

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

LAND CASE NO. 35 OF 2022

JORAN LWEHABURA BASHANGE 1ST PLAINTIFF

SALEHE MOHAMED LIKULO 2ND PLAINTIFF

VERSUS

MIKUMI TOWNSHIP AUTHORITY 1ST RESPONDENT

KILOSA DISTRICT COUNCIL 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

JUDGEMENT

Date of last order: 17/11/2023

Date of Judgement: 09/02/2024

BEFORE: G. P. MALATA, J

The plaintiffs claim to be the owners of business huts erected in land measured 26. 712 sq meters and 26. 712 sq meter respectively located at Mikumi Township. That, the said huts were built by the plaintiffs after being allocated the same by the defendants, "the Government". Following

the existence of the said huts the Government has been trespassing to the properties claiming for property taxes and other local Government taxes for the huts not owned by the Defendants. That, the Government has been issuing notice of compliance to plaintiffs in respect of the said business huts and that should they failed to heed to, the defendants will take necessary action including to vacate the plaintiffs from the suit dispute. It is claimed that, the plaintiffs were allocated land to build business huts in 2006 and 2007.

The plaintiffs alleged that, the defendants have been trespassing into the suit properties of the plaintiffs and issuing order and threats of vacation on the suit land. In view thereof, the plaintiffs approached this court for orders against the defendants that;

- a. Declaration that the plaintiff are the rightful occupants and possessors of the disputed premises no. 109 – 110 and 131.
- b. Declaration that the plaintiffs are rightful owners of the disputed business properties (kiosk)
- c. Declaration that the contemplated dispossession of the disputed business premises and properties by the 2nd Defendant is unlawful.
- d. The 1st and 2nd defendants be declared trespassers into the plaintiff's business premises no. 109 – 110 located in the vicinity of

Mikumi Green Pombe Shop and no. 131 Mwitura Line in the vicinity of Tanzania Telecommunications Company Limited (TTCL) at Mikumi Township, Kilosa District.

- e. Permanent Injunction against 1st and 2nd defendants, their agents, assignee or any other person acting under their capacity/ instructions from trespassing in the plaintiff's business premises.
- f. General damages to be assessed by the Honourable Court.
- g. Costs of the case to be borne by the 1st and 2nd defendants.
- h. Any other relief(s) the court shall deem fit to grant.

At hearing, the plaintiffs appeared unrepresented, while the defendants were represented by Ms. Lightness Tarimo, Emma Ambonisye, Elifrida Mutashobya and Nzumbe Machunda, all State Attorneys.

During final pre trial conference a total of three issues were framed with view of providing an answer for the dispute between the parties. These are;

1. Whether the plaintiffs are lawful owners of the land with business huts-built.
2. Whether the plaintiffs built the business huts on the defendants' land under any given conditions.

3. Whether the plaintiffs breach any of the conditions for lease agreement
4. Whether the defendants trespassed over the land in disputes.
5. To what reliefs are the parties entitled to.

The plaintiffs' case was built on the evidence of two witnesses, the plaintiffs themselves and nine (9) documentary exhibits.

PW1, Joran Lwehabura Bashange testified that, he is the resident of Mikumi Township Authority within Kilosa District Council in Morogoro Region. That, before the formation of Mikumi Township Authority, it was Mikumi village owning land and other land was owned by the individuals under customary right of occupancy.

That, between 2004 and 2007 there was an announcement that, Mikumi Village was to be upgraded into Township as a result the villagers were advised to change the land use from farming to residential, and that whoever wanted to do so had to communicate to the village leaders. Other Villagers were invited to surrender their land to the Village authority on compensation. The acquired land on compensation was allocated to individuals for building business huts.

