. That, the plaintiff has sanctioned the file of this suit in court by way of board resolution, he prayed to tender a board resolution which was admitted in evidence as exhibit "P1". He added that the suit land that has been trespassed upon by the defendants are plot No. 170/8 and 170/9 Western Industrial Area, Dodoma Municipality/city that was allocated to the plaintiff by the Capital Development Authority (CDA) which has been renamed to be the City Council of Dodoma. That, the land plot No. 170/9 Western Industrial Area was allocated to the plaintiff on the 23/7/2009

and Plot No. 170/8 Western Industrial Area, Dodoma municipality was allocated to the plaintiff on the 13/ 4/2012. PW1 tendered documentary evidence to prove the plaintiff's ownership of the two plots of land, thus letters of offer in respect of the plot No. 170/9 and 170/8 western industrial area Dodoma Municipality were collectively admitted by the court as exhibit "P2".

Pw1 testified further that, the plaintiff has been paying land rents thereof accordingly as per the Exchequer Receipt No. 37876319 in respect of 170/9 western industrial area (WIA) dated the 2/12/2009, Capital Development Authority Receipt No. 63134 dated the 25/10/2010 in respect of plot of land No.170/9 WIA, Capital development Authority Receipt B No. 99152 dated the 19/4/2012 in respect of plot No. 170/8 WIA, Exchequer Receipt No. 46379310 dated the 20/6/2012 in respect of Plot No. 170/8 WIA and Exchequer Receipt No. 920219002527154 by the Ministry of Lands Housing and Human Settlements Development dated the 12/8/2020 which were collectively admitted in evidence to form plaintiff's exhibit "P3".

Pw1 testified further that, at the moment the said plots of land belong to the plaintiff, Indomanda Enterprises Ltd. That, previously the plaintiff was registered by a business name, Indomanda Builders and General Enterprises owned by Thomas Mpangule. The documentary

evidence to prove the change of names and the existence of the plaintiff thus, the certificate of registration No. 116290 in respect of Indomanda Builders and General Enterprises (business name) dated the 23/2/1998, the business name was then changed into a company. The certificate of incorporation of a company No. 142034875 dated 12/7/2020 into Indomanda Builders and General Enterprises Ltd which was later changed into Indomanda Enterprises Ltd on the 3/7/2020 vide certificate of change of name No. 142034875. All the documents were tendered and collectively admitted in evidence to form plaintiff's exhibit "P4".

The plaintiff went on submitting that the suit land was allocated to the plaintiff in 2009 by the Capital Development Authority for purposes of investment. That by that time, the land had nobody on it when the plaintiff was still in the process of investing on the land. Later, the defendants named in the plaint severally trespassed on it and erected residential houses thereon whilst well knowing that the land do not belong to them.

Pw1 submitted that the plaintiff reported in writing the incident of trespass to government authorities such as the Director General of Capital Development authority vide a letter Ref. IBGE/MD.007 dated 20/1/2013, then the Capital Development Authority wrote to the Officers Commanding- Criminal Investigation Department District, Dodoma a letter

Ref. CDA/ED/LA-15/54825/7 dated the 21/10/2014. Then Capital Development Authority also wrote to the Dodoma District Commissioner a letter with reference number Ref. No. CDA/DED/ENG-3/VOL.XII dated 25/5/2016.

The plaintiff also complained in writing to the Prime Minister's office vide letter Ref. No. IBGE /MD/0018 dated 20/7/2017. The Prime Minister then wrote to the Dodoma Regional Commissioner a letter with Ref. No. PM/P/1/569/29 dated 21/8/2017 so as to work on the plaintiff's complaint regarding the land trespassed upon and report to him the feedback thereof. The Dodoma Regional commissioner wrote to the Director of Dodoma Municipal council vide a letter Ref. No. CA.78/357/OM/7 dated 18/9/2017 directing him to work on the complaint and take appropriate action.

