

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
TABORA SUB-REGISTRY  
AT TABORA  
LAND CASE NO. 02 OF 2023**

**MUHISI YUSUPH ..... 1<sup>ST</sup> PLAINTIFF  
ISACK J. MAGALATA ..... 2<sup>ND</sup> PLAINTIFF  
SWEDI SHAABAN HASSAN ..... 3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**URAMBO DISTRICT COUNCIL ..... 1<sup>ST</sup> DEFENDANT  
ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

*Date of Last Order: 12/04/2024  
Date of Judgment: 31/05/2024*

**KADILU, J.**

In this court, the plaintiffs filed a lawsuit against the defendants claiming payment of TZS.114,461,000/= for the value of goods that the 1st defendant illegally destroyed during the demolition of their business stalls. They also claimed the payment of general damages for the inconvenience caused by the 1<sup>st</sup> defendant's unlawful acts, interest on the claimed amount at the rate of 20% from 7<sup>th</sup> May 2021 to the date of full payment, a declaration that they are the lawful owners of the respective business stalls, compensation for the demolished business stalls, and any other reliefs the court may deem fit to grant.

The plaintiffs allege that sometime in 1978 before the establishment of the 1<sup>st</sup> defendant, the then Local Government authority allowed some businessmen at Urambo to construct business stalls in the area currently known as Urambo Central Market in consideration that each would own the business stall he built with capacity to sale, lease or dispose in accordance

with the law. They claim that after the 1<sup>st</sup> defendant was established, it acknowledged and recognized the original owners of the business stalls and began collecting levies from them. The plaintiffs claim to have purchased the respective business stalls from the original owners and continued to pay levies to the 1<sup>st</sup> defendant daily.

On 22/04/2021, the 1<sup>st</sup> defendant purported to treat the plaintiffs as tenants instead of the owners of the business stalls as it demanded the payment of TZS. 135,000/= from each business stall as the outstanding rent. The plaintiffs refused to pay the said rent arguing that they could not pay rent over their business huts. Following the refusal, the 1<sup>st</sup> defendant demolished the business stalls on 07/05/2021 allegedly destroying the goods therein, and seized some cash. The plaintiffs attached a list of items purportedly seized from and destroyed in the business stalls.

Upon being served with a copy of the plaint, the defendants filed a written statement of defence (WSD) asserting that the plaintiffs had never owned the business stalls as the same have been built over the land owned by the 1<sup>st</sup> defendant with a certificate of title. In addition, the defendants elaborated that the 1<sup>st</sup> defendant had never transferred its right of ownership over the disputed land to any businessmen and had never recognized the alleged original owners. The 1<sup>st</sup> defendant denied having any agreement with the plaintiffs or other businessmen regarding the business stalls at Urambo Central Market.

The defendants stated in the WSD that there was no sale of the business stalls to the plaintiffs because the vendors had nothing to sell as they occupied temporary business huts on the 1<sup>st</sup> defendant's land in Urambo

Central Market. The defendants argued that the 1<sup>st</sup> defendant was justified in collecting rent from the plaintiffs based on the principle that whatever is attached to the land forms part of it. They added that they were justified to demolish the business stalls from the disputed land but nothing was destroyed as all goods were safely collected, removed, and stored by the 1<sup>st</sup> defendant after the plaintiffs refused to remove them willingly. The defendants attached to the WSD inventories of the collected goods. The defendants prayed for the dismissal of the suit with costs.

During the trial the plaintiffs were represented by Mr. Mugaya Kaitila Mtaki assisted by Mr. Akram Magoti, the learned Advocates whereas the defendants were represented by Mr. Samwel Mahuma, assisted by Mr. Gureni Mapande, all learned State Attorneys. In consensus with the parties' Advocates, the court framed the following issues:

- 1. Whether the plaintiffs were the lawful owners of the business stalls they are claiming.*
- 2. Whether the 1<sup>st</sup> defendant was justified in demolishing the disputed stalls and destroying the properties therein.*
- 3. Whether the plaintiffs suffered any loss as a result of the complained act of the 1<sup>st</sup> defendant.*
- 4. To what reliefs are the parties entitled?*

Before the commencement of the trial, Mr. Mtaki prayed and was granted leave to amend the plaint in two aspects; on the heading, he prayed to substitute the words "Civil Case" with "Land Case." Second, he prayed to amend paragraph 18 of the plaint regarding the pecuniary jurisdiction of this court. He elaborated that the basis for filing this case in the High Court is

not the pecuniary value of the matter, but rather, because the 1<sup>st</sup> defendant is a Government Department.