PW1 being amongst the villagers requested to be allocated land for building business huts he was allocated two plots, that is plot no. 109 and

110 situated at Kilabuni area. He paid TZS 100,000 for two plots and on 28/12/2007 he was given a letter of allocation of land signed by the Ward Executive Officer for Mikumi. PW1 tendered exhibits to support the allocation. The documents are;

1. Tangazo la viwanja vya viosk eneo la kiwanja cha kilabuni was admitted as **exhibit PL1**,
2. Hati ya kugawiwa eneo la viosk pembeni mwa kilabu kiwanja no. 109 – 110 was admitted as **exhibit PL2**,
3. Tangazo la kulipia ushuru wa viwanja was admitted as **exhibit PL3**,
4. Tangazo dated 23/04/2019 by Omary Njaka TEO Mikumi as **exhibit PL4**,
5. A document titled Property rate demand note 2017/ 2018 dated 25/06/2018 as **exhibit PL5**,
6. Notisi ya kufungiwa biashara kuondolewa katika kibanda cha halmashauri dated 30/12/2019 was admitted as **exhibit PL6**,
7. The payment receipt evidence money paid in compliance with the order as **exhibit PL7**.

PW1 went on to testify that on 30/04/2019, the President while at Tukuyu Mbeya directed all District Executives Directors not to close business centers or impose taxes in their areas. Thus, the act of the 2nd defendant to close the plaintiffs' business and impose tax contravened the Presidential directives and tantamount to trespass to plaintiffs' properties. The plaintiffs were allocated the land in dispute with no intention of returning it at any point. The plaintiffs prayed for the sought reliefs in the plaint to be granted as prayed, the 1st and 2nd defendants be declared trespassers, and the court issue permanent injunction and the costs of the suit be on the defendants.

On cross examination, PW1 said I do not agree that, there was no agreement to allocate the land, as per exhibit PL2 it does not indicate the issue of ownership of land rather there was allocation of land for building kiosk/huts. Paragraph 2 of the letter depicts that PW1 was prevented from selling it without District Executive Director consent. The land was allocated on the condition that PW1 fulfill the conditions in Exhibit PL2.

He further answered that, in my testimony I stated that I paid TZS 100,000, this is evidenced by exhibit PL1. The compensation paid was for crops, survey and building of toilets. The compensation doesn't include compensation for land. I agree that I am not the owner of the land in

dispute. Ways of owning land by allocation by government authorities and adverse possession. I own the land by virtue of exhibit PL2. One can prove ownership of land by certificate of occupancy.

As per exhibit PL3 the owner of the land is the 2nd defendant. As per exhibit PL3 I am owning the business huts. Exhibit PL3 was directed to myself. The contents of PL3 are true and correct. The land belongs to the 2nd defendants and the huts belong to the 1st defendant.

PW2, Salehe Mohamedi Lukulo testified that, he has been residing in Mikumi since 1990 while Mikumi was just a village. In 2004 there was announcement from the Ward Executive Officer (WEO) inviting the villagers who are interested to build business huts to go to the WEO's office. He went to see the WEO and given the procedure of how to get piece of land for building business hut. He filled the application form; he was required to pay compensation for crops and survey costs. On 15/08/2004 he was given certificate of allocation of land in respect to plot No. 131 at green area, and he was required to build a business hut within 3 months. He complied by payment of TSZ 50,000 and built four huts in the given area.

To support the oral testimony, PW2 tendered;

1. Hati ya ugawaji viwanja (biashara) with reference no. KMKM/AV/17/03 was admitted and marked as exhibit **PL8**, and
2. Receipt was admitted and tendered as exhibit **PL9**.

PW2 went on to testify that, they were given notice to close business huts via exhibit **PL6** on 25/11/2020 and he paid a total of TZS 30,000 as shown on exhibit **PL9**. He further testified that, he is the lawful owner of the business huts (kiosk) and given compensation and costs of the case and the 1st and 2nd defendants be declared trespassers and be given permanent injunction.

That, as per exhibit **PL8** he was lawful occupying the land as he was the one who built the four huts, he was enjoying the peaceful occupation of the land until 30/12/2019 when the Kilosa District Council issued a notice to close the business huts and they went on closing until the rent are paid.

By way of cross examination PW2 answered that, we were informed through announcement. I was given plot for building business kiosk and tax was to be paid to TRA. I paid compensation for crops and survey costs. I will be ready to vacate upon payment of compensation for the built hut.

The testimony of PW2 marked the end of plaintiff's case. And the defendants case commenced with a total of two witnesses, DW1 and DW2.

DW1, Jacob Kusena testified that, he is a small farmer and retired Health officer from Kilosa District Council where he worked from 1981 to 2021.