Then the director, City Council of Dodoma vide a letter with Ref. No. HMD.15/54825/ dated the 20/7/2018 advised the plaintiff to go to court to get an order to demolish the houses that have been unlawful erected on the suit land and by the defendants. The commissioner for land and the assistant commissioner for land central zone respectively in their letters dated the 6/9/2019 and 26/9/2019 vide letters Ref. LD/146524VOL.VI/II and Ref. No. LD/CZ/17820/VOL.VI/135 respectively

advised the plaintiff to go to court in order to enforce his rights on the suit land. The letters Ref. No. IBGE/MD/007 dated the 20/1/2023, Ref. No. CDA/ED/LA-15/54825/7 dated the 21/10/2020, Ref. No. CDA /DED/ENG-3/VOL.XII dated 25/5/2016, Ref. No. PM/P/1/569/29/ dated the 21/8/2017, Ref. No. CA.78/357/OM/7 dated the 18/9/2017, Ref. No. HMD.15/54825/ dated 20/7/2018, Ref. No. LD/146524VOL.VI/II dated 6/9/2019 and Ref No. LD/CZ/17820/VOL.VI/135 dated the 26/9/2019 were collectively admitted as exhibit "P5" accordingly.

Pw1 went on submitting that, defendants severally and collectively defied the efforts for them to render vacant possession of the suit land. The plaintiffs therefore filed this suit before the court. That, the court gave several orders to the service of plaint and summons to the defendants to enter appearance and defend the suit against them, though it went in vain. Some of the defendants were served with the plaint and summons, including Joyce Joseph Abdallah, Mariam Andrea Madimilo, Omar Abdallah, Rehema Shabani Jumanne, Godfrey Chilongani, Adam Mohamed Baya, Joyce Joseph Abdallah (mama), Rachel Lazaro, Ndomuka, Said Omar Abdallah, Jackson Aloyce Chitute, Salum Hassan Matambo, and Adam Mohamed Said, but all those defendants despite of being duly served they defaulted appearance in court.

PW1 testified further that, the rest of the defendants, severally named in the plaint have violently refused service of the plaint and summons though they became aware of the suit against them. The court process server Yono Auction Mart filed in the court the affidavit on the defendants' violent refusal of service sworn by the court process server employees, Jackson Mwaja Mnyanzasa, Pendo Maiko Jackson, Catherine Daudi Mathosele and Ezekiel Mwakagali which was collectively admitted in evidence as exhibit "P6".

Pw1 added further that the summons given by the court to the defendants were not served upon few defendants. The summons was admitted in evidence as exhibit "P7". He went on testifying that, upon the defendants' refusal of service, the court ordered that, the defendants be served by way of publication of summons in the newspaper. The summons was so published in Mwananchi, daily newspaper dated the 2/8/2022. The copy of Mwananchi Newspaper was admitted in evidence as exhibit "P8". The copy of the newspaper exhibit P8 was served upon the defendants by Mbuyuni street chairman who was given the substituted service (newspaper) by the court process server Yona Auction Mart. Upon the service, the plaintiff successfully prayed the court for *ex parte* hearing of the suit, hence *ex parte* hearing.

Pw1 also alleged that, the defendants trespassed on the plaintiff's suit land and their refusal to render the vacant possession therein since 2012 have led to the plaintiff's failure to develop the land for the intended investment that is drinking water bottling factory. The plaintiff had already registered a company in the name of Dodoma pure drinking water Ltd. The Dodoma municipal council had given the plaintiff permit to develop the suit land as per building permit No. 01433 and 01434 in respect of plot No. 170/9 WIA and plot No. 170/8 WIA dated the 6<sup>th</sup> day of June, 2018. The building permits No. 01433 and 01434 (originals) collectively were admitted in evidence to form plaintiff's collective exhibit "P9" accordingly.

Pw1 stressed that, defendants' trespass on the suit land and their continued illegal occupation makes it difficult on the plaintiff to develop the land and get income for the intended investment. That, the suit land is valued at TZS 619,000,000/= in respect of plot No. 170/9 WIA and TZS 424,000,000/= in respect of plot No. 170/8. The total value thereof being TZS 1,043,000,000/= in accordance with the land valuation done by Property Matrix Co. Ltd. The land valuation reports titled "Report on valuation of a property-on-property No. 170/8 Block- West Industrial Area, Dodoma city and Report on valuation of bare land on plot No. 170/9



Block – Western Industrial Area, Dodoma city were collectively admitted in evidence as exhibit “P10”.

