

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

LAND CASE NO. 250 OF 2016

**JENERALI ULIMWENGU.....1ST PLAINTIFF
DR. GIDEON SHOO.....2ND PLAINTIFF
SHAABAN KANUWA.....3RD PLAINTIFF**

VERSUS

ROBERT ELISANTE NGOWO.....DEFENDANT

J U D G M E N T

Date of last Order: 28/2/2018

Date of Judgment: 4/5/2018

MGONYA, J.

This of course is an *Exparte* Judgment. The Plaintiffs basing on evidence of PW1 (Shabani Hamis Kanuwa) and four documentary Exhibits prays for Judgment and Decree against Defendant as follows:-

- i. Declaratory order that the Defendant has unlawfully trespassed the Plaintiffs' land in a Farm land located at Plot No. 1906 Kerege Village, Bagamoyo;***

- ii. Permanent Injunction to restrain the Defendant and or their agents or Legal Representatives from taking possession or selling or leasing the Farm land situated on Plot No. 1906 Kerege Village in Bagamoyo;*
- iii. Declaration that the suit property belongs to the Plaintiffs;*
- iv. Costs of suit be paid by the Defendant; and*
- v. Any other relief(s) this Honorable court may deem just and equitable to grant.*

Mr. Komba learned Advocate represented Plaintiffs.

The evidence given by PW1 **Shabani Hamisi Kanuwa** shows that the Plaintiffs were the Shareholders M of Mtanzania Publication Company Ltd, which previous owned the Farm with Certificate of Occupancy described as **Title Deed No. 51470**. The Certificate of Occupancy was admitted as **Exhibit P1**. The witness testified that on 29th November, 2008 Board of Directors meeting of Mtanzania Publications Company Ltd passed a resolution of transfer of the said Right of Occupancy of Title Deed No. 51470 to the Plaintiffs. The resolution was admitted as **Exhibit P2**.

Further to the above, PW1 averred that the Right of Occupancy of **Title Deed No. 51470** have subtitles which the Plaintiffs are paying land rent as per **Exhibit P3**. After being directed by Bagamoyo District Government over the change of the use of the Property, the Plaintiffs found Defendant in the suit plot claiming ownership of the said land. The Plaintiffs complain over the trespass to the Ward Land Committee via **Exhibit P4**; But the Committee never responded over the issue.

PW1 deposed that they have come to the court after failure of relevant Land Authorities Offices to assist the Plaintiff on the dispute.

PW1 retaliated the reliefs sought at page 4 and 5 of the Plaint which of course I have earlier stated them in this judgment.

At the closure of the Plaintiffs' case, upon a prayer by Mr. Komba, I granted leave for him to file the final written submission which accordingly was filed on **28th March, 2018** via **Excheque receipt No. 18546940**.

Now, before I venture to determine the merits or otherwise of the present matter, though this is an *Exparte* Judgement, the Plaintiffs are duty bound to prove what they asserted to be true as envisaged by the law of evidence under the provision of **Section 110 Cap. 6 [R. E. 2002]**, the same states:-

"whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

In the same series, the law stands very clear that the Plaintiff ought to get such reliefs as he they are entitled on the facts established on evidence even if the relief has not been specifically prayed for. See the authority of our Highest Court of the Land in the case of ***ZUBERI AUGUSTINO VS. ANICET MUGABE [1992] TLR 137.***

Looking at paragraph 9 and 10 of the Plaint among other facts, it has been disclosed that the Defendant has encroached the suit land which is alleged to be owned by Plaintiffs. Paragraph 10, the Plaintiffs have described the said act and baptized the Defendant as a **"trespasser."**

The noble duty before me, is to ascertain whether there is an evidence on record which have been established by Plaintiffs to justify that they are lawful owners of the suit property situated at Farm on **Plot No. 1906** consisting of 12.488 hacters at Kerege Village-Bagamoyo District with **Certificate of Title No. 51470.** The above exercise will not end up since the court will further

venture to ascertain whether the Plaintiffs herein are entitled to get the reliefs they have prayed.

On this aspect, however, the court will still remain on her duty to satisfy itself on the facts established on evidence over the said reliefs.

Now as regards to who is the lawful owner over the property in dispute, I am satisfied that indeed the Plaintiffs are the lawful owner of the suit property situated at Farm on **Plot No. 1906 consisting of 12.488 Hacters, Kerege Village, Bagamoyo** with Certificate of **Title No. 51470**. I arriving at this point, apart from PW1 oral testimony, I am guided by what transpired in the transfer as per the contents of **Exhibit P1**.

The next question is what reliefs are the Plaintiffs entitled.

At paragraph 4 of the Plaint, the Plaintiffs are claiming for general damages arising out of the trespass to land by the Defendant in respect of the Plaintiffs' land.

I am conversant that it is trite law that unlike special damages general damages ought not be specified by party in a pleading as it is within the discretion of the court. See the court of Appeal decision in the case of **LONDON AND NOTHERN BANK LIMITED VS. GEORGE NEWES LTD [1900]16 TLR 433**.

Since the general damages do not need to be specifically claimed or proved to have been sustained, and is within the discretion of the court, then the same will be awarded in the conclusion of this judgment.

Regarding to the specifically damages, PW1 testified that Plaintiffs have incurred some expenses for surveying the land and they have paid ADrchitecture **15 Million**.

The jurisprudence in our legal fraternity is settled that special damages must be proved specifically and strictly. On this I wish to celebrate the sentiment propended by Court of Appeal of Tanzania in the case of ***STANBIC BANK TANZANIA LIMITED VS. ABERCROMBIE & KENT T. LIMITED***, Civil Appeal No. 21 of **2001**. It was stated as under:-

"The law is that special damages must be proved specifically and strictly."

Now, the sum of **15 Million** paid to the Architecture unfortunately the same was not proved. PW1 had not tendered any receipt or documentary evidence to prove for the same. The said figure then cannot be awarded as the same was not supported by established evidence to prove.

Finally but not least, what reliefs are the Plaintiffs entitled to in this matter.

On the evidence and reasons discussed in this judgment, I hereby enter judgment in favour of the Plaintiffs as follows:-

- i. The Defendant has unlawfully trespassed the Plaintiffs' land on a Farm land located at Plot No. 1906 Kerege Village, Bagamoyo;***
- ii. The Defendant or his agents, or Legal Representatives are restraining from taking possession or selling or leasing the Farm land situated on Plot No. 1906 Kerege Village, Bagamoyo;***
- iii. The Plaintiffs are declared as lawful owners of Farm on Plot No. 1906 consisting of 12.488 hacters, Kerege Village Bagamoyo with Certificate of Title No. 51470;***
- iv. The Defendant shall pay Plaintiffs 9 Million Tshs as general damages;***
- v. The Plaintiffs shall also have the costs of the suit; to be borne by the Defendant.***

Consequently, in all fours since a trespasser is a trespasser nothing qualified him once he has been declared so by the court of competent jurisdiction, the Defendant deserves nothing than to demolish if any his building and carry any his building materials.

In the upshot, the suit is in favour of the Plaintiffs in the manner stated above.

It is so ordered.



L. E. MGONYA

JUDGE

4/5/2018

COURT: Judgment delivered in the presence of Advocate Aloyce Komba for Plaintiff and Ms. Emmy B/C in my chamber today 4th May, 2018.



L. E. MGONYA

JUDGE

4/5/2018