That, the plaintiffs are residents of Mikumi Township. He further testified that, in 2004 they inspected small market at Mikumi and noticed that, there were unfinished huts as such they reported to the Ward Executive Officer. The WEO made an invitation to the people to apply to be allocated the hut for business. That, majority of people including PW2 applied for it. They were required to build by using their own money and use it for ten years. While the building had partly done, they were required to sign agreement with Kilosa District Council but they refused.

In 2005, the WEO convened the meeting with the aim of conveying information from DED Kilosa. He elucidated that, Kimamba, Kilosa, Gairo and Mikumi Township should have source of revenue.

At Mikumi they introduce bus stand and it was directed that, at the Kilabuni business centre the allocated people should construct using their own money and use it for ten years. Thereafter, the building be returned

and belong to the council. The area was surveyed and business huts were demarcated accordingly for allocation to the interested ones.

In 2007 the people were invited to apply for allocation and majority of people applied including the 1st plaintiff. They were given letter for allocation of the business huts by Ward Executive Officer. The letter of allocation detailed what the applicants were required to do.

The villagers who were allocated land to build business huts in 2004 their life tenure lasted for ten years which ended in 2014 and those given in 2007 for the period of ten years ended in 2017.

On cross examination by the 1st plaintiff, DW1 replied that he was at Mikumi from 2004 to date. The plaintiffs who are residents of Mikumi are accountable to Mikumi Town Council. All villagers who were allocated the piece of land were given the letters. In exhibit **PL1** there is no clause of returning the hut after ten years. Exhibit **PL8** depicts that the allocatees were not required to sell the land and huts. The letters were signed by DW1 and WEO.

Upon cross examination by PW2, DW1 answered that, PW2 was given a bare land, the association of the business at said market refused to sign the contract with counsel and directed its members including the plaintiffs not to sign it.

DW2, Gilbert Matasu testified that, he was an employee of Kilosa District Council holding a position of Ward Executive Officer the position he held from 1984 to 2015, his duties included justice of peace, supervising development project in the Ward, Secretary of WDC meeting, head of employees at the Ward. DW2 further testified that, he knows the plaintiff in this case, they were allocated land for building business rooms by Kilosa District Council. The places were allocated to the plaintiffs through letters. They were required to develop the area within three months and required to enter into lease agreement with Kilosa District Council for payment of fees and that after ten years the rooms became the property of Kilosa District Council. The resolution was made to the Ward Development Committee and the villagers, thereafter to Kilosa District Council.

After ten years the rooms reverted back to the Council, the plaintiffs had recovered building costs during the period of ten years. The plaintiffs are tenants of Kilosa District Council at Pombe Shop Club area where people can build rooms and enable the council to generate revenue. On receipt of directives from the council we commenced a meeting for Ward Management team to deliberate the same. The resolution to allocate areas to interested one went through village and ward council. As the council was unable to develop it, it invited interested people to develop and use

it and return to the council after ten years. Among those who showed interest is the 2nd plaintiff. The 2nd plaintiff applied and he was granted two areas on the same condition. The plaintiffs with other people refused to sign the agreement as they built the rooms as such, they can't surrender it to Kilosa District Council. The 2nd plaintiff was to own huts from 2004 to 2014 while the 1st plaintiff was to own it from 2007 to 2017. That, the plaintiffs' claims are baseless.

When cross examined by the 1st plaintiff DW2 stated that, it is true that I came to testify on the 1st plaintiff failure to pay rent. After ten years he was a tenant. The land belonged to Kilosa District Council, but the rooms became under Kilosa District Council ownership after ten years. The Kilosa District Council is claiming rent for the rooms. The tax is imposed according to law. DW2 shown **PL5** and answered that **PL5** is directed to the 1st plaintiff demanding for room tax. I was the WEO at a time, I am no longer in the office as such I have no document.

That, Exhibit PL2 doesn't state the term of ten years this was followed by the agreement of which the plaintiffs refused to sign. The costs were known by the respective tenant not Kilosa but recoverable within ten years. According to **PL2** and **PL8** they were signed by DW2 on behalf of Kilosa District Council.

The testimony of DW2 marked the end of respondent's case.