The plaintiff prayed the court for judgment and decree for the following:

- i. An order that the plaintiff is the lawful owner of the suit land.
- ii. An order that the defendants severally and jointly are trespassers to the Suitland
- iii. An order of demolition to all the buildings and any other structures that the defendants severally have erected on the suit land. The demolition be affected at the defendants’ own costs
- iv. An order that defendants pay the costs of the suit
- v. Any other order the court may deem fit and just to grant including but not limited to vacant possession of the suit land

PW2 Ezekiel Mwakagali, a court process server testified about being given summons to serve 42 defendants for the first time. That, summons was handed over to him on 13/7/2021 and he started to supply to the defendants on 14/7/2021. He went to the village authority at Mbuyuni Kizota and the village authority leader was Mikidadi. That, the village leader knew all defendants thus they started to go in every house

under escort of the village leader. List of the people he was able to serve was attached in his affidavit of which he submitted to the court. That, he was able to serve 15 defendants out of 42. Among 15 people 12 had signed the summons and other 3 refused after claiming that their case was taken care by the District Commissioner. He was not able to serve the rest due to the reason that those 3 who denied to receive summons passed in each defendants' house and deceived them not to take the summons since their matter was taken care in the top authority. Thereafter, those people started to approach them with weapons such as stones, sticks and they informed police who soon after arrived to the scene and helped them get away from the place.

PW2, Pendo Jackson, Catherine Daudi and Jackson Mwaja then swore an affidavit on 15/7/2021 and PW2 handed over that affidavit to the court and it was admitted as exhibit PW6 and PW7 respectively. PW2 identified exhibit P6 as his affidavit.

PW2 went on testifying that on 5/9/2022 they were given summons by the plaintiff together with the newspaper pursuant to the order of the court that is Mwananchi of 2/8/2022. They were directed to serve it again to the village authority for the purpose of disclosing the information to the defendants. They sent the same to the chairman of

Mbuyuni cell leader, Mr. Mikidadi which ordered them to appear before the court on 20/09/2022. They served the community leadership one copy of the newspaper with summons and another piece of newspaper was tendered to the court by PW1.

Pw3, Adinani Issa Omary, authorized land officer was affirmed and testified on the ownership of the plot No. 170/8 and 170/9 located at Western Industrial Area within Dodoma city council that he understands that plot number 170/8 and 170/9 are owned by Indomanda Enterprises Co. Ltd. That, the plaintiff was given a letter of offer in 2008. PW3 identified the letter of offer. When questioned by the court for clarification PW3 stated that if a person has been granted with offer letter that means he has ownership of the land and that, if he has a ground lease, his status is that he is the owner of the plot. He added that, offer letter is an initial ownership and ground lease is a little of ownership and not letting.

That, offer letter Exhibit P2 was granted for 33 years, from 1<sup>st</sup> day of July, 2008 and it was supposed to expire on 30<sup>th</sup> day of June, 2048. If a person has been granted with an offer letter that means he/she has completed all the payment. That, the offer letter was granted to Indomanda Builder and General Enterprises but later they changed the name to Indomanda Enterprises Limited but he did not tender the

document showing changes of name from Indomanda Builder and General Enterprises to Indomanda Enterprises Limited.

Having heard the plaintiff's *ex parte* evidence and critically analysed the documentary exhibits admitted, as it has been pointed out earlier on, that, owing to the circumstance of this case, the issues for determination by the court is such that:

1. Whether the plaintiff is the lawful owner of the suit land.
2. Whether the defendants are trespasser on the suit land.
3. To what relief parties are entitled.

Now, to bring the matter into perspective, it would be pertinent at this juncture to start with the laid down principle of the law pertaining to the onus of prove in the civil litigation. Thus, reference should be to the decision in **Anthony M. Masanga v. Penina (Mama Mgesi) & another, Civil Appeal No. 118 of 2014 (unreported)** Where the court of appeal glossed that:

*"Let's begin by re-emphasizing the ever charished principle of law that generally, in civil cases, the burden of proof lies on the party who alleges anything in his favour."*

I am also mindful that, in civil proceedings, the party with legal burden also yield the evidential burden and the yardstick in each case is on the balance of probability. See for instance in Re B [2008] UKHL 35, where his Lordship Hoffman in defining the term balance of probability states that:

*"If a legal rule requires a fact to be proved (a 'fact in issue'), a judge or jury must decide whether or not it happened. The law operates a binary system in which the only value is 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened."*

Moving forward, the issue to be analysed in the first place is whether the plaintiff is the lawful owner of the suit land. From the evidence, PW1 testified that he owns the disputed land after being allocated the same. And that, the Plot No. 170/8 Western Industrial Area

within Dodoma Municipality was allocated to the plaintiff on the 13<sup>th</sup> day of April, 2012, and the land plot No. 170/9 Western Industrial Area was allocated to the plaintiff on the 23/7/2009. PW1 tendered documentary evidence to prove the alleged ownership of the two plots of land thus, letters of offer in respect of the plot No. 170/8 and 170/9 Western Industrial Area within Dodoma Municipality which were collectively admitted by the court as exhibit "P2".

