

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

**LAND CASE NO.37 OF 2017**

- 1. ALLY SELEMANI KIBWANA (Legal Personal  
Representative of ALLY SELEMAN KIBWANA**
- 2. MBUNDA CATHERINE MOSHIRO**
- 3. RICHARD MLANGA KINGA**
- 4. MOHAMED SAID NYAGALA (Legal Personal  
Representative of SAID KONDO NYAGALA)**
- 5. FADHILI MOHAMED SELEGA**
- 6. RAMADHANI MFAUME NASSORO**
- 7. MGENI KIZUNDU MWINYIMKUU**
- 8. JUMANNE SAID KAWAMBWA**
- 9. MWAJUMA SAID SALUMU**
- 10. RAJABU MWINYIMKUU KAMANGA**
- 11. SELEMANI SAID KAWAMBWA**
- 12. RASHIDI RAJABU MWINYIMKUU**
- 13. FARIDA SAID KAWAMBWA**
- 14. ALLY SULTANI DENGE**
- 15. MKEJINA RASHIDI KAWAMBWA**
- 16. ZAINAB MBEGU NASSORO**

**PLAINTIFFS**

- 17. MASHA ATHUMANI SIMBA**
- 18. NASSORO RAMADHANI NASORO**
- 19. FATUMA SAID NYAGALA**
- 20. ATHUMAN MOHAMED SELEGA**
- 21. MWANAHAMIS RASHID KAWAMBWA**
- 22. SELEMANI MOHAMED MGUBUHILE**
- 23. STAMILI RAMADHANI MFAUME**
- 24. AMINA MBEGU NASSORO**
- 25. SINA RAJABU BAKARI**

**Versus**

- 1. M/S COSMOS ESTATE LIMITED.....1<sup>ST</sup> DEFENDANT**
- 2. KISARAWA DISTRICT COUNCIL.....2<sup>ND</sup> DEFENDANT**

## **JUDGEMENT**

### **OPIYO, J.**

The land policy in Tanzania declares all land in Tanzania to be a "Public Land" vested to the president of the United Republic of Tanzania as a Trustee on behalf of all citizens (section 3 of the Land Act, Cap 113 R.E 2002). Therefore the Trustee is empowered by Cap 118, Land Acquisition Act to compulsorily acquire any lands which is private property of individual owners and occupiers in Tanzania for public purposes and in connection of housing schemes upon equitable compensation calculated at market value. The main

purpose of compulsory acquisition by the president is to make the land available at any time when needed for public purposes.

In consideration of the above spirit of the land laws in Tanzania, the 2<sup>nd</sup> defendant in this suit, Kisarawe District Council in 2014 acquired the land from the plaintiffs, located at Kazimzumbwi Village in Kisarawe District, Coast Region and allocated the same to the 1<sup>st</sup> defendant. The aim was to develop the suit land and construct modern residential houses and in the end turn the whole area into the modern town. All necessary arrangements were done, evaluation was duly conducted by the 2<sup>nd</sup> defendant and at the end 1<sup>st</sup> defendant paid compensation to 261 villagers who resided the area including the 25 plaintiffs, each according to what he or she deserved as per the valuation report (exhibit D1).

The plaintiffs were not happy with the amount of compensation paid by the defendants, therefore brought this suit on 16<sup>th</sup> February 2015, claiming for Payment of an outstanding 276,934,401/- (Two Hundred and Seventy Six Millions, Nine Hundred and Thirty Four Thousands, Four Hundred and One Tanzanian shillings), Interest on the principal amount at bank rate from 2014 to the date of judgement of this suit and on a decretal amount at court's rate of 12% from the date of judgement till payment in full, Costs of the suit and any other relief this court will deem fit and fit to grant.

The defendants jointly denied the above claims maintaining that, the compensation was fully paid to the 261 villagers including the 25 plaintiffs

hereinabove following a proper valuation of their property at then prevailing market value. That, all plaintiffs were fully involved in the valuation process and payment. They willingly accepted the payment given to them as their respective compensation. Therefore their claims are vexation, frivolous and unmaintainable in law.

The plaintiffs were being represented by Mr. Mashiku Sabasaba, Learned counsel while Mr. Hassan Mussa Learned counsel represented the 1<sup>st</sup> defendant and Mr Shani Njozi, Solicitor, appeared for the 2<sup>nd</sup> defendant. Before commencement of hearing, the following three issues were framed and agreed upon for determination by the court:-

1. Whether the Plaintiffs' properties were properly and fairly valued prior to acquisition of the respective land by the 1<sup>st</sup> Defendant.
2. Whether a subsequent compensation which was paid to the Plaintiffs by the 2<sup>nd</sup> Defendant was adequate.
3. To what relies are the parties entitled.