Having analysed the evidence for and against the claims, this court is now placed in a position to rule on the dispute at hand. However, before embarking into that journey, I wish to state governing principles in proving civil cases.

It is a cherished principle of law that generally, in civil cases, the burden of proof lies on the person who alleges. I am fortified by the provision of sections 110, 112 and 115 of the Law of Evidence Act, Cap. 6 of the Revised Edition, 2022 which state, inter alia that

Section 110.-

(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

section 112 provides that

'The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by law that the proof of that fact shall lie on any other person

Section 115 provides that;

In civil proceedings when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

The burden of proof does not shift unless stated by the law to that effect.

In the case of **Paulina Samson Ndawavya vs. Theresia Thomas Madaha**, Civil Appeal no. 45 of 2017, unreported the court of appeal held that;

"The burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for negative is usually incapable of proof. It is an ancient rule founded on consideration of good sense and should not be departed from without strong reason.... until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge

is burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.'

This position was repeated in the case of **Lamshore Limited & another vs. Bazanje K.U.D K, [1999] T.L.R 330**, the court held:

"The duty to prove the alleged facts is on the party alleging its existence"

This court has in a number of cases held that, proof of land ownership must be strict. The rationale behind has been stated in numerous cases including,

1. **Ramadhani Rashidi Kuhuka Vs Jela Maiko Meja And 44 Others** Land Case No.25/2022 and,
2. **Hadija Adam Said Maliwata Vs Asiga Abas and 4 others,** Land Appeal No. 101 Of 2022

In the case of **Hadija Adam Said Maliwata Vs Asiga Abas and 4 others,** Land Appeal No. 101 Of 2022, this court had these to say;

"Land as an utmost object to the eyes of God. Spiritually God's first fundamental work of creation started with "Heaven and Earth". This is gathered from the Holy Bible in the Book of

*Genesis, verse 1:1-3 and 1:9-10 state what God created first,
I quote;*

*1. In the beginning God created Heaven and **Earth**.*

Based on the above reference, one can agree without hesitation that, God valued land (Earth) as the first and most important item as without it, there could be no place for living and non-living organism, human being inclusive. As the Earth was empty and unoccupied, God continued placing on the Earth all what he created from time to time. The confirmation comes from the Holy Bible in the Book of Genesis 1:2,3, 9 and 10 which provide that;

*2. But the Earth was **empty and unoccupied** and darkness were over the face of the abyss; and so, the spirit of God was brought over the waters*

3. And God said, "let there be light" And light became.

Further, in Genesis 1:9-10 it is stated that;

9. Truly God said "let the waters that are under heaven be gathered together into one place; and let the land appear" And so it became.

10. And God called the dry land, '**Earth**,' and he called the gathering of the waters, '**Seas**'; And God saw that it was good."

The above cited verses from the Book of Genesis proves how God proceeded after creation of Earth and what he placed thereon. In other words, who we are, what we see and use is reflection of God's accomplishment of mission towards creation.

This makes land as first and most important item, God created for the holy work on the Earth as without it, there could be no place to lay the God's work of creation. Therefore, Land is a sensitive and valuable item even in the God's eyes.

In that regard, since the issue of land touches all living and non-living organisms, human being inclusive regardless of their wealth, status or impoverishment and that, no development can be effected without land, thus, land has become nothing but the first and most important thing to any living and non-living creature and

human development. In other words, no Earth no living and non-living organism, and therefore no life.

Given the afore stated position from the Bible, Tanzania as country has taken such sensitivity and put land as special thing in which its ownership, use, management and conservation are Constitutionally and legally regulated."

It is on that basis, courts have also taken similar root of ensuring that, all issues pertaining to land dispute have to be given special attention. This is due to its sensitivity and unbecoming behaviour of some of the people pampering into fraud, forgery, trespassing and encroaching one's land or reserved lands.

Thence, courts have called upon disputes on ownership of land to be proved strictly. This above position is intended to satisfy the court beyond sane of doubt as to who is really owner of land in dispute. Placing such proof to the balance of probability alike any other normal civil suit leaves unscrupulous people to win cases through cooked evidence.

