

IN THE HIGH COURT OF TANZANIA AT TANGA

IN TANGA SUB-REGISTRY

AT TANGA

LAND CASE NO. 14 OF 2022

DHAHABU BAU.....PLAINTIFF

VERSUS

MZIRAGEMBEI VILLAGE COUNCIL.....1ST DEFENDANT

LUSHOTO DISTRICT COUNCIL.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

Katarina Mteule, J.

06/05/2024 & 10/05/2024

Dhahabu Bau, the Plaintiff herein instituted this civil suit against Mziragembei Village Council, Lushoto District Council and the Attorney General; the first, the second and the third Defendants respectively. In the suit, the Plaintiff is claiming for recovery of the land measured (3) three acres, whose value is estimated at 5,000,000/=. The land in dispute is located at Mziragembei Village within the District of Lushoto.

It is alleged in the plaint that sometimes in 2018, Mziragembei Village Council trespassed into the Plaintiff's land and planted sisal therein without the consent of the plaintiff, thus the Plaintiff approached Mziragembei Village Council leaders to resolve the controversy without any success hence this suit. The Plaint is containing the following

relief(s):-

- (i) Declaration that the Defendants have trespassed into the Plaintiff's land.*
- (ii) The first Defendant be permanently restrained from entering the Plaintiff's land.*
- (iii) Costs of the case be borne by the Defendants.*
- (iv) Any other reliefs the court may deem fit and just to grant.*

Responding to the dispute, the Defendants filed their Joint Written Statement of Defence, claiming that the suit land belongs to the 1st Defendant, and it is used for games and sports for villagers and pupils. The Defendants therefore unanimously prayed for this Honourable Court to dismiss the entire suit with costs and grant other reliefs deemed fit.

Before determining this matter, it is crucial to note that prior to the commencement of the trial, this matter was scheduled before Hon. Manyanda, J. and later re-assigned to Hon. Chaba, J. following the transfer of the predecessor/ trial Judge Hon. Manyanda J to another duty station. Later the matter was then re-assigned to me for the purpose of case management and backlog clearance and parties were dully addressed in terms of Order XVIII Rule 10 (1) of the Civil Procedure Code [Cap 33 RE 2019].

Issues that were framed and agreed by the parties during Final Pre-Trial-Conference. The said issues are as follows:-

(i) Who is the lawful owner of the land in dispute.

(ii) To what reliefs the parties are entitled to.

In the matter, the Plaintiff was represented by Mr. Switbert Rwegasira, Advocate, whereas the Defendants were represented by Mr. Rashid Mohamed and Kefa Anase, State Attorneys.

Starting with the Plaintiff's case, three witnesses testified. PW1, Dhahabu Bau, a farmer, and a resident of Mziragembei Village in Lushoto District, is the plaintiff in this suit. He stated that he is suing the Village Council for trespassing into his land bequeathed to him by his father before his demise. According to his evidence, the land is measured 3 acres in size by estimation and it worths **TZS 60,000,000/=**, though he later stated that at the time he was instituting the case, the land valued **5,000,000/=**, and that the value has increased due to availability of electricity.

He further testified that in 2018 he saw the Village Council setting boundaries into his land by planting sisal plantations and it was when he decided to write a letter disclosing his intention to file a suit. The said

letter to the 1st Defendant dated 2/6/2022 was tendered in Court and admitted as **Exhibit P1**.

PW1 testified that his father lent the disputed land to the school as school children's playground and that the disputed piece of land is distinct from the school land which is located on the other side. He denied the claim that his father permanently offered the said land to the school.

On cross examination, PW1 testified that the school land was obtained via donation from various villagers one Munga, Mcharo, Mgonda and Bau Chikira who was his father. That it was handed to the village leaders, the Village Chairman and the School Chairman and thereafter, natural forests therein were cleared. He described the boundaries of the land he is the neighbour at the lower side while the upper side belongs to one Chambua Nyonge.

PW2 claimed that he was involved in the school committee that solicited the land from the Plaintiff's father in 1976 when the school was being established and him being the chairman of the school committee. He testified that having initially secured a land for school from four people, they later faced a challenge of school playground and they had to face the father of the plaintiff Mr. Bau Chikira and another person who

donated the land for playground. He added that they agreed to return the land to Bau after clearing the forest in the school land. That in 1980 they cleared their land and returned the borrowed land to the owner and thereafter Dhahabu Bau (The Plaintiff) started farming on the land but was stopped and decided to sue the village. On cross examination he stated that Bau Chikila passed away between 1981 and 1982 and he gave the land to his son Dhahabu Bau before he passed away. However, he stated that he did not see when Bau gave the land to Dhahabu.

PW3 gave a similar story as that of PW2 that in 1976 he was the secretary of the village of Mziragembei and that they requested the land from Mr. Bau to be used as a playground for the school children and in 1980 when they cleared their land, they returned the land for playground to the owners.

The Defendant's evidence was given by 2 witnesses (DW1 and DW2). DW1 Joseph Chambega, a resident of Mziragembei Village testified that he once worked with the Village Council as a resident of the Village and the Hamlet Chairman, Village Chairman and recently he is a Village Chairman. According to him, the school obtained the disputed land from the Village Council which also obtained it from the Plaintiff's father who donated it in 1976. He stated that in his position as a Member of the

Council, he was accompanied by one Mhadala to consult the Plaintiff's father and he orally agreed to offer the land to the village and it continued to be owned by the school and later, part of it was donated to KKKT Church for construction of a Church which still exists and the land was never returned to the Plaintiff's father Mr. Bau since he gave it to the village permanently and unconditionally.