**Muhisi Yusuph (PW1)**, testified that at the time of the incident, he was a businessman selling electronic devices and crops at Urambo Central Market. He started business in 1995 by hiring a business stall from Kasu Nuru Saidi Kafuku and in 2006, Kasu sold a business stall to PW1. A sale agreement between PW1 and Kasu was admitted for identification and marked as "ID-1" since it was found in contravention of the Stamp Duty Act, [Cap. 189 R.E. 2019] which requires every agreement to be stamped for it to be admissible. According to PW1, the agreement was made on 17/7/2006 and the purchase price was TZS. 600,000/=.

After the purchase, PW1 continued to conduct business in the stall and was paying levy to the 1<sup>st</sup> defendant. On 22/4/2021, the 1<sup>st</sup> defendant issued a notice to PW1 demanding payment of rent on the business stall. PW1 neglected the notice arguing that he cannot pay rent on his own business stall. In the notice, the 1<sup>st</sup> defendant claimed that PW1 had failed to pay nine months' rent (15,000/= per month), making a total of TZS. 135,000/=. He informed the 1<sup>st</sup> defendant that the requirement to pay rent was supposed to be one of the terms of use when the land was first allocated to the builders. Following that resistance, on 7/5/2021 the 1<sup>st</sup> defendant demolished PW1's business stall and took all the properties therein.

**Isack Jacobo Magalata** testified as **PW2** and explained that he started a medicine business at Urambo Central Market in the year 2000. He told the court that at the beginning, he used rented premises but he later shifted to his building. PW2 added that in 2006, he bought a business hut

from Mariseli Simon Mafisi in Urambo Central Market. The two entered into a sale agreement on 13/05/2006 and the sale price was TZS. 1,000,000/=.

PW2 narrated that before purchasing a business stall, he was paying levies to the 1<sup>st</sup> defendant, but on 07/08/2021, officers of the 1<sup>st</sup> defendant demolished his business hut and took all the properties. He, however, stated that he was not surprised because he was notified by the 1<sup>st</sup> defendant that he was required to pay TZS. 135,000/= as an outstanding rent for 09 months, which he denied because the business stall was his. He argued that he could not pay rent since he was not a tenant, and he had no agreement with the 1<sup>st</sup> defendant concerning the business stall.

**PW3, Swedi Shabani Hussein** told the court that from 2016, he was conducting business in his father's business stall within Urambo Central Market selling children's and women's clothes. On 07/05/2021, the business stall was demolished by officers of the 1<sup>st</sup> defendant who took his properties. He expounded that before the demolition, he received a letter from the 1<sup>st</sup> defendant requiring him to pay TZS. 135,000/= as outstanding rent on the business stall. He asserted that he neglected the demand because he could not pay rent in his own business stall. Unlike other plaintiffs, PW3 explained that he was not asked to pay any rent to the 1<sup>st</sup> defendant before the demolition. He added that his lost properties had a value of TZS. 38,148,000/=.

The Chairman of the Businessmen Association at Urambo Central Market (CHAWABISOKO), **Idrissa Jafari Nkubeko** testified as **PW4**. He stated that he has been doing business at Urambo Market since 2015 so, he knows the plaintiffs in this case as his fellow businessmen and members of

their association. PW4 explained that the purpose of CHAWABISOKO is to ensure unity among its members, to safeguard members' properties, and to resolve disputes involving its members. He narrated that by 1998, they used to pay TZS. 200/= per day to the 1<sup>st</sup> defendant as levies.

In 2010, the association's leaders at that time held a meeting and informed the members that they were required to pay rent for using the business stalls. It caused chaos as the business stalls belonged to members. The Chairman wrote a letter to the 1<sup>st</sup> defendant inquiring about it and they replied that they should pay rent. According to PW4, the 1<sup>st</sup> defendant acknowledged that the business stalls belonged to the builders but the land belongs to the 1<sup>st</sup> defendant. He refuted the allegation that the 1<sup>st</sup> defendant had contracts with the businessmen regarding the business stalls.