In the absence of such standards, the inferior one's or poorer will be whipped out and left landless by haves and dishonest men. The sensitivity

of land led to this court's finding that proof of ownership share position with cases involving special damages.

In the case of **Bamprass Star Service Station Limited vs. Mrs Fatuma Mwale**, [2000] T.L.R 390 **Hon. Rutakangwa J**, as he then was a High Court Judge, had these to say.

*"It is trite law that special damages being "exceptional in their character" and which may consist of "off-pocket expenses and loss of earnings incurred down to the date of trial" **must not only be claimed specifically but also "strictly proved"**.*

Further in the case of **British Transport Commission v. Courley** [1956] AC 185 at 206 where it was held:

*"In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as **special damages, which has to be specifically pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of the trial and is generally capable of substantially exact calculation.** Secondly there is general damages which*

the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such that as to lead continuing or permanent disability, compensation for loss of earning power in the future."

Based on the afore cited cases, this court has developed **seven** ways through which one can prove ownership of land. These are; **one**, by purchase, **two**, gift, **three**, allocation by Government authority, **four**, inheritance, **five**, clearing of unowned bush, **six**, adverse possession and **seven**, division of matrimonial property.

In response of issue no.1 as recorded herein above, it is undisputed that, the plaintiffs have testified that, they are not owners of the land but merely occupiers. That, they came in occupation after being allocated the land by the 1st and 2nd defendants for building business huts. In view thereof, they testified that, they are owning business huts built on the defendants' land.

The plaintiffs' testimonies that, there is no land ownership dispute is echoed by the defendants' testimonies given by DW1 and DW2. It is on that ground, there is no evidence proving ownership of land by the

plaintiffs of which they acquired through any of the above stated ways of getting land.

This marked the end of the fact that there is no ownership of land dispute between the parties as confirmed herein above. Based on the said testimonies, this court is therefore satisfied that, there is no land ownership dispute between the parties herein.

However, what the plaintiffs are claiming is that, they were allocated land by the 1st and 2nd defendants for building business huts. This is supported by various exhibits listed herein above. The defendants are not denying to have allocated the land to plaintiffs for building business huts. The Defendants testified that, the plaintiffs were to build the huts, recover building costs for a period of ten years and on expiry the huts became the property of the defendants, the Government. However, it was testified by the defendants that, the plaintiffs refused to sign the lease agreement with Defendants. As such, the plaintiffs refused to pay rent upon expiry of the recovery period. The defendant issuance demand notice of vacant possession among others, As result the plaintiffs filed the present suit.

As settled herein above, it is not in dispute that; **one**, the land belongs to the defendants, **two**, the plaintiffs were allocated land to build business

huts, **three**, the plaintiffs built the said business huts on the land. The parties are at variance on what terms was the land allocated to plaintiffs?

The plaintiffs testified that, there were no terms save for allocating and building business rooms. That, there was no agreement of using it for a period of ten years as recovery period of building cost and become the defendants' properties.

The plaintiffs are the ones who bear the duty of proving that, they were given the land to occupy limitless and with not terms of paying anything for the land. Further, in all exhibits by the plaintiffs there is not such condition. However, there is a condition that, they are not allowed to sell the said land and rooms. If the plaintiffs are correct, then why having prohibitive statement. As such, the defendants are not getting anything from the said land, if that is the position and *consensus ad idem*, then why the parties have been in dispute since 2017 on expiry of the ten years of recovery period as per the defendants' testimonies.

This court is also guided by the maxim that, *quid quid plantatur solo solo cedit*, that whatever attached to land becomes part of it. The court has been unable to gather evidence from the plaintiffs that; **one**, they are occupying the business rooms unconditionally and indefinite, **two**, the plaintiffs adduced no evidence to prove arrangement for occupying and

using the land unrestricted and **three**, that under which terms the plaintiffs occupying and using rooms built in the defendants' land, the Government.

Based on the testimonies for and against, in my considered view there was a lawful agreement entered by the parties capable of being enforced. This is evidenced by exhibit **PL2** and **PL8** whereby the plaintiffs herein agreed on the terms and conditions imposed by the 2nd defendant (Kilosa District Council). The agreement placed the plaintiffs the lawful occupiers of the premises and required them to build huts thereon. The parties are thus in difference, while the plaintiffs' claims that there are no conditions for occupying and using the land and huts/rooms, the defendants claims that the plaintiffs refused to sign lease agreement after expiry of recovery period for the building costs which lasted for ten years from the date of allocation.