DW1 further testified that apart from that land, the remaining land is 1 1/2 acres and it on the upper side, bordering one Chimila, and the lower side one Sekivuli, the other side being the Church, and the other side Mr. Bau (the Plaintiff's father).

He denied PW2 to be a resident of Mziragembei neither has he ever been a leader in that village. He as well denied any involvement of PW3 in requesting the land from the Plaintiff's father.

On cross examination, he stated that the school was established in 1976. That Mr. Bau offered 1 1/2 acres of land which was divided into two pieces, one side a playground for boys and the other side a playground for girls. The land donated to KKKT was within the same land which is in dispute within the playground.

DW3 stated that he was involved in the clearance of the land when it was being offered and converted for school use. According to him, the

land was never returned to Bau Chikila. He denied involvement of PW2 and PW3 in the acquisition of the land.

Upon closure of the defence case, parties filed their final submissions. I am thankful to their industrious work which shall be taken into account in determining this matter.

Having narrated the factual position from the evidence given by each side, I now consider the first issue which is **who is the lawful owner of the land in dispute.**

I have gone through the testimony of both sides, exhibit tendered and the submissions filed by both sides. The Plaintiff's testimony is that he obtained the land in dispute from his father by inheritance. In Exhibit P1 (a Notice of intention to sue) it is also written that the Plaintiff is the lawful owner of the land which he obtained in 1973 through inheritance from his father. Apart from the year of 1973 mentioned in Exhibit P1 as the year the plaintiff inherited the land, the Plaintiff testifying as PW1 could not remember when his father passed away and when he inherited the disputed land.

Though PW2 claimed the land to have been given to the Plaintiff, according to his testimony, he did not witness when the Plaintiff's father bequeathed the land to the Plaintiff although he remembers well that

the said father passed away in 1981 of 1982. The question remains to be whether there is evidence that Bau Chikila bequeathed the land to the Plaintiff. It remains that the only evidence of when the plaintiff inherited the land remains in exhibit P1 which is in 1973.

It is not disputed that in 1976 Mr. Bau Chikila who is the father of the Plaintiff offered the said land to Mziragembei Village for the use by the new school in the village. I share sentiments with the learned State Attorney Mr. Kefa Anase in questioning how the late Bau Chikila could have been inherited in 1973 before he passed away. And if he at any point bequeathed the land to the Plaintiff, how could he give it to the village in 1976. As well, the age of PW1 does not correspond to what he claims. In his testimony he stated that he is 50 years old which means he was born in 1974. Pursuant to Exhibit P1, he inherited the land in 1973 which means he inherited it not only before his father passes away but also before he was born.

In their submissions parties are in one on who bears the burden of proof which lies on a party who alleges the fact to be proved, and in this case, the Plaintiff. This is pursuant to **Section 110 of the Evidence Act [Cap 6 RE 2022]** which provides thus;

"(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."

See also the case of **Africarriers Limited vs Millenium Logistics Limited**, Civil Appeal No. 185 of 2018, CAT at Dar es Salaam at page 14 cited by the Mr. Kefa SA in his submissions.

Since the evidence of PW1 who is the plaintiff knowing his case better than others, diverts significantly from the possibilities of having the land bequeathed to him, then there was no evidence to prove the ownership of the disputed land to the Plaintiff. This is due to the confusion told by PW1 which indicates that he inherited the land before he was born.

There is no evidence that PW2 ever held the leadership in Mziragembei village and if so, there was no clear evidence on how he witnessed the transaction. In his testimony he stated that he was the leader of school committee and not the leader of the village which was offered the said land. His testimony did not clearly come out to disclose how the school committee became a party of the agreement between the village and the late Bau Chikila. Even PW3 did not specifically state how Mr. Chikila

offered the land for temporary use and there was no explanation on how the said land was handed back to the owners apart from the general assertions. The evidence of PW2 and PW3 was too general for reliance to prove the case to the balance of probabilities.

Additionally, there is no concrete evidence on the actual size of the land in dispute. The Plaintiff's testimony is that the land in dispute is 3 acres while according to the Defendant's testimony, the land in dispute is 1½ acres. This is a serious discrepancy in the evidence which needs to be cleared by the plaintiff's evidence especially when establishing ownership over the disputed land.

From the above analysis, it suffices to state that the Plaintiff failed to prove the case on the balance of probabilities that he is the lawful owner of the disputed land. As well since there is no dispute that the land was once in time offered to the village of Mziragembei since 1976 for the purpose of being used as a school playground and that it has been used for that purpose since then, it remains that the village lawfully owns the land. The first issue therefore is answered that the land is owned by Mziragembei Village Council who is the first Defendant.

At to what relief are the parties entitled to, it is apparent that since the plaintiff has failed to prove ownership of the land, the reliefs sought in the plaint cannot be granted.

In the finality, I find the matter lacking merits and therefore the suit is dismissed with costs.

Dated at Tanga this 10th Day of May, 2024.




KATARINA REVOCATI MTEULE

JUDGE

10/5/2024

Court:

Judgment delivered this 10th Day of May 2024 in the absence of the parties with the copy of the judgment uploaded in the electronic case management system. Right to Appeal is explained.




KATARINA REVOCATI MTEULE

JUDGE

10/5/2024