All the 25 plaintiffs testified to support the averments in their plaint. The defendant also lined up a total of 3 witnesses in vouch to disapprove plaintiffs' claims against them. The gist of their testimonies will be considered in analysis of each issue. Having assiduously heard and gone through the testimonies of witnesses from both sides, having also gone through the

exhibits and the entire record of this case, it is my observation that, the following facts are not at all in dispute:-

1. The plaintiffs' lands were involved in a development plan to build a modern town at Kazimzumbwi village at the material time.
2. The project was to be implemented by the 1<sup>st</sup> defendant, M/S Cosmos Estate Ltd, as the developer.
3. The 1<sup>st</sup> defendant as a developer in the said project was introduced to the plaintiffs by the 2<sup>nd</sup> defendant, Kisarawe District Council who had authorities on behalf of the President over the land in the locality involved in the intended project (Kazimzumbwi village).
4. The plaintiffs and other villagers together agreed to surrender their lands to the 1<sup>st</sup> defendant upon payment of compensation.
5. The 2<sup>nd</sup> defendant was tasked and in fact did the valuation of the plaintiffs' lands and accordingly compensated the land owners.
6. All the plaintiffs in the instant suit received the money intended for compensation and signed the relevant documents for the same.
7. Subsequently the plaintiffs and other villagers vacated their properties after the payments were effected.

8. The plaintiff re-valuated their properties through private valuer after compensation based on the original valuation by the 2<sup>nd</sup> defendant was effected.

Having identified the issues not in controversy the court now sets to determine the framed issues which were agreed to be in dispute between the parties as outlined above. The issues in dispute will be determined in seriatim. The first issue is whether the plaintiffs' properties were properly and fairly valued prior to acquisition of the respective land by the 1<sup>st</sup> Defendant? The plaintiffs' evidence on that issue came from PW1, and corroborated by the testimony of PW2-PW25. In nut shell, they had these to say in establishing their claim; that, the valuation of their properties by the 2<sup>nd</sup> defendant in the present case was unfair and illegal for being inadequate and reached without their involvement. They insist that, they were not involved in the valuation process by the 2<sup>nd</sup> defendant. They claimed that, it is only the 2<sup>nd</sup> defendant and her officers who were involved in the valuation process. Therefore, the valuation was done fraudulently. They testified that they were just paid the money without knowing what was being paid for and to what extent. To rectify the errors on the valuation by the 2<sup>nd</sup> defendant, the plaintiffs notified the 1<sup>st</sup> defendant and unsuccessfully invited her into a negotiation meeting.

They continued to state in their testimony that, after receipt of what they believed to be inadequate compensation, they moved to employ private

valuer who came up with different higher figures for each from that of the 2<sup>nd</sup> defendant valuation. The plaintiffs' evidence revealed that, the 2<sup>nd</sup> valuation suggested the value of their land to be 1500/= per square meter unlike 445/= per square meter suggested by the 2<sup>nd</sup> defendant in her original valuation report. The 2<sup>nd</sup> valuation report came out on August 2014. That, following the unwillingness of the defendants to meet with the plaintiffs to discuss payment deficits, they decided to give notice of their intention to sue as evidenced in exhibit P1 (a) and P1 (b), on 1<sup>st</sup> September 2014.

The defendants, particularly the 2<sup>nd</sup> defendant has strongly disputed the truthfulness of the evidence by the plaintiffs. DW1, Omary Sadat Mkwaya, an employee of the 2<sup>nd</sup> defendant by then as a valuer who did the evaluation of the plaintiffs' properties testified that, the valuation was carried out legally and scientifically, complying with all directives from the authorities concerned. That, the plaintiffs were fully involved in the whole process and at the end they received their payment as compensation willingly. He testified further that, the rates used in paying the plaintiffs are the government rates issued in the financial year 2013/2014 from the Ministry of Land, Department of Land Valuation. He cemented his testimony by tendering exhibit D1 is a valuation report for compensation at Kazimzumbwi area dated 7/2/2014. He ended his testimony by maintaining that, basically the claims by the plaintiffs are baseless. Their rates in re-evaluation process are non-existent and so much exaggerated.

DW2, Hiyasinta Ignas Masao who was the acting Village Executive Officer (VEO) of Kazimzumbwi during that material time on her part insisted that, the plaintiffs were fully involved in the valuation processes and were adequately compensated. They received the payment willingly and vacated their lands. She stated that, she was also fully involved in the whole process as an area leader (VEO) and she tendered exhibit D2 to substantiate her testimony, which is the collection of Land valuation Form 1 filled and dully signed by herself and plaintiffs during the process.

DW3, Irshad Hussein, 1<sup>st</sup> defendant's General Manager testified on good intention 1<sup>st</sup> defendant had in the project and her good reputation in the real estate industry. He told the court how they entered a MOU with Kisarawe District Council that, the District Council was to conduct the professional evaluation, supervise every aspect until payment for compensation which was to be effected by them. He also confirmed 1<sup>st</sup> defendant having paid the compensation amount as per valuation report through second defendant as agreed.