This court's analysis of evidence, inter alia that, the plaintiffs were not allowed to sell or sublease indicates that, there was agreement as one cannot be restricted from selling or subleasing his own property. From the exhibits tendered in court, none of them supports the plaintiffs' version that, the 2nd defendant conferred absolute occupation and use of the land owned by the said defendants.

Exhibit PL2 respectively elucidate that, I quote

***YAH: HATI YA KUGAWIWA ENEO LA VIOSK-PEMBEZONI MWA
KILABUNI.***

Mtajwa amegawiwa kiwanja na 109-110 eneo la kujenga kioski

- *unatakiwa kukiendeleza ndani ya miezi mitatu tu.*
- *Hutakiwi kuuza kibanda/kiwanja kama kuna ulazima wa
kuuza kibanda wasiliana na ofisi.*
- *Unatakiwa kukitunza vizuri.*

*Unatakiwa ukiri kupokea kiwanja na pia kama uko tayari
kutekeleza masharti ya Halmashauri basi usaini fomu hii.*

Also Exhibit PL3 which reads;

***YAH: TARATIBU ZA KULIPIA USHURU WA VIBANDA
VILIVYOJENGWA KATIKA MAENEO YA SERIKALI.***

The above words confirm this court's position.

Further, the plaintiffs have failed to adduce evidence that, the defendants' claim and evidence are just fabrication and with no slight truth on it. This being Government property governed by law, unless there is tangible evidence to the contrary, whoever using it liable to pay fees and taxes in accordance with the law. In this case, since the engagement involved the

local Government, the 1st and 2nd defendants, then the local Government laws with its Regulations are in use which imposes among others imposition of fees and taxes.

Additionally, reading **exhibit PL6**, in the view of this court found that the parties were aware of their understanding. Exhibit PL6 reads;

YAH: NOTISI YA KUFUNGIWA BIASHARA/KUONDOLEWA

KATIKA KIBANDA CHA HALMASHAURI

Husik ana somo tajwa hapo juu.

*Tafadhali unataarifiwa kuwa unapewa siku 14 kulipa kodi ya kibanda kwa Halmashauri ya Wilaya ya Kilosa hivyo hautakiwi kufanya biashara mpaka utakapolipa kodi ya kibanda **kwa mmiliki ambaye ni Halmashauri ya wilaya ya Kilosa.***

Tambua pia kuwa vibanda hivi ni kwa ajili ya kufanyia biashara hivyo vibanda vitakavyokuwa havitumiki itachukuliwa kuwa mfanyabiashara ametishindwa kufanya biashara na vitagawiwa kwa wahitaji wengine.....

Reading exhibit PL2, PL3 and PL6 as halfly quoted herein above, all of which were tendered by the plaintiffs in support of their case confirm nothing but the truth that the business huts/rooms belonged to the 2nd

defendant before the establishment of Mikumi Township council. The

use of the words "***mpaka utakapolipa kodi ya kibanda kwa***

mmiliki ambaye ni Halmashauri ya wilaya ya Kilosa" in exhibit

PL 6 leaves no doubt that the rooms belong to the 2nd defendant.

In the event therefore, this court is satisfied that, the defendants' version of evidence carries the truth on what happened as against the plaintiffs' evidence who failed to prove, inter alia, the above raised areas of concern of which they were legally bound to.

The plaintiffs are at conflict with the defendants for alleged trespass over the disputed land. It is a settled position of law that, for the claims of trespass to succeed there must be a proof of ownership. As the plaintiffs have confirmed that, they claim no ownership to the land in question, and considering the fact that answer to issue no.1 herein above, trespass cannot withstand in the circumstances.

The agreement rather created landlord tenancy relationship between the plaintiffs and the 2nd defendant, therefore a long-term tenancy/ periodic tenancy whereby the plaintiffs became the occupier of the huts for certain period of time enough for them to recover the costs incurred for construction of the business huts.