Going through the said exhibit "P2" I have noted that the said disputed land plots, No. 170/8 Western Industrial Area and land plot No. 170/9 Western Industrial Area were both allocated to the plaintiff on the 1/7/2008 as per item 1 of these exhibits. But, with regards to the letter of offer for land plot No. 170/9, it appears to yield another allocation date which reads 27/1/2011, with a signature of an unidentified person. However, the first allocation date was neither crossed nor justified as to why there were two dates. Thus, with no any justification hitherto, it leaves doubt as to when was the respondent allocated the said disputed land plot No. 170/9.

On the other hand, the dates on the letters of offer (exhibit P.2) seems to contradict with the oral evidence of PW1 on when she really got

allocated with the two disputed land plots. For instance, on his testimony, Pw1 testified that:

*"The suit land that have been trespassed upon by the defendants are Plot No. 170/8 and 170/9 Western Industrial Area Dodoma Municipality that were allocated to the plaintiff by the Capital Development Authority which has been renamed the City Council of Dodoma. The land Plot No. 170/9 Western Industrial Area was allocated to the plaintiff on the 23/07/2009. Plot No. 170/8 Western Industrial Area, Dodoma municipality was allocated to the plaintiff on the 13/04/2012. There is documentary evidence to prove the plaintiff's ownership of the two plots of land, thus letter of offer original in respect of the Plots No. 170/9 and 170/8 Western Industrial Area, Dodoma Municipality."*

In my view these facts as to when the plaintiff was allocated with the disputed land plots are contracting. Reading between the lines, it has been made clear on the face of the letters of offer (exhibit P2), the lease is for 33 years with effect from 01/07/2008 (as in item 01). The date at

which payment starts to take effect (see item 9 (vi) of the letters of offer). Thus, although PW1 had tendered the exhibits P2 (letters of offer), his version may have reflected on different matters, say it, the land plots which were allocated to her on 13/04/2012 for plot 170/8 and on 23/07/2009 for plot 170/9 respectively.

Turning to PW3 who testified to be an authorized land officer, in his evidence he alleged that, the said plots of land were allocated to the plaintiff in the year 2008. Again, his version is contradicting with the testimony of PW1.

In the circumstance, it was the duty of the plaintiff to prove with certainty to which land plots she referred and from when she was actually acquired the same. In my firm view, failure to do so renders failure to discharge her evidential burden.

At this stage, I am also alive on the requirements of Order VII Rule 3 of the Civil Procedure Code, Cap. 33 [R.E. 2022] which provides that:

*"Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and, in case such property can be identified by a title number under the*



*Land Registration Act, the plaint shall specify such title number."*

The above provision of law emphasizes where the involved subject matter in a suit is immovable property, there must be such details of the requisite property in the plaint to sufficiently enable it to be identified.

That being the case, I critically observed the Plaint, and at paragraph 2, the plaintiff has described the plots of land in dispute by their title number, that is land plot No. 170/8 and land plot No. 170/9 located at Western Industrial Area (WIA) within Dodoma City. Additionally, I have also perused various correspondences between the plaintiff and the land allocation authority (the CDA by then) and noted, that the said plots of land in dispute have not been surveyed.

To say the least, the letters which were collectively admitted in court as exhibit "P5". More specifically a letter written by the plaintiff to the Director General of Capital Development Authority with reference number Ref. IBGE/MD.007 dated 20/1/2013 requesting the plots to be surveyed. Then, following that letter, the Capital Development Authority wrote to the Officer Commanding Criminal Investigation Department Dodoma District, a letter Ref. CDA/ED/LA-15/54825/7 dated the 21/10/2014 requesting for police officers for security reasons during

survey of the plots. And a letter by Capital Development Authority to the Dodoma District Commissioner, a letter with reference number Ref. No. CDA/DED/ENG-3/VOL.XII dated the 25/5/2016 acknowledging that the land has not been surveyed.

