

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SHINYANGA SUB REGISTRY
AT SHINYANGA**

LAND CASE NO.3 OF 2023

MATONANGE TINDEPLAINTIFF

VERSUS

ZENGO LUTEMA TWEONDAMA.....1ST DEFENDANT

NGWHIGI NKUMINGI MAGIRIMA.....2ND DEFENDANT

JOSEPH MHAMIRA LUGANDU.....3RD DEFENDANT

MADAHA MASANJA.....4TH DEFENDANT

BUGEHU HUNGE.....5TH DEFENDANT

JUDGMENT

22nd March & 10th May 2024

MASSAM, J.:

The plaintiff herein claims against the defendant for vacant possession and a declaration order that the plaintiff is a lawfully owner of the disputed land measuring 400 acres located at Mwankali hamlet within Isebanda Village, Meatu being rounded by tree fence commonly known as (Minyaa). It was further alleged that in 1987 the plaintiff acquired a

disputed land by clearing the virgin forest and has been using the same without being interrupted by the defendants.

In the year 2023 the defendants at different times trespassed the land and started cultivating, clearing and putting marks in the disputed land. Being the case, the plaintiff went at Imalaseko ward tribunal for conciliation but with no success as the defendants did not pay attention. He then decided to file the instant matter before this Court.

Basing on the above facts, the plaintiffs claim for the following reliefs jointly and severally against the defendants for the following reliefs;

- a) A declaration that the suit land is the property of the plaintiff.
- b) Declaration that the defendants are the trespasser to the suit piece of land.
- c) The defendants be ordered to leave vacant possession of the suit land for the plaintiff.
- d) Costs of this suit be provided for.
- e) Any other reliefs this honorable Court may deem fit and just to grant.

At the hearing of this case, the plaintiff was represented by the Mshomari Isumbi learned advocate while the respondents enjoyed legal service of Ms. Glory Ikanda learned advocate. Three issues for court determination of this suit were framed namely;

- i. Who is rightful owner of the disputed land.
- ii. Whether the defendants trespassed the disputed land.
- iii. To what reliefs are the parties entitled thereto.

The plaintiff's case had a total of three witnesses namely; Matonange Tinde (PW1), Niko Ndagama (PW2) and Bundala Mwigulu (PW3). For the defendants' case had eight witnesses namely; Zengo Lutema,(DW1) Ngwagi Nkumingi (DW2), Joseph Mamira (DW3), Madaha Masanja (DW4), Bugehu Hunde (DW5), Emmanuel Chalya (DW6), Donald Lugendo (DW7), Kulwa Kashinje (DW8).

PW1, MATONANGE TINDE, testified that on 2023, defendants' trespassed to his land and divided the same, they were claiming that the said land is theirs, it is located at Mwankali hamlet, Isebande village, Meatu District, he planted Minyaa as boundary, his neighbors, at East, neighbor is Shinga Mchenya, West – Bofu river, South – Kabondo road, and one Nico Ndakama, North – Masanja Jijida. He also stated that, the land has 350

acres and he is living inside that land and he has been living at that place since 1980. He added that he got the same after cleared the virgin land, he said that he uses it for farming and for accommodation. He chased the defendants, who went to the tribunal where he was told to refund them, so they could vacate the disputed land.

PW1 also averred that, this is the second time the defendants have trespassed his land, they had trespassed the Imalaseko and Isebanda, whereby he filed a case at Maswa District Land and Housing Tribunal and won the case, defendants did not appeal, and the disputed land was handed over to him. He tendered a copy of judgment and the papers which hand over they said land, which is admitted as exhibit P1.

PW2, NIKO NDAGAMA testified that the disputed land belongs to the plaintiff, he is his neighbor at south side. The Plaintiff used that land for pastoralism, farming and for accommodation since 1987's

PW3, BUNDALA MWIGULU, averred that he knows one defendant who is 3rd defendant, living at Isebanda village, Bufu hamlet, Meatu District. From his place to the disputed land is not far. He also contended that the Plaintiff is his friend since 1984, the disputed land is used by the plaintiff. He came to know that defendant trespassed to that land, and he

was wondering, as plaintiff has been using that land for a long time. When he was cross examined he started that he was not the parent of any of the defendants but Pw1 told him that he started to use that land for long time since 1980's and he got it by clearing it.

On the side of the defendants, refuted the claims by the plaintiff and stated as follows; DW1, ZENGO LUTEMA, stated that he knows the plaintiff, who is living at Isebanga, Meatu, Simiyu Region. The plaintiff was among the villagers who were taken their land as a reserve area, (HASHI) the land taken belonged to their parents. The disputed land is at Imalaseko and another one Ngh'oboko ward at Meatu District. His land had 69 acres, his father cleared the land, but he doesn't know the year, his father is deceased now, he passed away on the year 2021. He was appointed as administrator of the estate of his father. His father told him that their land was taken by Hashi (reserve), the land which was taken was from six people, including the plaintiff's father. Hashi is a reserve land which was taken to preserve the environment. On 2019, the plaintiff started to use that reserved land, so they agreed to go and file the case so they recover back their land. The plaintiff was called by land ward tribunal but he did not appear instead he came to High Court and file this case. It is not true

that they trespassed the plaintiff's land, and their land has never returned back by Hash to date. That land is under Plaintiff. The plaintiff is insisting that, the said land belongs to him, but it belonged to their father who is namely Lutema Tweondama.