Though the term of the occupancy was not clear as for the time of occupation, the Land Act Cap 113 R.E, 2019 under section 79 provides that;

79.-(1) Where in any lease-

(a) the term is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to be a periodic lease;

Even though the terms of occupancy were not stated in the exhibit the plaintiffs were to abide with conditions set by the landlord (the 2nd defendant) in their previous and future agreement.

The law under section 79 (4) of the Land Act requires that upon the expiry of the term of such periodic lease, a party who wishes to terminate a periodic tenancy agreement, like the one at hand, to issue a notice, the defendant upon the expiry of occupancy of the plaintiffs issued a notice to the plaintiffs with the condition that they start paying rent. Further, section 79 (4) of the Act is silent on the mode of issuance of such termination notice. It does not prescribe whether it should be written or oral.

In the absence of any statutory requirement, then it remained a matter of contractual arrangement between the parties. For easy reference section 79(4) provides;

(4) A periodic tenancy may be terminated by either party giving to the other notice, the length of which shall be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.

All said and done this court is of the settled view that; **one**, to date the defendants are the lawful owners of the land where plaintiffs-built business huts/rooms, **two**, in 2004 and 2007 the 2nd defendant allocated land to among others, the plaintiffs for constructing business rooms using their own money with condition that, they shall use it and recover the costs spent for ten years, **three**, on expiry of recovery period of cost, that is to say in 2014 and 2017, the rooms became the property of the 2nd defendant, **four**, that plaintiffs became the tenants of defendants thus required to pay rooms' rentals, **five**, that, there is no evidence that, the plaintiffs were given the defendants' land to occupy and use it till the end of world, **six**, that the plaintiffs are still the owners of the rooms built in the plaintiffs' land in 2004 and 2007 and have unlimited time of occupying and using it, is contractually and legally unfounded, **seven**, the plaintiffs'

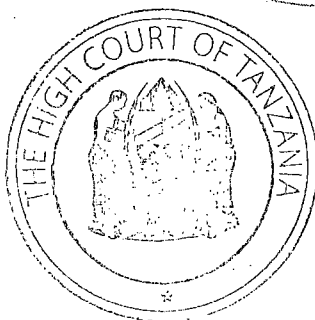
claims for declaratory orders that, they are the owners of the rooms and that the plaintiffs are trespassers are contractually and legally with no tangible evidence, thus unsubstantiated and **eight**, all the reliefs sought by the plaintiffs are unfounded and baseless for the above given reasons for the decision and **nine** the plaintiffs' suit stand dismissed.

In the upshot, the defendants are declared the lawful owners of the rooms in question, thus have all contractually and legal justification for collecting rents from the occupiers and users, the plaintiffs inclusive.

Consequently, the plaintiffs' suit is hereby dismissed with costs.

IT IS SO ORDERED

DATED at MOROGORO this 09th February 2024



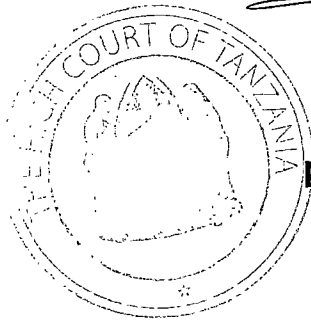
A handwritten signature in black ink, appearing to read "G. P. Malata", is written over a horizontal line.


G. P. MALATA

JUDGE

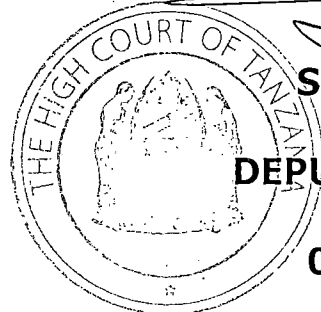
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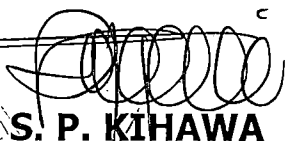
JUDGEMENT delivered at **MOROGORO** in chambers this 09th January, 2024 in the presence of the plaintiffs and Ms. Elifrida Mutashobya, learned State attorney for the Defendants.




S. P. KIHAWA
DEPUTY REGISTRAR
09/02/2024

Court: Right of appeal explained to the parties.




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