That being the case, there is no doubt that the land in dispute has not been surveyed. Although, it is undisputed that the plaintiff has been paying land rents all along the time since it was allocated to her on 01/07/2008 as the Exchequer receipts which were collectively admitted in court as exhibits "P3" and so proves. However, since it has been clearly indicated as aforementioned that, the plots have not been surveyed, it is obvious that the court will not be in the better position to ascertain the extent of the plaintiff's parcel. That means, how big in size it was for each plot, and the boundaries are still unknown and have not been proved by the plaintiff. Even by mere curiosity, one can ask himself the basic question as to how the plots of land can attain the plot's number without having been first surveyed.

Indeed, looking on the evidence averred by all plaintiff's witnesses, including both oral and documentary evidence, there is nowhere in the records where the plots description as to its boundaries, and or its demarcation with neighbour's plots, or other permanent marks

surrounding the plots were availed. In my considered view, the obvious conclusion at this point is that, the plots were not demarcated and the boundaries are unknown. Based on the evidence on the record, the disputed land plots were not surveyed in spite of the efforts made by plaintiff to request for the same. If that was the case, the question here will be, how can someone single out the other neighbours' land from disputed land. In my opinion, that is a hard nut to crack and, in such circumstance, without a clear boundaries, it cannot be said with clarity that the plaintiff owns the whole or part of the defendants' occupied land.

Coming to the other issue as to whether the defendants have trespassed into the plaintiff's plots of land as alleged. Now, having answered the first issue, this becomes a walking to the park. Thus, since there is no proper description of boundaries to the disputed land, and that, the ownership of the land in question was not proved in favour of the plaintiff thus, it is not clear whether the defendants have really trespassed the said land, or if they have, the question will remain as to what extent.

I think, now at this point, for the sake of confirming my findings, let me seek refuge, back to Order VII Rule 3 of the CPC where the court in **Fereji Said Fereji v. Jaluma General Supplies Ltd and Another Land Case 86 of 2020** HC (unreported), the court had this to say:

*"The highlighted phrase above makes it mandatory that where the subject matter of the suit is immovable property, the plaintiff must include a description sufficient to identify the said property. Such description may include **the location, title number for surveyed plots, neighbours or boundaries for un-surveyed plots or any form of description that would sufficiently identify and distinguish the suit property from other properties.** [Emphasis is Mine]*

Therefore, coached from the above, it is the duty of the party who allege to give a clear description of the land in dispute sufficiently to make it easy to the court to identify the same prior to reaching final determination. In opposite, failure to do so, will render the case unsuccessful.

Now, going back in the instant case, it is apparent from the evidence that, the plaintiff has not given a clear description of the land as the law requires. She has only given the plot's numbers of which it is also questionable. To say the least, how can the un-surveyed plots attain the official plot number. However, even if it has, as it appears herein, the same cannot be sufficiently proved to be that of the plaintiff with

exception of the proper boundaries. Thus, in the circumstance the court cannot ascertain if, as the matter of fact, that the defendants have trespassed the alleged plaintiff's land.

At this juncture, I have observed and put into consideration all oral and documentary evidence including but not limited to, evaluation report (exhibit P. 10), letters of correspondence (exhibits P. 5), letters of offer (exhibits P.2), company's documents (exhibits P.4), payment receipts (exhibit P. 3) and a building permit of the disputed land plots (exhibit P. 9) and make any mind.

Needless to say, to comment on the building permits, the same has no a building permit number, also, it has not been attached with a Plan number. This also shows that, the plots remain un-surveyed as a result, all those essential official attributes are missing in the permits.

In the end, all said and done, in totality, the plaintiff has failed to prove her case and the same is dismissed. No order as to costs.

Accordingly ordered.

**DATED at DODOMA** this 8<sup>th</sup> day of April, 2024.



*S. H. Hassan*

**S. H. HASSAN**

**JUDGE**

**8/4 2024**

This ex parte Judgment delivered this 8<sup>th</sup> day of April, 2024 in the presence of the Plaintiff who appeared in person while his advocate is absent.



*S. H. Hassan*

**S. H. HASSAN**

**JUDGE**

**8 /04/ 2024**