DW2, NGWAGI NKUMINGI, testified that he knows the plaintiff, he is his neighbor. The disputed land had 72 acres, it is at Isebanda village, Ng'hoboko Ward Mwankai hamlet. His neighbors are Zengo, Tinde and Bugehu, the disputed land before belonged to his father who cleared the bush on 1968. His father is deceased now. He is administrator of the estate of his father Since 2001, He started the process of recovering their land which was taken by Imalaseko Ward. The other land which was taken was that of Tinde, Bugehu Masanja, Tughe Lugandu, the said land was taken on the year 1987. He was using that land, that's why they went to complain at Imalaseko ward tribunal but the plaintiff did not appear, later on they got summons that, he had filed a case at High Court, but according to them did not trespass to the land of Matonange (PW1). Also, his father's land had 45 acres.

DW3, JOSEPH MAMIRA, testified that he knows the plaintiff who is living at Isebanda village, the said plaintiff had trespassed their father's

land which was reserved by Hash, on 1987, and it was reserved by Imalaseko village. The land which was taken was Buhegu, Tinde, Tugi, Masanja, Nkuming and Lutema and thus he was there when the said land was taken, they were using it for farming and pastoralism. His father got that land on 1956, he got it by clearing the bush, Imalaseko village used land as a reserve until one day they saw plaintiff using the same; the whole land had 400 acres, the land of Tinde Gosani had 45 acres, his grandfather passed away on 1988, and the property was inherited by her mother and when her mother passed away on 2013, he was appointed as the administrator of the estate of her mother, at Imalaseko Primary Court. he once went to the ward tribunal to complain for his grandfather land been trespassed.

They were five, all defendants, the plaintiff was called by tribunal and appeared but he was not ready for mediation. The plaintiff is the one who trespassed to their land and is the one who is using it.

DW4, MADAHA MASANJA, averred that he knows the plaintiff, he is his neighbor and thus the disputed land is nearby his house, which is at Isebanda and Imalaseko. He refuted to trespass his land, the disputed land is at Isebanda, with size of 73 acres. This land is at Imalaseko and

Ng'hoboko, that land belongs to his father who is now at Manyoni, he cleared the bush, he told him that story on 1975. Since 1975 to 1987 were using that land for pastoralism and farming. In 1987 their land was taken by village council as reserve of Hash, the land of six people was taken. On 2019, it's when the plaintiff started to use that land. He doesn't know who gave him that land. When they saw him, they went to complain to the ward tribunal, but later on they got a summons from High Court Shinyanga

DW5, BUGEHU HUNDE, testified that the land belonged to the plaintiff's father and was taken by Hash village council of Imalaseko, with the other land of his father and defendants, but he doesn't know how his father got that farm but he knows that he cleared the bush. His father was using it for farming and pastoralism, he was not appointed as the administrator of the estate of his father but it is the plaintiff who sued him for trespass, which is not true. The plaintiff is on the disputed land.

DW6: EMMANUEL CHALYA, stated that he knows the plaintiff, he is among of the citizen who handed over the land to Hashi (reserve) it was on 1987, together with the parents of the defendants. That time he was working at the village office, as the records keeper. There was a meeting which was conducted, it included Imalaseko village, Nata and Kabondo,

and the hamlet which was also included in that exercise were Mwasusu, Isebanda, and Mwabayanda. In that meeting the parents of plaintiff and defendants, agreed to handover some of the pieces of land to the Government (Hashi) for environment reserve. They thus prepared the minutes to the effects.

The Government through Hashi took the land of six peoples; Lutema Tweondama, Kwiming Magilima, Masanja Jijida, Tinde Gosani, Bugeho Hunge, Tugi Lugano. All people mentioned were the parents of the defendants. The land taken were like 400 acres.

That land was under village council of Imalaseko from 1987-2000. After that on 2001 the plaintiff filed a case to the land District land and Housing tribunal which determined the case and ordered the plaintiff to be lawful owner. The Plaintiff then went to the office to be handed over the said land, the village council refused to hand over the land to him but the tribunal broker handled it to him.

He further continued that, the claim before this court is for trespass of the defendants to the plaintiff's land which is not true. However, he asserted that it is not true that the plaintiff cleared the said land on 1987,

that time, there was no empty land to clear. Most of the area was desert that why Government came with the said Hashi for preservation of environment.

DW7: DONALD LUGENDO, testified that he was a member of village council. They took some land to Hashi, it was Mwasusi area. That area was used to make Hashi (reserved) area.

DW8, KULWA KASHINJE, stated that he knows the said land dispute, as it includes three villagers Imalaseko, Nata and Isebanda since 1987, these villages decided to call defendants and plaintiff's parents. So, they took their land as reserve area (Hashi). And that area is not used as Hashi anymore. He also added that village council took that land to Hashi. I was there; their aim was to be owned by village council, and not to return it. Hashi is no longer there, and the said land is used by plaintiffs after trespassed it, Plaintiff filed a case and won it.