I find it innocuous through the evidence from both parties, the exhibits tendered and the records at hand, to say that, the claim by the plaintiffs that, the valuation process was illegal and further that they were not involved in the process to be unfounded. My basis for saying so is that, the findings in this case have revealed the contrary to plaintiffs claim above. In my view, the whole process was legal, it followed all the steps as required in law. This is evidenced by the testimony of DW1 and DW2, also exhibits D1 and D2, the documents the plaintiffs dully approved to signify their involvement. The



evidence on record further shows that, the acquisition process touched over 200 villagers at Kazimzumbwi, not only the plaintiffs in the instant case. All of them willingly accepted the compensation paid to them by the defendants and surrendered their landed properties to the 1<sup>st</sup> defendant for intended developments to be effected on the same.

The above testimony reveals that, the plaintiffs like the rest of the property owners in the area where the intended project was supposed to take place were fully involved in the valuation process and they participated fully up to the day when they were paid their dues as compensation for their land. My keen observation, as far as this case is concerned, the plaintiffs' claims in the case are the result of an afterthought desire for more. From the evidence before this court, they all of them agree and promised the defendants to surrender their landed properties upon being compensated. The defendants accordingly acted on that promise. Used their resources to perform their part of the agreement with plaintiffs. The plaintiffs also on their part, performed as agreed. They received the payment, signed all the necessary documents as evidence of their acceptance to the valuation and compensation and vacated their lands. Based on that, it is my view that the contractual obligations arising between the parties to the present suit were fully performed by both parties. In the circumstances, the plaintiffs are estopped to bring these claims with regard to the fully performed contract. Acceptance of the payments and vacating their lands thereafter, marked the end of the contract and the said properties shifted from them to the 1<sup>st</sup> defendant.

It is a rule in the law of contracts that, a person making a promise to another, and causing the other to believe and act on the said promise, the promisor is then estopped to revoke his or her promise afterwards. This rule is also treasured in the law of Evidence Act, Cap 6 R.E 2002, under section 123 which provides:-

*"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or his representative shall be allowed, in any suit or proceedings between himself and that person or his representative, to deny the truth of that thing."*

The same rule was well explained in the case of **East African Development Bank v Blueline Enterprises Ltd, Civil Appeal No. 110 OF 2009, CAT, DSM (unreported)**, where it was observed that:-

*"...estoppel, as we understand, is meant to preclude a party from contending the contrary of any precise point which having been distinctly put in issue, has been solemnly and with certainty determined against him."*

The application of the estoppel rule is also found in the case of **National Insurance Corporation vs Maligisa Manyangu & Others (Civil Revision No.14 of 2017), [2019] HC, DSM (unreported)**, where it was held that:-

*"This statement by the Applicant's counsel is loud and clear. It need not be emphasized that the Applicant as well as their counsel are fully aware of the identity of the 24 persons whom Mr. Sheppo loudly acknowledged to have paid. If their identity were unknown, how did the Applicant effect payment? Considering that there is no indication in the court's record's to the effect that the Applicant and its counsel retracted the above averment, the principle of estoppel estops them from raising the issue of identity at this state."*

In view of the above cited authorities, it is my considered opinion that, the plaintiffs claim in the suit at hand arise out of an afterthought, it intended to bring nothing other than unnecessary inconveniences to the defendants who have already performed their obligations as agreed in the contract. Above all, the plaintiffs' 2<sup>nd</sup> valuation by their private Valuer (Tapro Consult (T) Ltd) came to be conducted two years after the 2<sup>nd</sup> defendant's valuation. It was conducted in August 2014 and the values that caused the deficit so claimed by the plaintiffs could have arisen due to difference in time of the two valuations. While the 1<sup>st</sup> valuation was done in 2012 and ended in 2013, as per the prevailing values of the properties issued by the Ministry Land, House and Human Settlement of 2013, the alleged second valuation was conducted almost two years after the first. Worse still, the basis of plaintiff's alleged second valuation was never proved in court. The 2<sup>nd</sup> Valuer was never called in court to testify on the basis of his valuation and the alleged second valuation report was never tendered in court. This is as good as the plaintiffs completed failed to prove their case on existence of any deficit in payment of compensation to them. In my keen observation, the fact that, the 2<sup>nd</sup>

valuation which forms the basis of the dispute between these parties came after the plaintiffs have already received payments from the defendants, forms a concrete proof that this suit is an afterthought built on mere imaginations. Therefore, first issue is answered in the affirmative.

The analysis above also answered affirmatively the 2<sup>nd</sup> issue on whether a subsequent compensation which was paid to the plaintiffs by the 2<sup>nd</sup> defendant was adequate. After finding that the plaintiff failed to prove any claim for deficit in compensation, in my view, this is a failure to challenge the adequacy of what they willingly received as compensation. It remains therefore that, the paid compensation was adequate. The issue on the reliefs the parties are entitled to need not detain me in wake of the finding that the plaintiffs failed to prove their claim against the defendants. What such plaintiffs are entitled to is a dismissal of their unproved claim.

Having answered the two main framed issues in the affirmative, it follows therefore that the plaintiffs will not be entitled to any of the reliefs sought. Accordingly, I am bound to find that, the suit fails in its entirety with costs.

Ordered accordingly.



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**M. P. OPIYO,**

**JUDGE**

**3/4/2020**