PW4 recounted that some business stall owners occupied them after having constructed and others occupied business huts constructed by the 1<sup>st</sup> defendant. He added that those who use business stalls constructed by the 1<sup>st</sup> defendant used to pay rent whereas those who constructed the huts themselves do not pay rent. PW4 elaborated that CHAWABISOKO members continued to pay levies up to May 2021 when the 1<sup>st</sup> defendant announced that 14 business stalls would be demolished due to the occupiers' failure to pay rent. Indeed, on 7/5/2021, officers from the 1<sup>st</sup> defendant demolished the plaintiffs' business stalls. The association leaders reported the saga to the CCM Chairman of Urambo District and the District Commissioner but no solution was reached.

**PW5, Heri Richard Mabuga**, stated that on 7/5/2021 between 7:00 hrs and 8:00hrs, he was near the plaintiffs' business stalls and saw officers

of the 1<sup>st</sup> defendant demolishing Muhisi's business stall. Afterward, they shifted to the 2<sup>nd</sup> plaintiff's business hut and started demolishing it. Later, PW5 heard that the 3<sup>rd</sup> plaintiff's business hut was also demolished. He told the court that the owners of the business huts were not present during the demolition. He said he overheard that the reason for the demolition was that the occupiers failed to pay rent.

**Furaha Daniel Nchomagu (PW6)**, stated that she knows the plaintiffs as businessmen at Urambo Central Market. She said on 7/5/2021, she saw militias demolishing the 3<sup>rd</sup> Plaintiff's business stall. She called the 3<sup>rd</sup> Plaintiff and informed him that his business stall was being demolished. When the 3<sup>rd</sup> Plaintiff arrived, he found the militias finishing to demolish his business hut. Before demolishing the 3<sup>rd</sup> Plaintiff's business stall, they started by demolishing the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs' business stalls. The 1<sup>st</sup> defendant took all of their properties. PW5 was later informed that the plaintiffs refused to pay rent which is why their business stalls were demolished.

On their part, the defendants vehemently contested the plaintiffs' claims. The 1<sup>st</sup> defendant produced a title deed which shows that the business stalls have been built on the land lawfully owned by Urambo District Council. The defendants argued that the business huts could not belong to the plaintiffs who are not the legal owners of the land on which the business stalls have been constructed. The defendants called three witnesses and tendered one exhibit in their defence. The 1<sup>st</sup> defendant's Assistant Land Officer, **Sofia Athumani Chivia** testified as **DW1** and informed the court that Urambo Central Market belongs to the 1<sup>st</sup> defendant. It was designated as a marketplace in the land planning of 1962.

DW1 elaborated that the suit land was acquired by the then-Tabora District before 1984 when the 1<sup>st</sup> defendant was established. She tendered a Certificate of Title No. 13277 - TBR for Urambo Central Market which was by that time known as "Central Area." The certificate was admitted as exhibit D1. DW1 argued that the plot must be used as a marketplace and if the owner wishes to construct any structure thereon, she should apply for a building permit from relevant authorities. **DW2, Shadrack Wilson Yamba**, a fishery officer gave a testimonial account similar to that of DW1. He added that the 1<sup>st</sup> defendant is the owner of Urambo Central Market where there were temporary business huts which were later improved into permanent structures owned by the 1<sup>st</sup> defendant.

**DW3, Moses Mathew Muhagama**, a Solicitor of the 1<sup>st</sup> defendant stated that Urambo Central Market belongs to the 1<sup>st</sup> defendant. DW3 narrated that the 1<sup>st</sup> defendant allowed the plaintiffs to construct temporary business stalls in the disputed area however, the land does not belong to them. According to DW3, after the 1<sup>st</sup> defendant started to build permanent structures in the market, the plaintiffs were required to pay TZS. 6,000/= per month as rent. Some of them complied but some refused to pay. They were given notice to vacate. The plaintiffs refused to pay hence, their business huts were demolished by the 1<sup>st</sup> defendant on 7/5/2022.