Having heard both parties on merit, I have now to determine this suit based on evidence before this Court in order to declare who is a lawful owner.

In my determination of the matter, I shall be guided by the following principles of law. One is that in civil cases, the burden of proof lies on the

person who alleges anything in his favor as founded in Section 110 of the Evidence Act. Two, is that the burden of proof envisaged above is on the balance of probabilities See Section 3(2) (b) of the Tanzania Evidence Act as stated in various decisions, including **Anthony Masanga v. Penina Mama Mgesi and Another**, Civil Appeal No. 118 of 2014 and **Hamza Byarumshengo v. Fulgencia Manya and 4 Others**, Civil Appeal No. 33 of 2017 (both unreported).

This court will determine the same through the raised issued, to begin with the first issue that *"Who is rightful owner of the disputed land"*

I have scanned the evidence of both sides; indeed it is the plaintiff evidence provides that he cleared the bush and started living therein in the 1987 years. He thus remained in the suit until 2023 where the defendants trespassed the land and claimed ownership over the said land. He however sued the Village council where the land was before the Maswa District Land and Housing Tribunal where he won the case and he was declared to be the rightfully owner of the disputed land, but the defendants trespassed the land without any cause. Exhibit P1 which is Tribunal decree, clearly provides that the disputed land belongs to the plaintiff.

The defendants' evidence is to the effect that the disputed land belonged to their fathers who acquired through clearing the virgin land. The testimonies also provides that in the 1987's their late father's surrendered the disputed land to Harsh – reserved land which was under the control of Imalaseko village. The disputed land remained under the control of Harsh until 2000's where the plaintiff invaded the land and claimed to be the owner of the disputed land. They referred the matter before the Ward tribunal but the plaintiff did not show cause and later, they were notified that the plaintiff has filed land case before this Court.

Glaring from the testimonies the question cricking my mind would be, if the plaintiff was declared to be lawfully owner of the disputed land by Maswa District Land and Housing Tribunal via Land Application No.22 of 2017 which was unchallenged to date, does it signify the ownership of the disputed land by the plaintiff? Secondly, if the disputed land was taken by Harsh and put under control of Imalaseko village, how and when again the disputed land returned in hands of defendants' fathers? And what was the aim of surrendering that land to the Government? was it to use it and return to them or not.

The question above is answered, it is apparently the Maswa District Land and Housing Tribunal declared the plaintiff to be lawfully owner of the disputed land, such decision was unchallenged. In upshot, it is easier to conclude that the plaintiff is a lawful owner of the disputed land until the said decision challenged.

Notably, there is no suggestive testimony as to whether the alleged land which was given to Harsh was then returned in hands of the defendants' fathers. Also, there is no evidence showing that their parents and Government entered an agreement of returning the same to them. Therefore, this entail that if the land was given to Harsh then the disputed land is under control of the Imalaseko Village. If that is a case then the plaintiff was right to sue the said village councils and the order of Maswa District land and Housing Tribunal in land Application No.22 of 2017 which involved the plaintiff and Imalaseko Village and Isabanda Village Council where the disputed land is, declared to be the property of the plaintiff.

In a close digest of the plaintiff's case and the legal principle cherished in the case **of Hemed Saidi V Mohamed Mbilu [1984] T.L.R 113** at page 116 that a person whose evidence is heavier than that of the other is the one who must win. I fully subscribe to the said position.

Further, I am also of the stance that in measuring the weight of evidence, it is not a number of witnesses that matters but rather the quality of evidence. That being the position, the plaintiff has in balance of probability been able to establish the claims against the defendants. And thus, is entitled for recovery of the disputed land.

Responding to the second issue "*Whether the defendants trespassed the disputed land*"

Notably, as I detailed when answering the first issue, I hold without hesitation that the defendants trespassed the plaintiff's land as The Maswa District Land and Housing Tribunal via Land application No.22 of 2017, declared the plaintiff as lawful owner of the disputed land and the said decision was not appealed. Whereas, it is not proved as to whether when the land taken by Hashi was then later returned to the defendants' father if the said proof was, the right persons defendants required to sue is not plaintiff but Imalaseko and Isebanda village council as plaintiff did, in absence of these proof, the remained evidence suggest that the owner of the disputed land is a plaintiff and thus the defendants are trespasser.

Lastly, looking to the last issue as ***to what reliefs are the parties entitled thereto.***

This issue should not detain me much to discuss as I have keenly answered it when discussing issues No.1 and 2. Therefore, the plaintiff is declared to be lawful owner of the disputed land. The defendants be evicted from the suit land and left free enjoyment of the suit land by the plaintiff. The defendants are condemned to pay costs of the suit. It is so ordered.

It so ordered.

DATED at SHINYANGA this 10th day of May, 2024.



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R.B Massam
JUDGE
10/05/2024

Right of appeal is explained.



A handwritten signature in blue ink, appearing to read "R.B. Massam".

R.B Massam
JUDGE
10/05/2024