

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

LAND CASE NO. 107 OF 2004

ROMANI MOSHA.....PLAINTIFF

VERSUS

TANZANIA NATIONAL ROADS AGENCY:.....1ST DEFENDANT
THE ATTORNEY GENERAL.....2ND DEFENDANT

Date of the Last Order: 19/3/2014

Date of the Judgment: 11/9/2014

JUDGMENT

B.R. MUTUNGI, J.

This case had proceeded before Rugazia, J and Chinguwile, J and it was assigned to me at the defence stage. Even though, no additional defence witness appeared before me as a result I have had to write this judgment.

Upon perusal of the record and considering the evidence on record, the following is the summary of the case. The plaintiff Roman Mosha had narrated of how he

was the lawful owner and occupier of farms No. 2807, 2815 and 2809 with certificate of titles No. 49729, 50690 and 4998 respectively situate at GobaKisauke in Dar es Salaam Region. He further stated that some time in December, 2002 the first defendant Tanzania National Road Agency started the process of expanding the road which was passing through his farms and maintained by the first defendant. In the course of the expansion the first defendant's workmen or agents entered in his farms and destroyed various crops which included orange trees, coconut trees, pineapples, pawpaw, mango trees together with various other agricultural products. The foregoing not being enough, they also destroyed beacons demarcating the boundaries of the farms.

As would be expected the plaintiff wrote the first defendant several demand letters but he totally refused to pay any money to compensate the destroyed crops. This has necessitated the plaintiff to come before this court praying for the following:-

1. Payment of shs. 25,000,000/= as general damages
2. Interest on (1) above at court rate

3. Costs of this suit

4. Any other relief this court may deem fit and just

In order to corroborate his evidence the plaintiff had also summoned PW2 (Aretus Felix Swai) who worked and lived in his farms. This is the very witness who saw the first defendant's workers or agents uproot the various crops and the beacons. What PW2 did is to report to his employer (PW1) for further action.

On the other side of the coin, the first defendant brought DW1, Yusuf Jaffar Mazanga (a civil engineer) who by then was the Tan road's supervisor of road maintenance in Dar es Salaam region and had prepared an inventory before the maintenance in the disputed area had begun. DW1 further explained that the road that was widened was too narrow before as only one car could pass, but with the extension during the normal maintenance of an existing road it could accommodate two cars. He further explained that the plaintiff's farm was not within the 6 meters width that was extended, neither were there beacons and crops

destroyed. DW1 further stated that as a supervisor he was all the time at the site during the expansion of the road.

The issues that were framed by the court were as follows:-

1. Whether the defendant destroyed part of the plaintiff's farms
2. Whether the plaintiff is the lawful owner of the tree farms
3. What reliefs are the parties entitled to

The defendants did file their final submissions which in essence were to the effect that the plaintiff had miserably failed to prove his case. He had not demonstrated any evidence to warrant or engineer the grant of his prayers. All that the plaintiff has testified was hearsay and lacked evidential value. Even the alledged farms, two of them were not in his names and even the remaining one had no evidence to show that crops and beacons had been uprooted.

After the foregoing summary of the evidence on record I now turn to the framed issues starting with the first issue. The only witness purported to witness the destruction done on

the farms is PW2. This witness simply states that he saw a bulldozer destroying the crops found on the land and on inquiry he was told they had been sent by the first defendant. What he did was simply to call the plaintiff who came later after the destruction had been done. All that PW1 testified was hearsay as he only came after all had been settled. He alledged to have gone to complain before one Nyoni from the first defendant's office but this witness was not bought to testify. We are not told of what he saw.

PW1 tendered photographs of which in my settled opinion do not speak much (Exhibit P2 and P3). These were not taken on the alledged day but much latter. With no other collaborating evidence it is difficult to know if that was the situation on the material day.

The court had expected at least some expert opinion or analysis on the alleged destruction but no such evidence was ever brought in court. In so far as the destruction of the beacons is concerned, it is my settled view that at least a surveyor would have been brought to ascertain the boundaries as these farms were surveyed. This would have shade light as to whether the beacons were really removed

by the bulldozer of the first defendant. In the given forgoing situation it is hard to believe if at all the plaintiff's farms were destroyed by the defendants. .

The plaintiff had admitted that the area had all along a road but this was narrow and what the defendants had done is to expand the same. This is what was also admitted by DW1 but made it very clear that the area that was extended had nothing to do with the Plaintiff's farms. They only dealt with the area that falls within the road reserve.

There is the question of whether indeed the disputed farms were plaintiff's farms. It is on evidence that the plaintiff alledged to have been allocated three farms (Exhibit P1). As a result he owned three certificates of title. According to the plaintiff these were farm number 2807 with title number 49729 (Roman Manzewa), farm number 2815 with title No. 506960 (Roman Mosha) and farm No. 2809 with title No. 49981 (Roman Manzewa). PW1 tried to move the court to believe that these were all his names but the issuing authority of these certificates had chosen to use these names may be because he had applied using a very

long name (Roman EliapendaMauzewaSalieMosha). In my settled opinion it is difficult to believe that the Ministry of Lands (Registrar of Titles) had the time to start choosing and shortening the names and for what purposes or benefit.

There is also the evidence (Exhibit P4) tendered by Plaintiff in regards to the certificate of registration of business which appears in the name of Roman Mosha, this too is surprising as it has only two names which also appear in the plaint. Having such controversy in the names and no other collaborating evidence to prove otherwise the court stands to believe that the only farm that belonged to the plaintiff is farm No. 2815 with certificate of title 506960. The farm No. 2807 with title No. 49729 and No. 2809 with title No. 49981 do not belong to the plaintiff. It follows therefore the plaintiff not being the owner of farms number 2807 and 2809 had no colour of right to sue on them. Even on the remaining one, there is no evidence to show that it was destroyed by the acts of the first defendant in carrying out the road maintenance.

I now come to the last issue. As I have tried to analyse in the first two issues the plaintiff has not proved as to the

destruction of the beacons and the crops purported to be on his farms nor as he proved to be the owner of farms number 2807 and 2809. Even though, we are not told if at all the remaining farm was destroyed as the assertion on the alledged destruction was too general. In such circumstances the plaintiff stands to loose.

The plaintiff has prayed for general damages of 25,000,000/=. The Plaintiffs claims as I have already stated have no basis at all.

In light of the foregoing the plaintiff's case fails for lack of sufficient evidence with costs.

Right of Appeal Explained.

B.R. MUTUNGI

JUDGE

11/9/2014

Read this day of 11/9/2014 in presence of Living for
Katemifor Plaintiff and Mr. Vicent Tango (P.S.A) for the
defendants.

B.R. MUTUNGI

JUDGE

11/9/2014