The demolition was done in the absence of the plaintiffs. An inventory sheets itemizing the properties found in the business stalls were prepared before the demolition, but the plaintiffs refused to sign. Before the demolition, there were announcements made on that day. The properties in



the business huts were listed and taken to the 1<sup>st</sup> defendant's office. The plaintiffs neglected to take their properties.

Having heard the evidence from both sides as set out above, it is now time for the court to determine the issues raised in consensus with Counsel for the parties. Starting with the issue of whether the plaintiffs were the lawful owners of the business stalls they are claiming, I find it proper to restate a renowned principle of the Land Policy in Tanzania that all land is public land vested in the President as trustee for and on behalf of all the citizens. This case was initially filed as a civil suit but before the hearing, Advocate for the plaintiffs prayed to convert it into a land case since his clients are claiming ownership of the land on which the business stalls were built.

Under the Land Act [Cap. 113 R.E. 2019], the word land is defined to include the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water. On cross-examination, the 1<sup>st</sup> plaintiff (PW1) stated as follows:

*"... I purchased the business stall from Nuru Saidi Kafuku. He did not show me his document of ownership. He said the land was allocated to him in 1978. I have not tendered any evidence to prove that the DED told us that those who built the business stalls were the owners. I do not have a certificate of ownership over the land on which I have built a business stall. That land belonged to nobody."*

Section 2 (1) of the Land Registration Act, [Cap. 334 R.E. 2019] defines the term 'owner' in relation to any estate or interest, as the person for the

time being in whose name that estate or interest is registered. In the case at hand, all the plaintiffs' witnesses stated that the plaintiffs purchased the business stalls from the original builders who were allocated land by the 1<sup>st</sup> defendant. Notwithstanding that strong assertion, none of the plaintiffs called a person from whom he derived title to testify about ownership of the land over which the business stalls were constructed. They just relied on the sale agreements between them and their pre-occupiers of the business huts.

On the other hand, the 1<sup>st</sup> defendant presented in evidence a Certificate of Title No. 13277 - TBR for Urambo Central Market. Applying the *ad coelum rule* (*Cujus est solum, ejus est usque ad coelum et ad inferos*) to the scenario at hand, means that whoever owns the soil, owns it up to the sky and beneath it. (Also see the **Black's Law Dictionary, 8<sup>th</sup> Edition** (2004) on page 1824). Simply put, a person who owns land or the surface of the ground, has an exclusive right to everything that is on or above it to an indefinite height, of course in Tanzania, the definition of land excludes minerals, petroleum, and gas.

The plaintiffs in this case have not fulfilled a famous rule of evidence under Section 110 (1) of the Evidence Act [Cap. 6 R.E. 2022] that, he who alleges must prove. In civil matters like this one, the standard of the said proof is in the preponderance of probability. I am aware that in Tanzania one may acquire land by purchase, but the plaintiffs herein tendered agreements for the purchase of the business stalls, not the land on which they were built. In my view, a mere assertion that the plaintiffs obtained the suit land from their predecessors is not sufficient to entitle them to the reliefs they are claiming.

The law is clear that where two or more persons have competing interests over land, a person with a certificate of title thereof is considered to be a lawful owner unless it is proved that the certificate was obtained illegally. The Court of Appeal stated the position in the case of ***Amina Maulid Ambali & Others v Ramadhani Juma***, Civil Appeal No. 35 of 2015. The plaintiffs did not allege and prove any illegality surrounding the 1<sup>st</sup> defendant's certificate of ownership of Urambo Central Market. Consequently, this court finds that the plaintiffs have failed to prove their ownership of the business stalls they are claiming because the same were built over the land legally owned by the 1<sup>st</sup> defendant. Thus, the first issue is answered in negative.

The second issue is whether the 1<sup>st</sup> defendant was justified in demolishing the disputed stalls and destroying the properties therein. During the hearing of this case, the plaintiffs argued vehemently that the business stalls belonged to them as there were no agreements between them and the 1<sup>st</sup> defendant concerning the business huts. Nevertheless, they all admitted having been served with a notice of demolition by the 1<sup>st</sup> defendant when they refused to pay rent. Each tendered the 1<sup>st</sup> defendant's notice requiring them to pay rent for the business huts and the consequences of failure to do so after the expiry of the prescribed time. The said notices were admitted as exhibits P1, P2, and P5.

