

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND CASE NO. 392 OF 2016

GODWIN NOTESSY MBWILO PLAINTIFF

VERSUS

FESTO OMARY	1ST	DEFENDANT
SAGILE MKAMI.....	2ND	DEFENDANT
EDWARD DAUDI.....	3RD	DEFENDANT
MZEE HAMADI.....	4TH	DEFENDANT
SAID SHABAN.....	5TH	DEFENDANT
ALLY MCHUCHULE.....	6TH	DEFENDANT
JOSEPH MKISS.....	7TH	DEFENDANT
HASSAN MASHAKA.....	8TH	DEFENDANT
DULA SAID.....	9TH	DEFENDANT
HAMISI RAMADHANI.....	10TH	DEFENDANT
MZEE KIKONO.....	11TH	DEFENDANT
ALLY MBONDE.....	12TH	DEFENDANT
WANKULU MARWA.....	13TH	DEFENDANT
SELEMAN ABDALLAH.....	14TH	DEFENDANT
FATUMA SAID.....	15TH	DEFENDANT

JUDGMENT

Date of Last Order: 27/8/2018

Date of Judgment 14/9/2018

A. Mohamed, J:

The Plaintiff, Godwin Notessy Mbwilo, brought this action against Festo Omary and fourteen other defendants seeking a declaration that he is the lawful owner of a 10 acre parcel of land at Msongola

Area, Yangeyange Street, Ilala within Municipality Dar es Salaam effective from 13/1/2009. He avers to have acquired it from Mr. and Mrs. Mwamba Ally Jingu and Mrs. Rozan. Raymond Mkendyanoni pursuant to sale agreements between the aforementioned vendors as well as the Msongola Village Government's allocation letter dated 20/2/1995.

He claims for the following reliefs:-

- i. A declaration that he is the lawful owner of the disputed parcel of land comprising 10 Acres located at Msongola Area, Yangeyange Street, Ilala Municipality, Dar es salaam.
- ii. An order for eviction by demolition of the defendants' buildings illegally built on the disputed land to give way or they yield vacant possession to the plaintiff.
- iii. Payment of general damages for the defendants' illegal occupation of the land arising out of damaged crops, plants that belonged to the plaintiff and loss of use by the plaintiff for all that period the land is under illegal occupation.
- iv. Payment of interest on general damages at the Court rate of 7% from the date of judgment until final payment.
- v. An order for costs of the suit.

At the hearing, Mr. Ngudungi, for the plaintiff averred service was properly effected to all defendants to defend the suit through substituted service by way of publication in the Mwananchi Newspaper and the Nipashe Newspaper of 22/3/2017.

The counsel further asserted to date, the defendants have failed to either appear in court or file their written statements of defence. He then urged this court to enter a defaulted judgment against the defendants under Rule 14(1) of Order VIII of the Civil Procedure Code [Cap. 33 R.E. 2002] with costs.

Having heard the plaintiff and upon examining the record, I am satisfied the defendants have indeed defaulted in both entering appearance and filing their written statements of defence.

The record reveals on 17/2/2017, a Court process server took affidavits that all the defendants had refused to sign on summonses to file written statements of defence issued on 15/11/2016. Consequently, on 19/3/2017 this court ordered the defendants be served by way of publication which was done through the Mwananchi and Nipashe newspapers of 22/3/2017. Yet again, the defendants failed to file written statements of defence.

The position is that Rule 14(1) of Order VIII of the Civil Procedure Code (Supra) empowers this Court to enter default judgment and decree for the plaintiff. See **Joe R.M. Rugarabamu V. Tanzania Tea Blenders [1990] TLR 24.**

I consequently enter judgment and decree for the plaintiff. I also issue the following orders:

- i) The plaintiff is declared the lawful owner of all of the parcel of land comprising 10 Acres located at Msongola Area, Yangeyange Street, Ilala Municipality, within Dar es salaam.
- ii) The defendants to be evicted from the disputed parcel of land or yield vacant possession to the plaintiff.
- iii) The defendants jointly and severally are to pay general damages of shillings ten million to the plaintiff.
- iv) Costs of the suit.

It is so ordered.



**A. Mohamed,
JUDGE,
14/9/2018**