Despite the notice of demolition, the plaintiffs ignored it and did not take any precautions to secure their properties in the business stalls before the demolition. The Chairman of the businessmen association at Urambo Central Market (CHAWABISOKO), PW4 informed the court that after the

demolition notice, he did not encourage the plaintiffs to remove their properties in the business stalls because he considered the notice as illegal. He elaborated further that after the demolition, the 1<sup>st</sup> defendant called the plaintiffs to take their properties, but they refused. The third plaintiff (PW3) testified as follows:

*"Before the demolition, I received a letter from the 1<sup>st</sup> defendant requiring me to pay TZS. 135,000/= as rent for 9 months on the business stall. I did not reply to that letter because I could not pay rent on the business stall that belonged to me. My properties were taken and I never got them after the demolition."*

DW3 told the court that the 1<sup>st</sup> defendant permitted businessmen at Urambo Central Market to construct temporary business stalls waiting for its financial capacity to build permanent structures. He added that before the demolition, officers of the 1<sup>st</sup> defendant prepared inventory sheets itemizing the properties found in business stalls, but the plaintiffs refused to sign and when they were called to take their properties, they refused. In the circumstances, the plaintiffs seemed well prepared for all the consequences of their decision. A Swahili proverb goes, *"arukaye ukuta, ameagana na nyonga."* From the foregoing, I entertain no doubt that the 1<sup>st</sup> defendant had no other option than demolishing the disputed business stalls as specified in the notice.

As to whether the plaintiffs suffered any loss as a result of the complained act of the 1<sup>st</sup> defendant, certainly, this issue is answered in the affirmative as evidenced by exhibits P4, P6, and P7. Notwithstanding, the plaintiffs assumed the loss voluntarily since they resisted taking any precautions to mitigate it even though they were duly notified. Worse still,

after the demolition of the business stalls, the 1<sup>st</sup> defendant called the plaintiffs so they could collect their properties but they neglected them.

For the stated reasons, I jump to the fourth issue and hold that the plaintiffs are not entitled to any relief because the loss they had suffered is not compensable by the defendants. Damages are intended to put the injured party in the same position he would be if the complained wrongful act was not done to him by the defendant. Since this court has found that the plaintiffs volunteered the loss voluntarily, the defendants are not blameworthy and may not be condemned to pay damages to the plaintiffs.

In ***Njombe Community Bank & Others v Jane Mganwa*** (Dc. Civil Appeal No. 3 of 2015, High Court of Tanzania at Iringa, it was held that damages are that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been if he has not sustained the wrong for which he is now getting compensation or reparation. It is my considered view that there was neither direct nor circumstantial indication that the loss suffered by the plaintiffs was attributable to the defendants. I hold that view because as shown, after the plaintiffs refused to comply with the notice, the 1<sup>st</sup> defendant had to demolish the plaintiffs' business huts as indicated in the notice or surrender its land to them.

The 1<sup>st</sup> defendant's decision to demolish the business stalls was reached after having taken all necessary steps including issuing notices to the plaintiffs, which they did not heed. Thus, the loss suffered by the plaintiffs cannot be presumed to be a direct and natural or probable consequence of the defendants' act for the plaintiffs were made aware of,

and were ready to bear it. From the foregoing analysis, it is my conclusion that the plaintiffs have failed to prove their claim against the defendants to the standard required by the law. In the upshot, I dismiss the case with costs for lack of the legal base. I declare the 1<sup>st</sup> defendant the rightful owner of Urambo Central Market. The right of appeal is fully explained to any party aggrieved by this decision.

**It is so ordered.**



  
**KADILU, M.J.**  
**JUDGE**  
**31/05/2024**

Judgment delivered in chamber on the 31<sup>st</sup> Day of May, 2024 in the presence of Mr. Akram Magoti, Advocate for the plaintiffs who are also present and Mr. Samwel Mahuma, State Attorney for the defendants.



  
**KADILU, M. J.**  
**JUDGE**  
**31/05/2024**